



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
[INFORMATION RIGHTS]**

Case No. EA/2013/0273

ON APPEAL FROM:

**Information Commissioner's
Decision Notice No: FS50502881
Dated: 28 November 2013**

Appellant: Richard Drover

First Respondent: The Information Commissioner

Second Respondent: Chief Constable of Hampshire Police

On the papers

Date of decision: 16 July 2014

Before

**Chris Ryan
(Judge)**

and

**Melanie Howard
Andrew Whetnall**

Subject matter: Whether information held s.1

**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER**

Case No. EA/2013/0273

DECISION OF THE FIRST-TIER TRIBUNAL

The appeal is dismissed

REASONS FOR DECISION

1. In January 2013 the Appellant's vehicle was recorded as exceeding the speed limit at a particular location. He was subsequently given an option to either accept a fixed penalty or be prosecuted for the alleged speeding offence. He was provided with the following documents:
 - a. A witness statement signed by a qualified operator of the equipment used to record his vehicle's speed. The operator was an employee of the Hampshire Constabulary (the Second Respondent to this Appeal and referred to hereafter as "the Constabulary"). The witness statement recorded the location of the equipment and certain other information about its operation at the time when the vehicle's speed was detected and recorded.
 - b. An image of the front of the Appellant's vehicle showing its number plate.
 - c. A certificate given by Tele-Traffic (UK) Ltd. that the equipment used by the operator complied with certain specifications. The certificate was supported by calibration data.
2. The Appellant argued at the time that the "Code of Conduct for operational use of road policing enforcement technology", published by the Association of Chief Police Officers ("ACPO") imposed on the Constabulary various obligations for the operation of speed recording equipment and that he was entitled to satisfy himself that those obligations had been complied with before he made his choice between a fixed penalty and a prosecution. He said that withholding information would breach his human rights, including his right to a fair trial.
3. By letter dated 20 March 2013 ("the Request") the Appellant identified ten items of information which he sought. The full list is set out in the appendix to this decision. As the matter comes before us items 1 and 5 are to be disregarded (it is conceded that item 1 was not an information request and that item 5 had been complied with).

4. The Request constituted a request for information under the Freedom of Information Act 2000 ("FOIA"). FOIA section 1 imposes on the public authorities to whom it applies an obligation to disclose requested information unless certain conditions apply or the information falls within one of a number of exemptions set out in FOIA.
5. The Constabulary's response at the time was that it did not hold any of the items of information sought under items 6-10 inclusive of the Request. It maintained that position during an investigation by the Information Commissioner into the Appellant's complaint about the way in which the Request was handled and during this Appeal from the Decision Notice which the Information Commissioner issued at the conclusion of his investigation.
6. The Decision Notice was dated 28 November 2013 and recorded the Information Commissioner's decision that the Constabulary had been correct in its assertion that it did not hold the information in dispute. He reached that conclusion by the following route:
 - a. The supplier of the speed enforcement equipment in question had previously submitted it to the Home Office for type approval;
 - b. Type approval had been granted, with the result that the equipment constituted "a prescribed device" and that data recorded by it could be relied upon to support the prosecution of a speeding offence;
 - c. The equipment had been purchased some ten years previously, not by the Constabulary, but by Portsmouth City Council ("the Council");
 - d. The Constabulary had come to use the equipment because, at the time of its acquisition, it had been in partnership with the Council; and
 - e. The Constabulary was not a party to the procurement contract and the Council did not hold any relevant information on the Constabulary's behalf.
7. The Appellant has appealed the Decision Notice to this Tribunal. Such Appeals are governed by FOIA section 58. Under that section we are required to consider whether a Decision Notice issued by the Information Commissioner is in accordance with the law. We may also consider whether, to the extent that the Decision Notice involved an exercise of discretion by the Information Commissioner, he ought to have exercised his discretion differently. We may, in the process, review any finding of fact on which the notice in question was based.
8. The basis of the Appellant's appeal continues to be that the Constabulary is unable to pursue a prosecution in compliance with the Code of Conduct without making the requested information available to him. That raises a number of issues that fall outside the limited jurisdiction of this Tribunal. It is not for us to determine, or even to

express an opinion on, whether the Constabulary should hold the information, let alone whether the Appellant's right to a fair trial would be denied were it not to be provided to him. Our jurisdiction, for the purpose of this Appeal, is limited to the question of whether, on the balance of probabilities, the Constabulary held the requested information at the time of the Request.

9. As to that issue, the Appellant has provided no evidence or argument to suggest that the Information Commissioner's assessment, as summarised in paragraph [6] above, was wrong. It seems to us that, although the Constabulary was not particularly forthcoming in answering the questions put to it by the Information Commissioner during his investigation, the statements that were made fully justified the conclusion the Information Commissioner reached. They were, moreover, entirely consistent with the proper operation of a statutory procedure which seems deliberately to have separated:
 - a. The type approval of equipment for use in support of prosecutions, which was undertaken centrally by the Home Office; from
 - b. The provision by a prosecutor in each case of evidence establishing that the data relied on had been generated by approved equipment which had been operated properly at the time.
10. Against that background we find no surprise in the Constabulary's assertion that it did not hold any of the technical information which the Appellant requested. We therefore conclude that the Information Commissioner was correct to conclude that, on the balance of probabilities, the Constabulary did not hold the requested information at the relevant time.
11. The appeal should therefore be dismissed.
12. Our conclusion is unanimous.

Chris Ryan

Judge
16th July 2014

APPENDIX

Please provide the following information based upon the requirements of the Freedom of Information Act. I would add that you are required to respond to these and the previous request for information within twenty days.

1. Please provide an explanation to confirm absolute certainty that a camera allegedly registers a complete set of data, namely the set number of distance and change of distance reading.
2. Please confirm what recorded set of data information is collected to satisfy the requirements for compatibility with the calibration certificate pulse repetition frequency test. The data allegedly comprises of 30 or 42 readings dependent upon speed camera specification. The manufacturer acknowledges that a shift of the aiming point, namely the registration plate, increases the likelihood of error.
3. Please confirm the minimum number of readings required by the laser aiming point on the vertical target namely the registration plate, for a reading of speed to be valid. Please qualify any statements.
4. Please confirm whether or not readings gathered from the curvature positions of a vehicle or alternative target points other than the vertical number plate are sufficient to invalidate speed reading. Please qualify any statements.
5. Please confirm whether the practice of ensuring Risk Assessments are conducted regularly for every site used for mobile speed detection and the use of generic risk assessments are completed and countersigned.
6. Please provide a copy of the Constabulary procedure for the use of the laser.
7. Please provide detailed information of the independent tests applied to the pulse data which is claimed by the manufacturer to eliminate any error that a shift of aiming point from the registration plate could cause.
8. Please provide documented information of the method adopted to ensure that the aiming point will remain constant and fixed upon the registration plate for the entire C.B (??) C.3 (??) second measurement period, which the manufacturer stresses is very important. This is particularly important when the cosine factor in the vertical and/or horizontal plane is applicable. The cosine factor encourages the aiming point to move away from the target in a vertical and/or horizontal plane, dependent upon the location of the camera. This represents an important issue to consider when contesting the accuracy of any speeding allegation.
9. Please provide all information related to the testing procedures of this speed camera for type approval.
10. Please confirm whether a printout is provided of the collected camera data, following a speeding allegation. Compatibility of the data with the calibration certificate would provide conclusive proof of camera accuracy.