

B E T W E E N:

Paul Hemsley

Appellant

and

The Information Commissioner

Respondent

and

The Chief Constable of Northamptonshire

Additional Party

J U D G M E N T

1. **Safety Cameras and SCP`s**

Safety or, as they are frequently termed, speed cameras are widely used at accident black spots throughout the United Kingdom to detect and discourage breaches of the relevant speed limit. Drivers who exceed the limit are liable to be photographed with an imprinted speed, time and date, providing cogent evidence of an offence. Whilst controversy surrounds their use, its fairness and its effectiveness in economic terms, there is substantial evidence that they are effective in discouraging speeding, hence in reducing road casualties.

2. Road signposting is the responsibility of the highway authority, whether the Department of Transport or the County Council. The location and operation of speed cameras are, however, determined by partnerships of the local police force, magistrates and highway authorities, known as Safety Camera Partnerships (“ SCP`s “). Cameras are active at a particular site only

intermittently. They are installed in yellow housing and are moved from site to site with no external indication that a camera is or is not operative. When and where the cameras operate is determined by reference to prevalent road casualties. Such intermittent use has considerable practical advantages ; administrative costs are reduced and there are fewer prosecutions although most drivers are deterred from speeding by the possibility that a camera is operative.

3. Signs warn the motorist that cameras operate on a given stretch of road. Deterrence demands publicity, not concealment. Public knowledge of their presence is essential. By contrast, information as to when they are active is a matter which SCP`s and police forces are anxious to withhold. They fear that disclosure of such information, even restricted to past events, may tempt an unscrupulous driver to speculate, accurately or not, that he can speed safely at certain times or on certain days.

4. **The background to this appeal**

On 30th. March, 2003, the appellant was photographed by a safety camera located on the A508 at Kelmarsh, Northamptonshire, driving above the speed limit of 40 mph.. On 3rd. December, 2003, at Towcester Magistrates Court, he was convicted of an offence of driving at excess speed. We are not concerned with the basis of that conviction. This appeal arises, however, from concerns first expressed by the appellant in advance of that hearing as to the adequacy of the signage at this site and the possible value of information derived from the operation of the safety camera..

5. He had been driving east on the A14 and had joined the A508 by a slip road where the A14 passes underneath the A 508. He turned right on to the A508 in the direction of Northampton. At that point and for some distance southwards there is a speed limit of 40 miles per hour. The camera which recorded his speed was located a short distance from the junction.

6. The appellant submitted to the Tribunal an agreed plan and a helpful series of photographs tracing the route described above and indicating the location of the camera and relevant road signs on 30th. March, 2003. As might be expected, there were standard signs on both sides of the carriageway at the top of the slip road warning the motorist that he was entering a stretch of road governed by a 40mph. speed restriction. Thereafter, there were camera warning signs (which do not specify the relevant restriction) and a small 40mph. repeater sign, which was partially obscured by a larger sign for the opposite slip road.
7. The appellant frankly acknowledged that the signs on the slip road would, in most weather conditions, give ample warning to the motorist of the speed restriction. He pointed out, however, that, in sunny weather, in the early morning, the driver is looking directly into the sun and that his internal sun visor is liable to obscure the signs. Having revisited the site, he ascribed to this factor his own failure to see the signs. We readily accept that this was so.
8. In an undated letter received by Northamptonshire police on 9th. April, 2003, he requested, for the purposes of his defence, answers to three questions :
 - “ 1) *Since its installation, how many people have been caught by the camera that caught me ?*
 - 2) *Of these, what percentage were travelling south, like me, and what percentage were travelling north ?*
 - 3) *What was the average speed of those caught travelling south compared to northbound vehicles ?”*

He referred very clearly to what he perceived to be “ *the need to improve the signing of the A14 junction* “. It is plain that the appellant believed that there was a broad public interest in discovering whether excess speed at this and perhaps other locations, resulted from inadequate requirements as to signs.

9. Differently worded, this was in substance the same request for information as was subsequently made by the appellant to the same public authority pursuant to section 8 of the Freedom of Information Act 2000 (“ the Act “) on 4th. January, 2005. He wrote :

“ My request is for information relating to speed offences recorded by the speed camera located at Kelmarsh on the A508.

For each offence, I would like to know the following information :

- 1) *Date*
- 2) *Time*
- 3) *Speed*
- 4) *Direction of travel e.g., S for south towards Northampton or N for north towards Kelmarsh. “*

He then referred to the large number of such offences but suggested that they were readily retrievable from a database. At a later stage the appellant, very sensibly, abandoned the request for information relating to speed, recognising that it could alert drivers to any prosecuting policy of marginal tolerance, thereby encouraging speeds slightly in excess of the limit.

10. By letter dated 21st. January, 2005, Northamptonshire Police , through its Information Compliance Officer, Mr. Brown, refused this request, invoking the exemptions provided for by section 31 (1)(a) and (b) of the Act, namely the prevention or detection of crime and the apprehension and prosecution of offenders. It is doubtful whether this letter, drafted very soon after the relevant provisions of the Act came into force, complied with section 17(1), though nothing now turns on that. By a further letter dated 28th. January 2004 (clearly in fact 2005) the appellant requested a reconsideration of this refusal, setting out his reasons for questioning reliance on section 31 and his belief in a public interest in improving sign requirements. There was a lengthy delay in responding to this request, apparently due to a failure to send a prepared letter dealing with the results of the review. On 28th. February, 2005, the appellant applied to the Information Commissioner for a decision as to whether the first purported refusal complied with the requirements of the Act..

11. Correspondence ensued involving the appellant, Ms. Elizabeth Dunn, a Complaints Resolution Officer of the Office of the Information Commissioner and Mr. Brown. By letter dated 20th. July, 2005, Mr. Brown notified the appellant that , following a reconsideration of his request, the original decision was unchanged. A Refusal Notice was issued setting out, as required by section 17(1) of the Act, the exemptions relied on and the reasons for applying them. In addition to section 31(1)(a) and (b), the Notice cited section 38(1)(a) and (b), asserting danger to the physical health and safety (of road users). It was common ground at the hearing before us that the application of these exemptions and, if applicable, the weighing of competing public interests raised identical issues.

12. Having received that Notice, the appellant wrote to Ms. Dunn on 27th. July, 2005, further setting out his case. She treated that letter as an application under section 50(1) and initiated further inquiries with Northamptonshire Police in the course of which that authority disclosed an informative report by Hampshire and Isle of Wight Safety Camera Partnership, justifying, in another case in which a complaint had been made to the Commissioner, the refusal of site – specific information. That report, which was included in the agreed bundle for this appeal, contains a useful summary of the role and operation of safety cameras and the perceived risks involved in the release of such information.

13. The Commissioner `s Decision Notice, dated 24th. November, 2005, upheld the refusal of Northamptonshire Police to provide the requested information. It confirmed that both exemptions applied and that the public interest in maintaining those exemptions outweighed the public interest in disclosure. The accompanying Statement of Reasons set out in some detail the competing arguments on the public interest, arguments which were subsequently advanced in the Notice of Appeal dated 2nd. December, 2005, the Commissioner `s Reply, dated 12th. January, 2006 and skeleton arguments of all parties prepared for this appeal.

14. The Tribunal directed at an earlier hearing that the Chief Constable of Northamptonshire be joined as an additional party. Through counsel he made written and oral submissions to the Tribunal in support of the Commissioner`s decision.

15. **The relevant law**

No dispute emerged as to the application and construction of the relevant provisions of the Act. We therefore set out their effect shortly.

16. So far as material, section 31 (1) provides that information not covered by section 30 (criminal investigations and proceedings) is exempt information if its disclosure under the Act would, or would be likely to prejudice

- (a) *The prevention or detection of crime,*
- (b) *The apprehension or prosecution of offenders*

Section 38 (1) confers exemption if disclosure under the Act would or would be likely to –

- (a) *endanger the physical health of any individual, or*
- (b) *endanger the safety of any individual*

No practical distinction arises between “ prejudicing “ and “ endangering “ for the purposes of this appeal, in our opinion. If disclosure would or would be likely to have those effects, then section 2(2)(b) requires the public authority, the Commissioner and this Tribunal to decide whether the public interest in maintaining the exemption outweighs the public interest in disclosure. These are qualified not absolute exemptions (see section 2(2)(a) and (b)).

17. Before us the appellant did not really dispute that some prejudice and some danger to safety would be likely to result from disclosure so that the two provisions were engaged. His real argument was that the degree of prejudice or danger was slight, whereas disclosure would have clear public benefits. The balance of public interest therefore favoured disclosure. We have no doubt that there would be prejudice and some degree of danger, so that the above

provisions come into play. The issue, as all parties recognised, is : where does the balance of public interest lie ?

18. At the directions hearing, Mr. Pitt – Payne indicated that he wished to deal, if necessary, with the general question of the Tribunal `s jurisdiction under section 58. At the hearing he presented a careful argument to the effect that the Tribunal, in deciding whether the Decision Notice was in accordance with the law under section 58(1)(a), was entitled to consider all the evidence by way of rehearing and was not restricted to a form of judicial review. We agree with that submission and intend no discourtesy in omitting from this judgment any detailed recitation of his argument. An important consequence in an appeal such as this is that the Tribunal is entitled, indeed obliged, to make its own findings as to the balance of the public interest. That result clearly reflects the composition of the Tribunal panel, namely two lay members, selected for their experience in a wide range of public, professional and commercial activities and a legally – qualified chairman or chairwoman.

19. **The balance of public interest**

The Commissioner and the Chief Constable assert :

- That the disclosures requested would or might induce irresponsible drivers to speculate, correctly or not, as to the times when the safety camera at this site was active and to drive faster when they supposed it to be inoperative.
- That such disclosure would encourage a stream of further requests in relation to other sites which would be hard to resist, given such a precedent and the same consequences, on a wider scale, would result.
- That the resultant increase in breaches of the speed limit would involve further undetected speeding offences and more road casualties.
- That such consequences could be met only by introducing a system of constantly active cameras, which would incur major and unacceptable public expenditure.

20. The appellant contends :

- Inadequate signage of speed limits is a major safety issue of current importance.
- It is also important that motorists are not unfairly caught out at this site by inadequate signs in unfavourable weather conditions.
- The release of the requested information as to Kelmarsh, coupled with available local weather records, would show whether there was a strong correlation of time, weather and motorists travelling south at excessive speeds. Such a study would also show whether improvements in the speed signs, which took place about eighteen months before the hearing, had reduced the incidence of speeding.
- That would or might demonstrate that the existing signs were inadequate and/or that improvements to them influenced offending, thereby inducing the highway authority further to improve the signage. This would protect future motorists from possible injustice.
- More fundamentally, it would or might form the launch pad for a campaign to raise the standard of speed signage required by statute.
- The public interest in withholding such information is slight when compared to the interest in disclosure, as summarised above. Operation times can be changed following disclosure.

21. The two respondents argue that there are clear weaknesses in this case which severely weaken the public interest in disclosure :

- If disclosed, the data for southbound traffic would not discriminate between traffic entering the A508 from the A14 and traffic coming straight down the A508 from Kelmarsh and Market Harborough.
- The appellant faces this dilemma : disclosure of data for this site alone would be valueless in terms of a general campaign seeking to amend the statutory requirements as to speed signs ; disclosure on a much wider scale, following similar requests elsewhere, would have a devastating effect on national enforcement of speed limits by safety cameras.
- Such data is unnecessary for the improvement, if appropriate, of the Kelmarsh site ; photographs and a site inspection are all that is needed.

22. **The conclusion of the Tribunal**

We acknowledge that there are conflicting public interests in withholding and disclosing this information, especially in relation to this particular site. We are, however, of the view that the public interest favours the refusal to disclose.

23. Plainly, as the Hampshire / Isle of Wight report acknowledges, there is much general information as to safety cameras which should be available to the public. There may also be examples of limited site – specific information which can safely be publicised, such as the records of enforcement at a single point on a single day, as suggested in paragraph 6 of the report. However, what is sought here is a record covering several years which, simply by reference to this site, raises fears of misuse, though certainly not by the appellant, of the kind asserted by the respondents. 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 and others whose purpose was less admirable, for example the creation of a commercial website selling forecasts on the operation of safety cameras.

24. We do not accept that operational times can easily and safely be changed following disclosure since their initial selection is determined to a significant degree by casualty records.

25. Furthermore, we have real doubts as to the value to the public of the exercise which the appellant wishes to conduct. As to this site, it seems unlikely that the information would enable the appellant to say which drivers had followed the same route as himself, even if there was a large preponderance of

southbound speeding offences. Precise correlation of offences with sunshine records might be difficult. The improvements already completed suggest that such research is unnecessary to a proper assessment of the adequacy of signage. As to a campaign to change the statutory requirements on speed signage, we are far from convinced that this information, whatever its content, would be a substantial base for moves to change the law. This is, of course, an issue of considerable public importance on which the appellant evidently holds sincere and wholly tenable views. We simply do not see that the outcome of the debate will be significantly influenced by the disclosure of this information relating to Kelmarsh.

26. For these reasons we dismiss this appeal.

27. In conclusion, we wish, nevertheless, to commend the appellant, both for his disinterested pursuit of evidence on an important public issue and for the skill and moderation with which he most attractively presented his case.

2nd April, 2006

David Farrer Q.C.
Chairman

John Randall

Ivan Wilson