



**Kent
Police**



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Mr M Bailey
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Date 14th January 2011

Tel No. (DDI) 01622 652668

FOI Ref. 7809/2010

Dear Mr Bailey,

Freedom of Information Request 7809/2010 – Internal Review

Following our response to your application under the Freedom of Information Act 2000 (FOIA) for information regarding fixed safety cameras, you wrote to us on 20 December 2010 requesting an internal review of our decision. The outcome of the review is as follows.

Original Request

On 28 November 2010, you requested details of the following:

1. The number of tickets/cases initiated by a fixed traffic enforcement camera, per camera within Kent & Medway;
2. The number of these which have been appealed to court;
3. The number of these which were "lost" by Kent Police at court or where no further action was taken.

You subsequently clarified that your request was for information from the last 3 years.

In our response, dated 20 December 2010, we provided the information requested in question 3 but withheld information requested in questions 1 and 2 relying on the exemptions at s.31(1)(a)&(b) relating to law enforcement and s.38(1)(a)&(b) relating to health and safety. We did however provide the number of Notices of Intended Prosecutions (NIPs) issued from fixed camera sites per policing area together with the number of potential prosecutions which include NIPs receiving no response from recipients.

Procedure

Our response was provided on the 15th working day following receipt of your request in compliance with s.10(1) of the FOIA. It constituted a refusal notice in compliance with s.17(1) of the Act in that it stated that the information requested but withheld was exempt, it specified which exemptions applied and the reasons for those exemptions. Both exemptions cited required the application of a public interest test which was included in the response. I am satisfied therefore that the procedural requirements of our response were satisfactorily met.

Application of the exemptions

An internal review is not confined to matters relating to our response; rather, it is an opportunity to consider the request again in its entirety. I am grateful therefore for your views contained in your email of 20 December 2010:

- i. The public has a right to the information requested given the recent press coverage regarding this subject;

- ii. Statistics alone would not reveal when and where cameras are operational;
- iii. The public interest favours disclosure since the cameras are publicly funded and the information is required in order to test the results of camera use.

The use of safety cameras to enforce speed limits does receive considerable press coverage with controversy arising from the incorrect perception that revenue generation is the actual goal rather than law enforcement and public safety. However, the public's right to know is governed not by recent press coverage but rather by the terms of the FOIA.

I agree that annual statistics are unlikely to reveal the enforcement pattern of cameras; therefore, our central argument for engaging both exemptions cannot be maintained.

The public interest is of course relevant to a number of exemptions under the Act including those cited in our response. I disagree that the withheld information is required in order to test the results of camera use: safety cameras are located at the site of previous collisions and their efficacy is measured not by the number of NIPs issued but by the reduction in fatalities and injuries (available on safety camera partnership websites); further, the withheld information would not include the important deterrent effect of sites with enforcement equipment other than operational cameras.

Previous Tribunal decisions

The Information Commissioner has issued a number of Decision Notices after information regarding safety cameras had been withheld on the grounds of the 2 exemptions cited above. 2 of these were appealed to the Information Tribunal: *Hemsley v Information Commissioner & The Chief Constable of Northamptonshire* (EA/2005/0025) and *Bucks Free Press v Information Commissioner* (EA/2006/0071). In brief, *Hemsley* established that site-specific information such as dates and times of activations, the number of offences detected per hour and a breakdown of statistics into quarterly or monthly totals is exempt as it is capable of having an effect on drivers' behaviour. *Bucks Free Press* established that combined annual statistics for NIPs in relation to a pair of safety cameras along the same stretch of road were insufficient to effect drivers' behaviour; therefore, such information should be disclosed under the FOIA.

S.31 – Law enforcement

While I agree that enforcement patterns are unlikely to be revealed by the withheld information, I consider that your request can be distinguished from the *Bucks Free Press* case: that case regarded combined data for just 2 cameras with particular concern about their operation on the road in question; your request is for NIPs from all cameras in Kent and Medway for the last 3 years. Although accurate enforcement patterns would be unlikely, there would be a perception that those generating the most NIPs are most likely to capture speeding motorists and should therefore be avoided. This is likely to displace speeding offences onto roads not covered by safety cameras.

There is a further harm to consider regarding the disclosure of the withheld information: the cameras generating the most NIPs would be identified and would be subject to vandalism. There are a number of groups opposing safety cameras, at least one of which promotes the destruction of safety cameras. I have consulted with colleagues from the Kent and Medway Safety Camera Partnership (KMSCP) who advised that in the last year, there have been no fewer than 4 incidents of vandalism, one of which involved an operational camera resulting in costs in excess of £30,000. The camera generating most NIPs has been vandalized 3 times in the past. Where vandalism occurs, deterrence is lost irrespective of whether an operational camera was involved.

I consider the exemptions at s.31(1)(a)&(b) are engaged since the information requested would prejudice the prevention or detection of crime and the apprehension or prosecution of offenders respectively. Vandalized equipment would remove an important deterrence against speeding; vandalized cameras would prevent the identification of speeding motorists and their prosecution. A recent Decision Notice (FS50305653 available at www.ico.gov.uk) supports this view.

The public interest arguments for both subsections (a) and (b) are identical. In favour of disclosure are openness, accountability and the positive contribution to public debate about the use of safety cameras. Against disclosure are the loss of deterrence against speeding and the inability to prosecute speeding motorists as a result of vandalism; the cost of repairing and replacing equipment (particularly in light of current budget cuts); and the displacement of speeding offences onto roads not covered by safety cameras. In considering where the balance between these factors lies, I have regard to the fact that there is already much information available on safety camera partnership websites, however, those partnerships generally stop short of providing site-specific information. While there is site-specific information from the Safer Roads Partnership in Thames Valley (at <http://www.saferroads.org/information/camera-site-stats/>), there is an important caveat that the data cannot provide the total number of offences per day or year. Despite interest in, and press coverage of, the use of safety cameras, I am satisfied that the public interest in maintaining both law enforcement exemptions outweighs that in disclosing the information.

S.38 – Health and safety

The arguments above relating to law enforcement apply equally to the exemptions at s.38(1)(a)&(b). Displacement of speeding offences and the loss of the deterrence against speeding following vandalism at sites with a history of collisions resulting in death or injury would endanger (a) the physical or mental health, and (b) the safety, of road users, particularly those who are vulnerable.

Again, the public interest arguments above apply to these exemptions. Disclosure would contribute to openness, accountability and public debate. On the other hand, disclosure would also lead to vandalism and displacement increasing the already considerable risk to public safety posed by speeding. Since the cameras are sited at locations of previous fatalities and injuries, any loss of deterrence increases the risk of further loss of life and limb with associated mental illness. Again, the cost of repair and replacement in the current economic climate is a factor against disclosure. After careful consideration, I determine that the public interest lies in favour of maintaining these exemptions.

Conclusion

Having reviewed all aspects of your application for information, I am satisfied that Kent Police complied with the procedural requirements of the FOIA. Although the exemptions cited were not engaged correctly, I determine that the same exemptions apply to your application and that the public interest in maintaining those exemptions outweighs the public interest in disclosure. The effect is to maintain our original decision, albeit for different reasons.

I realize you may be disappointed with the result of this review and take this opportunity to remind you of your right under s.50 of the FOIA to apply for a decision by the Information Commissioner regarding the way Kent Police has dealt with this matter. Such an application should be addressed to:

FOI Compliance Team (Complaints)
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

Yours sincerely,

Giovanni Cacciaccaro
Freedom of Information Advisor