



Tribunals Service
Information Tribunal

Information Tribunal
EA/2006/0071

Appeal Number:

Freedom of Information Act 2000 (FOIA)

Date 8th January 2007

Decision Promulgated

18th January 2007

BEFORE

INFORMATION TRIBUNAL DEPUTY CHAIRMAN

Chris Ryan

And

LAY MEMBERS

Anne Chafer

Peter Dixon

Between

BUCKS FREE PRESS

Appellant

And

INFORMATION COMMISSIONER

Respondent

Decision

The Tribunal has determined this Appeal in favour of the Appellant. Accordingly, it has decided to substitute the following Decision Notice in place of the Decision Notice dated 10 August 2006. The action required in light of the decision that has been reached is that the Chief Officer of the Thames Valley Police should release the information requested by the Appellant in the form set out in the Substituted Decision Notice.

FREEDOM OF INFORMATION ACT 2000 (SECTION 50 and 58(1))

SUBSTITUTED DECISION NOTICE

18th January 2007

Name of Public authority: Chief Officer of the Thames Valley Police

Address of Public authority: Thames Valley Police Headquarters
Kidlington, Oxon, OX5 2NX

Name of Complainant: Bucks Free Press

The Decision Notice of the Information Commissioner dated 10 August 2006 shall be substituted as follows:

Nature of Complaint The Public Authority had not complied with the FOIA in the manner in which it dealt with the Complainant's request for information in relation to the number of times a Notice of Intended Prosecution had been issued by the Public Authority as a result of alleged speeding at speed camera sites 265 and 266, both located on Marlow Hill in High Wycombe.

Action Required Within 20 working days from the date on which the Information Tribunal promulgates its decision in case EA/2006/0071 the Public Authority is to communicate to the Complainant the information requested in the form of (i) combined totals in respect of both sites since they were established, and (ii) combined totals in respect of both sites during the calendar year 2004.

Chris Ryan
Deputy Chairman

dated this 18 day of January 2007

Reasons for Decision

Background

1. Marlow Hill in High Wycombe forms part of the A404 Road and has two mobile speed camera sites located on it. Camera site 265 is intended to enforce a 30 mph zone near the bottom of the hill and camera site 266 a 40 mph zone near the top of the hill. In accordance with normal practice a mobile unit is positioned and activated at each site only intermittently.
2. The Appellant, Bucks Free Press ("BFP"), considers that the location of at least the 30 mph camera has generated intense public interest centred on a belief that it is poorly positioned. It is said that it is located close to the point where the 30 mph limit changes to a 40 mph limit and that vehicle drivers find it difficult to drive up the hill without exceeding the speed limit, particularly if they are overtaking another vehicle slowed down by the relatively steep gradient. The BFP says that there is a public concern that one or both of the cameras may be positioned for the predominant purpose of maximising revenue from fines and that the extent of the concern is reflected in the quantity of correspondence on the subject which it has received as well as the fact that questions have been asked about it in the House of Lords.

The request for information

3. The BFP's interest in the issue led it to submit at least two requests for information under section 1 of the FOIA. This provides that, subject to certain exemptions, any person making a request for information to a public authority is entitled to have that information communicated to him.
4. There was at one stage some uncertainty about the precise terms of the request, the date when it was submitted and the organisation to which it should properly have been directed. However, by the time the matter reached this Tribunal the agreed position was that:
 - a. the original request was submitted on 4 April 2005;
 - b. the Chief Officer of the Thames Valley Police was the public authority responsible for responding to it;
 - c. the request should be treated as being for the number of times a Notice of Intended Prosecution ("NIP") had been issued as a result of alleged speeding at sites 265 and 266; and
 - d. the request was for combined figures in relation to sites 265 and 266, and not for separate figures in respect of each site.

5. The public authority refused to release the information requested. It claimed that it was not required to disclose the information requested for two reasons.

First, it said in its first response to the original request, that releasing the information about the offence history of any site could enable a member of the public to calculate the level of enforcement at the site and therefore their likelihood of being detected in committing an offence. On that basis, it claimed, disclosure would be likely to prejudice the apprehension or prosecution of offenders and that the information therefore fell within the scope of the exemption from disclosure established under section 31 of the FOIA. The section is in the following terms:

"(1) Information ...is exempt information if its disclosure under this Act would, or would be likely to, prejudice -
(a) the prevention or detection of crime,
(b) the apprehension or prosecution of offenders."

The second ground for resisting disclosure was put forward at a later stage, after the BFP had asked the Information Commissioner to investigate its complaint about the public authority's refusal. It was based on section 38 of the FOIA which reads:

"(1) Information is exempt information if its disclosure under this Act would, or would be likely to -
(a) endanger the physical or mental health of any individual,
or
(b) endanger the safety of any individual."

The public authority argued that where a driver speeds at a speed camera site because he or she has deduced that enforcement is less likely at that site, there is an increased risk of a serious accident.

6. Both of these exemptions are categorised in the FOIA as qualified exemptions. This brings into play section 2 (2) which provides that the right to have the relevant information communicated by the public authority does not apply if in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing it. The public authority's argument, therefore, was that the prejudice to the prevention of crime and to public health and safety outweighed the public interest in having the requested information disclosed

The complaint to the Information Commissioner and the Appeal to the Tribunal

7. The response of the BFP to the public authority's refusal to disclose was to file a complaint with the Information Commissioner under section 50 of the FOIA and to ask the Information Commissioner to investigate the matter. At the end of that investigation the Information Commissioner issued a Decision Notice. It was dated 10 August 2006 and concluded that the public authority had correctly applied the exemption provided under sections 31 and 38 of the Act. The BFP lodged an appeal to this tribunal against that decision on the 4 September 2006.
8. The appeal is governed by section 58 of the FOIA, which enables the Tribunal to consider whether the Decision Notice was in accordance with the law and to review any finding of fact on which it was based. The parties consented to the appeal being determined without an oral hearing and this decision is therefore based on the written submissions made by the parties and a bundle of agreed documents. In addition to those documents, we have also been provided with various statistical materials in respect of the two camera sites, some of which would be covered by the request for information. This additional information has not been disclosed to BFP for the obvious reason that to do so would prejudice the outcome of the Appeal.

Questions for the Tribunal

9. There are two issues raised by the BFP in its Grounds of Appeal, and supported in written submissions that it lodged with the tribunal, which we consider lack any merit. First, the BFP complains that there were insufficient reasons given in the Decision Notice for refusing the original request. However, we believe that this criticism stems from a misunderstanding of a paragraph of the Decision Notice, which summarised the Information Commissioner's conclusions. We consider that, whether or not one agrees with the Decision Notice, it cannot be said that, when read as a whole, it is anything less than a thorough review of the evidence assembled and a clear explanation of the conclusion reached. Secondly, the Information Commissioner is criticised for the way in which he allegedly relied on an earlier Information Tribunal decision, *Hemsley v Information Commissioner*, but we believe that this, too, results from a misunderstanding of the Information Commissioner's approach to it and that, in any event, the point is subsumed into our own decision as to the status and relevance of that case.
10. We should also mention that the BFP draws support for its arguments in favour of disclosure from an event that has occurred since the appeal was lodged. This is the decision of Buckinghamshire County Council in October 2006 to undertake a public consultation into a proposed increase in the speed limit at the lower end of Marlow Hill from 30 mph to 40 mph. The BFP argues that, whether or not the

County Council ultimately adopts the proposal to increase the speed limit, it is clear that the fact of the consultation demonstrates that there is a significant issue for the public to debate. The Information Commissioner submits that we should not take into account a matter that has occurred since the original request was made and which does not provide evidence about the circumstances existing at the time. We accept that submission and have concluded that we should not take the County Council's consultation decision into account at all, but should consider the matter as at the date when the request for information was refused.

11. We turn, therefore, to what we consider to be the substantive arguments put forward by the BFP in support of this appeal. They may be summarised by the heading which the BFP applied to the relevant part of its Grounds of Appeal - "the Decision is flawed in logic".

12. In the Decision Notice the Information Commissioner had explained that, if a combined figure for the two Marlow Hill camera sites were to be disclosed, the public authority would find it difficult to resist a request for a combined figure for other pairs of cameras sited on a single stretch of road. The result, he said, would be that drivers would be able to deduce the relative likelihood of being caught speeding on one stretch of the road in comparison with another. It was with regard to the first of these issues, the likelihood of the information being requested and then combined with information disclosed under subsequent requests, that the information Commissioner referred to Hemsley. That was a case in which Mr Hemsley had requested dates and times of speeding offences at a particular site. As previously indicated, BFP argued that it is therefore quite different from the present case in that the information in that case would have provided drivers with direct evidence as to when a particular camera was likely to be operational, whereas in the present case it would be virtually impossible to deduce, from a combined figure of NIPs for camera sites 265 and the 266, the likelihood of being caught speeding on Marlow Hill. For that reason, it says, Hemsley should not be regarded as a comparable case and should not have been relied upon by the Information Commissioner in his Decision Notice. The Information Commissioner says that he did not rely on Hemsley as a precedent that he was required to follow but that he reached his decision by applying the law to the particular facts of the case. However, he concluded in his Decision Notice that if a combined figure were to be disclosed for camera sites 265 and 266, the public authority would find it difficult to resist a request for a combined figure for other pairs of cameras sited on a single stretch of road. On that point - the risk of setting a precedent - he considered that the tribunal in Hemsley had said something that was relevant and he quoted the following paragraph:

"Moreover, we are impressed by the argument as to setting a precedent. Whilst every request must be dealt with on its merits, if this request were granted, it is not hard to envisage the

difficulties faced by police authorities in dealing with future requests for such information, justified more or less plausibly, as designed to test the efficacy of signs, the hazards posed by weather conditions or the vigilance of drivers at particular times of day. It might be difficult to distinguish between the public spirited motivation of such as the appellant [in that case he had concerns about the adequacy of signage at the site in question] and others whose purpose was less admirable, for example the creation of a commercial web site selling forecasts on the operation of safety cameras"

13. The Information Commissioner considered that the disclosure in this case of information that was admittedly less specific than in the case of Hemsley would nevertheless give rise to the same danger of being agglomerated with equivalent information for other camera sites in order to provide motorists with the means of assessing the relative risk of being prosecuted for speeding from one location to another. This, he concluded, would increase the likelihood of speed restrictions being ignored, with a consequent prejudice to the prevention of crime (so as to engage the exemption under section 31 of the Act) and the self evident consequential risk to health and safety (so as to engage the exemption under section 38).
14. The BFP argues that it is asking for the information in respect of one stretch of road only and is not interested in seeking information on other locations with a view to making comparisons. However, that seems to us to miss the point. The perceived risk is, not that BFP will make multiple requests, but that other individuals or organisations will make similar requests in respect of other camera locations and that all the information obtained in this way will then be agglomerated in order to provide a comprehensive view for comparison purposes. The BFP describes this as a far-fetched scenario and suggests that if the train of thought were to be followed then the police could use the same argument to withhold all crime statistics, as criminals could use them to determine where they would be less likely to be caught. A similar point was addressed in the Decision Notice, in which the Information Commissioner recognised that the disclosure of a combined figure for a considerably larger number of camera sites might not have the same prejudicial effect, quoting the hypothetical example of combined figures for all the mobile camera units in the Thames Valley area. At the other end of the scale, the BFP has made it clear that it does not seek disclosure of separate figures for camera site 265 and 266 because it believes that there is a risk that drivers would be able to assess the risk of prosecution resulting from exceeding either the 30 mph limit or the 40 mph limit.
15. The assessment we have to make, therefore, is:
 - a. do we accept that a decision in favour of disclosure in this case would set a precedent that would encourage and enable others to obtain equivalent data in respect of other camera sites?;

- b. if so, do we consider that the prospect of several of those who have made such requests combining the information received into a single comparative view for publication is a far-fetched notion (as the BFP contends) or a risk of real substance (as the Information Commissioner contends)?; and
- c. if so, do we believe that the result of such a publication would prejudice either the prevention of crime or public health and safety?

If the answer to all three questions is "yes" then the relevant exemption will apply and we will be required to go on to decide whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Whether exemption engaged

16. As to the questions raised in 15.a and 15.b above, there may be particular factors applying to certain camera sites, which preclude disclosure. In this case, for example, the BFP made it clear that it did not seek separate data for each of the two sites because it thought that this would enable drivers to make an assessment of the risk of detection at different points along the same stretch of road. In other cases different factors may apply, of greater or less significance. However, we believe that we should proceed on the basis that there is a real prospect that, if we find in favour of the BFP, the equivalent data in respect of many other camera sites managed by the Thames Valley Police may well be disclosed, as the result of further FOIA requests, and may then be combined into some form of publicly accessible tabulation. We are not convinced that, if that were the outcome, the effect mentioned in paragraph 15.c would result. It is already public knowledge that speed camera equipment is generally operated intermittently, with a view to providing an adequate deterrent without burdening its operator with an excessive workload of prosecutions. It seems also to be well known in High Wycombe (because of the BFP's own campaign, if for no other reason) that a large number of people have been prosecuted for speeding offences committed on Marlow Hill. Against that background the number of NIPs issued over a reasonably lengthy period does not, in our view, provide additional information that is likely to influence drivers' behaviour. A high number of NIPs over a period of, say 12 months, may result from the camera site having been operative for very long periods. But it may equally be the result of very substantial offending by motorists during a relatively short period of operation. Conversely, a low number may be the result of drivers being conscious of the dangers of a particular accident blackspot, and therefore observing the applicable speed limit, even though the camera site was operative for long periods of time.

17. It seems to us that driver behaviour is only likely to be affected when further information is provided, such as the dates and times when

offences were detected (as in Hemsley), the date or time when a particular site was operative, or the number of offences detected per hour of camera operation. We wish to make it very clear that we would be very reluctant to order the disclosure of information which would reveal the enforcement pattern for a site, or would otherwise be likely to encourage selective offending and, without hampering in any way the freedom of this Tribunal in any future cases, we can envisage circumstances in which the disclosure of the additional information mentioned in the examples we have given above might well have that effect. However, that is not the information which the BFP has requested. It seeks only the total number of NIPs resulting from camera activities at sites 265 and 266 combined. That total, covering the period since the sites were first created in 2003, will not in our view be capable of having any effect on drivers' behaviour. We believe that the same result would follow if the figures were broken down into annual totals. However, we would not order any further breakdown (e.g. into quarterly or monthly totals) and we do not believe that the BFP has sought this.

18. We therefore conclude that the exemption provided for under section 31 has not been engaged. We believe that the connection between the incidence of speeding and the danger of accidents occurring is so obvious that it must follow that the section 38 exemption is also not engaged.
19. In case we were found to be wrong on the conclusions set out in the previous paragraph we will proceed to consider the public interest test i.e. whether the public interest in having the information in question disclosed outweighs the public interest in maintaining the relevant exemption.
20. The BFP has urged us to give considerable weight to what it described as "intense public interest" in having the figures revealed. It records that hundreds of people wrote to it backing its campaign for such disclosure and it mentions the concerns summarised in paragraph 2 above. It argues that disclosure of the figures would assist in a debate on the current positioning of the 30 mph zone camera.
21. We believe that, although the scale of public comment is a factor which we should take into account, we should also form our own view on the issue. It is quite conceivable that a matter of great public interest may be identified by no one other than an astute requester of information and, conversely, that a number of individuals may become voluble on a topic of little genuine relevance to the public as a whole.
22. In this case, the concern is that the public authority has used its powers to select a camera site for the purpose of trapping drivers unfairly (and thereby raising revenue from fines) and not for the purpose of ensuring that traffic does not travel at speeds that are inappropriate to a particular location.

23. The Information Commissioner has accepted, both in the Decision Notice and the materials lodged in this appeal, that there is a public interest in the release of the information sought so as to inform the debate on the local controversy about the effectiveness and fairness of camera locations. However, he urges us to reach the same decision as he did in his Decision Notice, to the effect that this is outweighed by the countervailing public interest in maintaining the exemption. He argues that the public interest in relation to the prevention and detection of crime, and the prevention of risks to health and safety, is always likely to be a weighty one and drew attention to the fact that in this particular case the camera location is near a school and a hospital, with the result that vulnerable road users were likely to be in the vicinity and that emergency vehicles were likely to be using Marlow Hill in order to access the hospital. He says that these site-specific factors meant that there was a particular public interest in the proper enforcement of speed limits at this location.
24. We conclude that, even if the disclosure would be such as to engage either or both of sections 31 and 38, the connection between disclosure and driver behaviour is tenuous, and not strong enough to bring into play the site specific safety factors on which the Information Commissioner relies. In the light of that conclusion, and our view that information of the kind requested in this case will not disclose enforcement patterns or otherwise influence driver behaviour, we conclude that, on the particular facts of this case, the public interest in the undoubtedly important issues of speeding offences and public safety is not sufficiently strong to outweigh the public interest in informing the public debate on the fairness and efficiency of the management of the speeding camera facilities in the area.
25. The effect of our decision on both the application of the exemptions relied on and the public interest balance is that the information requested should be disclosed by the public authority in the form of combined total of NIPs resulting from the operation of speed cameras at sites 265 and 266:
- a. from the date when the sites were both established to the date of the request (4 April 2005); and
 - b. for the calendar year 2004

Chris Ryan
Deputy Chairman

Date 18th January 2007