

## Freedom of Information Act 2000 (FOIA)

### Decision Notice

**Date:** 28 February 2012

**Public Authority:** Police Service of Northern Ireland  
**Address:** 65 Knock Road  
Belfast  
BT5 6LE

#### Decision (including any steps ordered)

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1. The complainant has requested the locations of fixed number plate recognition cameras operated by the Police Service of Northern Ireland (the PSNI). The PSNI refused the request under sections 24(1) and 31(1)(a), (b) and (c) of the Act.
2. The Commissioner's decision is that the PSNI was entitled to rely on section 31 as a basis for withholding the requested information.
3. The Commissioner does not require the PSNI to take any further action in this case.

#### Request and response

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4. On 4 May 2011 the complainant requested the following information from the PSNI:  
*"The locations of fixed, operating number plate recognition cameras operated by the PSNI or its agencies".*
5. The PSNI responded on 16 June 2011. It stated that the requested information was exempt under sections 24(1) and 31(1)(a),(b),(c) of the Act.
6. Following an internal review the PSNI wrote to the complainant on 15 July 2011. The PSNI advised that it was upholding its refusal of the request.

## Background

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7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant did not believe his request had been properly refused, and argued that the requested information should be disclosed.
8. The Commissioner issued a decision notice in a similar case involving Devon and Cornwall Police<sup>1</sup>, which found in favour of maintaining the section 31 exemption. That decision was appealed to the First-tier Tribunal (Information Rights) which agreed that the exemption at section 31 was engaged. However, contrary to the Commissioner's decision, the Tribunal found that the balance of the public interest favoured disclosure<sup>2</sup>. The Tribunal's decision has been appealed by Devon and Cornwall Police and is due to be heard by the Upper Tribunal in 2013.

## Reasons for decision

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### Section 31 – law enforcement

9. Section 31 of the Act provides an exemption from disclosure if to do so would or would be likely to prejudice a number of law enforcement functions as set out in the Act. In this case the PSNI has clarified to the Commissioner that it is relying on sections 31(1)(a) and (b), not section 31(1)(c). Sections 31(1)(a) and (b) provide an exemption where disclosure would be likely to prejudice the following law enforcement functions:
  - Section 31(1)(a): the prevention or detection of crime; and
  - Section 31(1)(b): the apprehension or prosecution of offenders.
10. Consideration of this exemption is a two stage process. For the exemption to be engaged it must be at least likely that the prejudice identified will occur. Even if the exemption is engaged, the information should be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

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<sup>1</sup> Decision Notice reference FS50270424

<sup>2</sup> Appeal no EA/2010/0174

11. The PSNI told the Commissioner that the automatic number plate recognition (APNR) system was used to prevent and detect crime as well as provide evidence to assist with the apprehension and prosecution of offenders. In addition, APNR was used by the PSNI to “monitor, investigate and intervene in terrorist activity”.
12. In support of its argument in relation to prejudice, the PSNI explained that disclosure of the location of APNR cameras across Northern Ireland would be likely to assist criminals and terrorists in that it would allow them to identify routes where they were less likely to be monitored, and thus more likely to evade detection and surveillance.
13. The complainant challenged the PSNI’s explanation, arguing that he had made other information requests to the PSNI which suggested that the PSNI did not collect statistical information to measure the effectiveness of APNR. The complainant also argued that the locations of 150 APNR cameras had already been identified by concerned members of the public and published on a website<sup>3</sup>. The complainant suggested that criminals or terrorists would similarly already have identified routes to avoid, therefore he was of the view that disclosure of all the locations would not significantly increase existing prejudice.
14. The Commissioner has considered the issue of APNR cameras in previous cases<sup>4</sup>, and has accepted that the disclosure of locations would be likely to prejudice the prevention and detection of crime, as well as the apprehension and prosecution of offenders. The Commissioner notes the complainant’s argument in relation to his perceived lack of statistical evidence that APNR cameras are effective. The Commissioner considers that the effectiveness of the APNR system may well be difficult to measure in terms of the number of convictions based on APNR evidence, but this does not mean that disclosure of the locations would not cause prejudice.
15. The Commissioner has considered the website referred to above which claims to indicate the location of a number of APNR cameras. The PSNI has argued that, although individuals may choose to publish information they have collected through observation, this was not an official disclosure by the PSNI, and the PSNI has not confirmed any of the information to be accurate.

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<sup>3</sup> [http://www.bigbrotheriswatching.co.uk/Anpr\\_Camera\\_Locations.html](http://www.bigbrotheriswatching.co.uk/Anpr_Camera_Locations.html)

<sup>4</sup> Most recently in relation to Kent Police, Decision Notice reference FS50416596

16. The Commissioner has considered all the arguments put forward, and is satisfied that disclosure of the location of APNR cameras would provide information which would assist individuals in avoiding the APNR camera network. The Commissioner accepts the PSNI's arguments in relation to its use of APNR to prevent, detect and investigate crime, and he accepts that disclosure of the withheld information would be likely to cause the prejudice identified. The Commissioner is therefore satisfied that the exemptions under section 31(1)(a) and (b) are engaged.

### **Public interest arguments in favour of disclosing the withheld information**

17. The complainant argued that the locations of APNR cameras should be disclosed so that individuals could choose not to have their details captured, and therefore protect personal privacy.
18. The PSNI acknowledged the legitimate public interest in the public being informed about issues and activities which could affect their privacy. The PSNI recognised the public debate surrounding whether APNR was a proportionate measure in terms of human rights legislation and the data protection issues involved. The PSNI accepted that disclosure of the locations of APNR cameras could contribute to the public debate and help ensure that discussion was based on accurate information.

### **Public interest arguments in favour of maintaining the exemption**

19. The PSNI argued that ANPR was a valuable law enforcement tool, and therefore there was a strong public interest in not disclosing information which would harm its effectiveness. In support of this argument the PSNI provided the Commissioner with detailed information which demonstrated how APNR had been used in criminal cases, and how ANPR was useful in combating terrorist activity.
20. The PSNI also reminded the Commissioner that the current threat level was "severe", which meant that a terrorist attack in Northern Ireland was considered highly likely. The PSNI was of the view that it would not be in the public interest to disclose information which would assist terrorists, or which would make it more difficult for the PSNI to monitor and take appropriate action.
21. The Commissioner notes that the PSNI has responsibility for dealing with criminal activity common to all parts of the UK (for example vehicle crime and burglary). In addition the Commissioner has taken account of the high level of terrorist threat faced by the PSNI in Northern Ireland. This provides a particular challenge to the PSNI in its policing duties, and the PSNI was of the view that APNR is an essential tool in dealing with the terrorist threat. Therefore the PSNI argued that there was a

significant public interest in preventing harm to the PSNI's ability to combat terrorism.

### **Balance of the public interest**

22. When considering the balance of the public interest the Commissioner must decide whether the public interest in maintaining the exemption in question (and therefore withholding the information) actually outweighs the public interest in disclosing the information. If the public interest arguments are equally balanced then the information must be disclosed.
23. The Commissioner is aware that the use of APNR is not specific to Northern Ireland, and neither is the public debate surrounding its use. APNR enables the monitoring of road journeys taken by many individuals, the vast majority of whom are not suspected of being involved in criminal or terrorist activity. The public has a legitimate interest in being informed as to the purpose, extent and outcome of such monitoring.
24. However, the Commissioner understands that it is not always appropriate to put information into the public domain, even where this would inform the public's understanding of issues of the day. In this case the Commissioner is satisfied that disclosure would be likely to prejudice essential policing functions, and more acutely, the PSNI's counter-terrorist function. The Commissioner believes that there is a strong public interest in avoiding such prejudice, especially in light of the particular challenges faced by the PSNI. He believes that this interest is stronger than the collective public interest factors identified in favour of disclosure.
25. For the reasons set out above, the Commissioner finds that the public interest in maintaining the exemption at sections 31(1)(a) and (b) of the Act outweighs the public interest in disclosure. The Commissioner makes this finding on (a) and (b) separately.

### **Section 24 – national security**

26. The Commissioner has found that the PSNI was entitled to rely on the exemption at section 31 in relation to all of the withheld information. Therefore he is not required to consider the PSNI's application of the exemption at section 24(1).

### **Procedural requirements**

#### **Section 17 – refusal notice**

27. Section 17(1) of the Act states that:

*"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –*

- (a) states that fact,*
- (b) specifies the exemption in question, and*
- (c) states (if that would not otherwise be apparent) why the exemption applies".*

28. The time for complying with section 1(1) is twenty working days from the day after the request is received. In this case the refusal notice was issued 31 working days after the request was received, well outside the statutory time limit. Therefore the PSNI failed to comply with section 17(1).
29. The Commissioner notes that the PSNI refusal notice did not explain why the exemptions cited applied to the requested information in this particular case. The refusal notice did not adequately explain how disclosure of the requested information was linked with the prejudice claimed, but set out a number of generic arguments. The Commissioner therefore finds that the PSNI failed to comply with the requirements of section 17(1)(c) of the Act in relation to the refusal notice.

## **Other matters**

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30. Although it does not form part of this Decision Notice the Commissioner wishes to highlight the following matter of concern:

### **The internal review**

31. The Commissioner has considered the quality of the internal review conducted by the PSNI. Paragraph 39 of the Code of Practice issued under section 45 of the Act advises that:

*"The complaints procedure should provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue."*

32. The Commissioner notes that the PSNI's internal review letter of 15 July 2011 repeated large portions (including typographical errors) of the original refusal notice, and did not explain how the original decision was

reconsidered. Therefore it was not evident to the Commissioner that the PSNI had conducted an internal review in accordance with the Code of Practice.

33. The PSNI has assured the Commissioner that it is reviewing its processes and procedures, and it has identified experienced staff to undertake reviews.

## Right of appeal

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34. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals  
PO Box 9300  
LEICESTER  
LE1 8DJ

Tel: 0300 1234504  
Fax: 0116 249 4253  
Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

35. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
36. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed** .....

**Steve Wood**  
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