

FOIA s.31 – Qualified exemption: law enforcement

FOIA s.38 – Qualified exemption: health and safety

Bucks Free Press v IC

EA/2006/0071

18th January 2007

Cases:

Paul Hemsley v IC & The Chief Constable of Northamptonshire [2006] UKIT EA_2005_0026 (EA/2005/0026)

Facts

The Appellants requested information regarding the number of times a Notice of Intended Prosecution (“NIP”) had been issued as a result of alleged speeding at two mobile speed camera sites in High Wycombe. The request emanated from intense public interest centred on a belief that one of the cameras was poorly positioned and public concern that one or both of the cameras may be positioned for the predominant purpose of maximising revenue from fines. The extent of their concern was reflected in the quantity of correspondence on the subject which the Appellants received as well as the fact that questions had been asked about it in the House of Lords. The public authority refused the request on the grounds that it was exempt from disclosure under ss.31 and 38 FOIA.

The IC concluded that the public authority had correctly applied the exemptions.

Findings

The IC argued that the disclosure in this case of information that was less specific than that in the case of *Hemsley* would nevertheless give rise to the same danger of being compiled with equivalent information from other camera sites in order to provide motorists with the means of assessing the relative risk of being prosecuted for speeding in one location as opposed 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 s.31 of the Act) and the self evident consequential risk to health and safety (so as to engage the exemption under s.38). The Appellants argued that there was no risk as they were asking for information in respect of one stretch of road only and were not interested in seeking information on other locations with a view to making comparisons. The Tribunal observed that the perceived risk was, not that the Appellants would make multiple requests, but that other individuals or organisations would make similar requests in respect of other camera locations and that all the information obtained in this way would then be compiled in order to provide a comprehensive view for comparison purposes.

Was the exemption engaged?

The Tribunal believed there to be a real prospect that, if they found in favour of the Appellants, 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. However, it did not believe that, if this were the case, it would have the effect of prejudicing either the prevention of crime or public health and safety.

It stated that it was already public knowledge that speed camera equipment was generally operated intermittently, with a view to providing an adequate deterrent without burdening its operator with an excessive workload of prosecutions. It also stated that it seemed to be well known in High Wycombe that a large number of people had been prosecuted for speeding offences committed on Marlow Hill. Against that background the number of NIPs issued over a reasonably lengthy period did not, in the Tribunal's view, provide additional information that was likely to influence drivers' behaviour. It expressed the view that driver behaviour was only likely to be affected when further information was 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.

The Tribunal concluded that the s.31 exemption had not been engaged and that the connection between the incidence of speeding and the danger of accidents occurring is so obvious that it followed that the s.38 exemption was also not engaged.

However, the Tribunal considered the public interest in the event that it were found to be wrong in its decision.

Public Interest

The Tribunal concluded that, even if the disclosure would be such as to engage either or both of ss.31 and 38, the connection between disclosure and driver behaviour was tenuous, and not strong enough to bring into play the site-specific safety factors on which the IC relied. In the light of that conclusion that information would not disclose enforcement patterns or otherwise influence driver behaviour the Tribunal concluded that, on the facts of this case, the public interest in the issues of speeding offences and public safety was 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.

Conclusion

The Tribunal allowed the appeal and substituted a Decision Notice that directed the public authority to disclose total figures since 2003 (when the two camera sites had been established) as well as annual totals since then.