

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 June 2024

Public Authority: National Highways
Address: Bridge House
1 Walnut Tree Close
Guilford
Surrey
GU1 4LZ

Decision (including any steps ordered)

1. The complainant has requested information relating to a fixed penalty fine ('FPF'). National Highways ('the public authority') refused the request, citing section 31(1)(a), (b) and (c) (law enforcement) of FOIA.
2. The Commissioner's decision is that the requested information is exempt under section 31(1)(a), (b) and (c).
3. The Commissioner does not require further steps.

Request and response

4. On 8 January 2024, the complainant wrote to the public authority and requested information relating to their prosecution for a speeding offence.
5. The public authority chose to handle this query as business as usual and declined to provide the requested information,
6. Then, on 20 January 2024, the complainant requested:
"The other confusion is the statement regarding you not providing information if it may be costly to courts and heling a defendant in a speeding case."

You may gather from my response to (Redacted's) email I am a defendant and my defence is that a large smart motorway sign informed me the restrictions were over and the national speed limit applied, only to be flashed at the very next overhead gantry, which was in effect the gateway to a new speed restriction.

Can I get the information I have indicated about that smart motorway sign if I submit a freedom of information request? Or will be it be denied as it will help my defence?"

7. The public authority responded on 9 February 2024. It refused to provide the requested information, citing section 31(1)(a), (b) and (c).
8. The complainant requested an internal review on 14 February 2024.
9. The public authority provided the outcome to its internal review on 8 March 2024. It upheld its previous position and directed the complainant to previous decisions¹ of the Commissioner's which supported its application of the exemptions in similar circumstances.

Reasons for decision

Section 31 – law enforcement

10. Section 31(1) of FOIA states:

"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 –

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice."

11. The public authority is relying on all of the above to withhold the requested information.
12. There's a lot of overlap between these exemptions which is logical. In order to prevent and detect crime, and administer justice, offenders must be prosecuted.

¹ [ic-261835-z2m4.pdf \(ico.org.uk\)](#); [ic-258440-x2d5.pdf \(ico.org.uk\)](#)

13. When applying any of the above, a public authority doesn't need to have responsibilities to prevent or detect crime. However, it does have to demonstrate that disclosing the requested information would, or would be likely to, cause harm to law enforcement activity.
14. As previously discussed, the Commissioner has dealt with at least two similar cases, where requestors have all requested variable speed limit ('VSL') settings, i.e. why a specific speed limit was set at a specific location and at a specific time.
15. Paragraphs 15-28 of IC-258440-X2D5² contain a detailed analysis as to why VSL setting information engages section 31(1)(a), (b) and (c). The Commissioner doesn't intend to replicate that whole analysis here.
16. To summarise, the public authority has previously provided the Commissioner with evidence between itself, a Police force and Road Safety Support 'RSS', which demonstrates that disclosure of VSL setting information had directly prejudiced the Police's ability to prosecute an offender, and thus prejudicing the prevention or detection of crime and the administration of justice.
17. Following on from this incident, the public authority now refuses requests for VSL setting information under section 31(1)(a), (b) and (c) of FOIA, because disclosure of this information has previously prejudiced law enforcement activity.
18. Since the Police advised the public authority that disclosure of VSL setting information has previously prejudiced law enforcement activity, it follows that disclosure now would be likely to do so again. Therefore the Commissioner is satisfied the exemption is once again engaged.

The public interest test

19. In line with his previous decisions, the Commissioner has determined that the balance of the public interest lies in maintaining the exemption. A detailed analysis on the public interest considerations can be found in paragraphs 29-39 of IC-258440-X2D5.³
20. There is always a public interest in transparency, openness and public authorities providing as much information as possible about their processes and work.
21. However, if disclosure of VSL setting information hampers the Police's ability to prosecute offenders, this isn't in the public interest. It's in the

² [ic-258440-x2d5.pdf \(ico.org.uk\)](#)

³ [ic-258440-x2d5.pdf \(ico.org.uk\)](#)

public interest to keep roads safe and doing so involves prosecuting those who commit driving offences.

22. Ultimately, the complainant is trying to ascertain why a certain speed limit was in place at a specific location, date and time. The public authority has previously explained to the Commissioner:

“The police, RSS and NH share the view that it does not matter why a speed limit was set or cancelled - driving in excess of the displayed mandatory speed limit is a strict liability offence - drivers must comply with the speed limit regardless of why it was set. National Highways providing an explanation as to why the speed limit was set can cause drivers to challenge a Notice of Intended Prosecution (NIP) on the basis that they perceive that there was insufficient reason for the speed displayed. Such challenges waste police and court time, at significant cost to the public purse, when legally the reason behind a setting is of no consequence and strict liability applies.

23. It's not the role of the Commissioner to comment on any offence that the complainant has received. It is up to them to appeal any such notice they believe may have been handed down unfairly but they can do so through the relevant appeal procedure.
24. The Commissioner considers the requested information is of very limited public interest. It is relevant to the complainant and potentially any other individual who was caught speeding at the same time, date and in the same location as the complainant.
25. Furthermore, the Commissioner acknowledges that the VSL information may still be relevant to any appeal. However, it should be disclosed via the proper appeal channels and processes, whereas its premature disclosure under FOIA could compromise law enforcement work.
26. The Commissioner is sympathetic that the complainant believes they've been convicted of an offence in unjust circumstances. However, it would be remiss of the Commissioner to ignore the fact that disclosure of VSL information has had such a detrimental effect on law enforcement activities previously, that the Police, RSS and the public authority all dispute the disclosure of such information.
27. The Commissioner is satisfied that the requested information can be withheld under section 31(1)(a), (b) and (c) respectively.

Right of appeal

28. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

29. 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.

30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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