

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 25 July 2017

**Public Authority:** London Borough of Lambeth  
**Address:** Olive Morris House  
Brixton Hill  
London  
SW2 1RD

#### Decision (including any steps ordered)

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1. The complainant submitted a request to the London Borough of Lambeth (the Council) seeking information about its mobile enforcement vehicles (MEVs) that employ CCTV cameras for the issuing of Penalty Charge Notices. He specifically sought the vehicle registration number, location and start time/end time of the MEVs operated over a 18 month period. The Council withheld this information on the basis of the exemption contained at section 31(2)(a) (law enforcement) of FOIA. The Commissioner is satisfied that this exemption is engaged and that in all the circumstances of the case the public interest favours maintaining the exemption.

#### Request and response

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2. The complainant submitted the following request to the Council on 17 October 2016:

*'The following request relates to mobile enforcement vehicles (MEVs) that employ cctv cameras for the issuing of Penalty Charge Notices (PCNs).*

*For the period 1 April 2015 to 30 September 2016 please provide the daily on-street logs, grouped by date, for each MEV paid for by the council. The logs should show:*

- 1) Vehicle registration number
- 2) location

- 3) *start time/end time*
- 4) *PCNs issued*

*N.b. The logs should include those of all MEVs paid for by the council, regardless of whether they have been deployed on street.'*

3. The Council responded on 28 December 2016 and confirmed that it held the information falling within the scope of requests 1 to 3 however it considered this information to be exempt from disclosure on the basis of section 31(1)(a) (prevention or detection of crime) of FOIA. In relation to request 4, the Council explained that the data held does not distinguish between PCNs issued by MEVs and other CCTV devices and it was therefore unable to provide information in respect of this request.
4. The complainant contacted the Council on the same day and asked it to conduct an internal review of this decision.
5. The Council informed him of the outcome of the internal review on 26 January 2017. The Council explained that it remained of the view that the information was exempt from disclosure albeit under section 31(2)(a) of FOIA (ascertaining whether any person had failed to comply with the law) rather than under section 31(1)(a).

### **Scope of the case**

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6. The complainant contacted the Commissioner on 30 January 2017 in order to complain about the Council's decision to withhold the information falling within the scope of requests 1 to 3.

### **Reasons for decision**

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#### **Section 31 – law enforcement**

7. Section 31(1)(g) of FOIA states that:

*'Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –*

*(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)'*

8. With the purpose listed at section 31(2)(a) being '*ascertaining whether any person has failed to comply with the law.*

9. In order for a prejudice based exemption, such as section 31 to be engaged the Commissioner believes that three criteria must be met:
- Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
  - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
  - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.

#### The Council's position

10. The Council argued that providing the vehicle registration; geographical location and start/end time of each of its vehicles which were used to issue PCNs would allow an individual intent on avoiding parking or other fines to move without detection. The Council argued that provision of the registration number would clearly allow any other individuals to note the vehicle and would impede its ability to enforce parking regulations. The Council suggested that this may also lead to its vehicles being damaged by road users unhappy that they have received a parking ticket.
11. The Council explained that it considered the lower threshold of prejudice to be met; that disclosure would be likely to have a prejudicial effect as it would allow individuals to avoid parking enforcement and may allow these individuals to assess the likelihood of apprehension at various locations across its borough.
12. In support of this position the Council referred to a previous decision of the Commissioner in respect of similar request submitted to Vehicle

Operator Services Agency (VOSA)<sup>1</sup>. In that case VOSA, which undertakes a range of activities including the enforcement and compliance with road traffic legislation, refused to disclose the make and model of its vehicles, the function of its vehicles and the exact geographical location of the vehicles on the basis of section 31(2)(a) of FOIA. The Council emphasised that this decision notice upheld VOSA's application of the exemption and its own reasoning to rely on the same exemption, for very similar information, mirrored that adopted by VOSA.

### The Commissioner's position

13. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by the Council clearly relates to the interests which the exemption contained at section 31(2)(a) is designed to protect. This is because one of the Council's functions includes issuing PCNs to motorists who fail to abide by road traffic laws. Consequently, the Commissioner is satisfied that any infringement on the Council's function to issue PCNs could interfere with its ability to ascertain whether any person has failed to comply with the law, specifically road traffic laws.
14. With regard to the second criterion, the Commissioner accepts that there is a clear causal link between disclosure of the withheld information and the Council's ability to effectively issue PCNs. This is because the withheld information would provide the public with a clear insight into the specific areas where MEVs operate, an indication of their days and times of operation and their registration number. The Commissioner agrees with the Council that disclosure of this information could assist an individual in avoiding detection by one of the MEVs and thus potentially avoid a PCN. Furthermore, the Commissioner is satisfied that the resultant prejudice which could occur if this information was disclosed is one that is real, actual or of substance.
15. With regard to the third criterion the Commissioner is satisfied that there is a real and significant risk of this prejudice occurring. She has reached this conclusion given the amount of data that would be disclosed; the request seeks information for an 18 month period and would therefore provide a detailed insight into the operation of MEVs in the borough. Furthermore, whilst not every member of the public would necessarily be motivated to use the withheld information in order to attempt to

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<sup>1</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2011/610050/fs\\_50309983.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2011/610050/fs_50309983.pdf)

avoid receiving a PCN, the information could in theory be used by any motorist in the borough, or indeed any motorist driving thorough the borough. In the Commissioner's view the significant number of people who could potentially use the information to attempt to avoid receiving PCNs, combined with the insight the data would provide such individuals, convinces her that disclosure presents more than a hypothetical risk of prejudice occurring.

16. Section 31(2)(a) is therefore engaged and the information is exempt from disclosure.

### **Public interest test**

17. Section 31 is a qualified exemption and therefore the Commissioner must consider the public interest test and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
18. The Council acknowledged that is important that the public have confidence in the public authorities responsible for enforcing the law and that there is a general public interest in disclosing information that promotes accountability and transparency in order to maintain that confidence and trust in the local authority. The Council also noted that there was a particular public interest in the disclosure of information concerning road safety.
19. However, it argued that disclosure of this specific information would not greatly increase public understanding of this issue. Moreover, the Council argued that maintaining road safety and that its ability to effectively ensure that vehicles are safely parked are both issues that are in the public interest. It would therefore be firmly against the public interest if information which undermined its ability to do this was disclosed under FOIA. Furthermore, the Council argued that it was against the public interest to disclose information which may assist individuals intent on avoiding parking fines.
20. The Commissioner agrees that there is a strong public interest in allowing the public to understand how public authorities operate. In the circumstances of this case disclosure of the withheld information would provide a clear insight into how the Council's uses MEVs in its enforcement of parking laws in the borough. However, in the Commissioner's opinion there is stronger and more compelling public interest in ensuring the effective compliance of these parking laws. The Commissioner has therefore concluded that the public interest in maintaining the exemption outweighs the public interest in disclosure of the withheld information.

## Right of appeal

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21. 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: 0870 739 5836  
Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

22. 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.

23. 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 .....**

**Jonathan Slee**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**