



Decision 030/2006 – Mr David Ewen of the Evening Express and the Chief Constable of Grampian Police

Request for information relating to the number of drivers caught speeding at each fixed camera location in Grampian in 2004/05.

Applicant: Mr David Ewen of the Evening Express
Authority: Chief Constable of Grampian Police
Case No: 200502959
Decision Date: 23 February 2006

Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
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Decision 030/2006 – Mr David Ewen of the Evening Express and the Chief Constable of Grampian Police

Request for information about the number of drivers caught speeding at each fixed camera location in Grampian in 2004/05 – withheld on the basis of section 35(1)(a) and (b) of the Freedom of Information (Scotland) Act 2002 (FOISA) – law enforcement – section 39(1) of FOISA – health and safety

Facts

Mr Ewen, a journalist with the Evening Express, submitted an information request to the Chief Constable of Grampian Police (the Police) for the number of drivers caught speeding at each fixed camera location in Grampian in 2004/05. The Police did not disclose any information to Mr Ewen on the basis that release of the information would, or would be likely to, prejudice substantially the prevention or detection of crime under section 35(1)(a) of the Freedom of Information (Scotland) Act 2002 (FOISA); would, or would be likely to, prejudice substantially the apprehension or prosecution of offenders under section 35(1)(b) of FOISA and would, or would be likely to, endanger the physical or mental health or the safety of an individual and was therefore exempt under section 39(1) of FOISA. The decision was upheld by the Police on review and Mr Ewen applied to the Commissioner for a decision.

Outcome

The Commissioner found that the Police had complied with Part 1 of FOISA in withholding the information requested from Mr Ewen.

Appeal

Should either Mr Ewen or the Police wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.



Background

1. On 23 September 2005, Mr Ewen submitted an information request to the Police for the number of drivers caught speeding at each fixed camera location in Grampian in 2004/05.
2. The Police responded on 30 September 2005, indicating that although the information was held by them, it was exempt from disclosure on the basis of sections 35(1)(a) and (1)(b) and section 39(1) of FOISA.
3. Mr Ewen submitted a request for a review of the Police's decision on 3 October 2005.
4. The Police responded to Mr Ewen on 18 October 2005, upholding the decision that had been made in response to his original request.
5. On 25 October 2005, Mr Ewen applied to me for a decision as to whether the Police had breached Part 1 of FOISA in withholding the information. The case was subsequently allocated to an Investigating Officer.

The Investigation

6. Mr Ewen's appeal was validated by establishing that he had made a valid information request to a Scottish public authority under FOISA and had appealed to me only after asking the Police to review its response to his request.
7. A letter was sent by the Investigating Officer to the Police on 14 November 2005, asking for their comments on Mr Ewen's application in terms of section 49(3)(a) of FOISA. The Police were asked to provide, amongst other items, a copy of the information which had been withheld and a detailed analysis of its use of the exemptions under sections 35(1)(a) and (b) and section 39(1) of FOISA. The Police were also asked to provide a detailed analysis of their consideration of the public interest test in relation to these exemptions.



Submissions from the Police

8. As mentioned above, the Police cited three exemptions under FOISA to justify withholding the information: sections 35(1)(a) and (1)(b) and section 39(1). I will consider the Police's reasoning for relying on each exemption further in the section on Analysis and Findings below.
9. The Police also submitted a copy of a decision prepared by the (UK) Information Commissioner in relation to a similar application which the (UK) Information Commissioner had received in respect of a request made to Essex Constabulary.

Submissions from Mr Ewen

10. In his submissions to my Office, Mr Ewen provided a copy of a report published in December 2005 by PA Consulting Group, University College London (UCL), University of Liverpool and Napier University entitled, "The national safety camera programme: four year evaluation report."
11. Within this report, the siting of safety cameras and their effect on the number of personal injury collisions (PICs) and killed and seriously injured (KSIs) was measured for all of the partnership areas which are part of the National Safety Camera Programme. A quote taken from this report in relation to the effect of personal injury collisions states, on page 38: "Most partnership areas have demonstrated a significant reduction in PICs at the camera sites. Other areas are not significantly different from zero, apart from Grampian – the only area to show an increase at camera sites." The report also states on page 39: "Most partnership areas have demonstrated a significant reduction in KSIs at camera sites. The only areas to show an increase are Grampian and Fife, but on small sample sizes."
12. Mr Ewen also provided my Office with a press report by Aberdeen Journals Ltd on 21 December 2005 in respect of the findings of this report. In this press report, one of the authors (Professor Benjamin Heydecker, Professor of Transport Studies at UCL) is quoted as saying, "The figures are a cause for concern. NESAMP needs to understand what's going on. A few sites under-performing could provide these results – and Grampian should be looking at its sites and reviewing them." My Office was advised that this quote is taken from a telephone interview which was carried out by Mr Ewen with Professor Heydecker.



13. Mr Ewen contends that all cameras should have film in them and should be sited at accident blackspots. Mr Ewen states that to argue that releasing this information would encourage people to speed misses the point and that the policy should not be about shaping public perception, but about enforcing the law.
14. In making his appeal to my Office, Mr Ewen has put forward various arguments as to why he feels that the public interest arguments made to him by the Police in their response are not sufficient. Mr Ewen has indicated that evidence of the number of drivers being caught at a particular site is not relevant to an individual driver. Mr Ewen contends that this is evidence of law enforcement at that site and so promotes road safety. Mr Ewen goes on to say that speed cameras are there not only as a deterrent, but to enforce the law and that for there to be a perception of being caught, there needs to be some level of evidence of enforcement.
15. Mr Ewen has also submitted that for a driver to be able to work out the chances of being recorded at a particular site, he would need to know the volume of speeding traffic on that road. Mr Ewen states that he is not aware of such information being in the public domain.
16. Mr Ewen contends that if it transpired that no one had been caught at a particular site, a motorist would not assume speed cameras were not active at that site. The motorist may assume that no one had been speeding at that site.
17. Mr Ewen believes that if camera sites are not active all the time it may be argued that they should be and that the request for this information could form a basis of a case to increase spending on speed cameras, which would ultimately improve road safety.

The Commissioner's Analysis and Findings

18. In its response, the Police provided a copy of the information that it had withheld from Mr Ewen (i.e. a list of fixed camera sites in the Grampian region together with details of the number of persons caught speeding at each of these sites), together with an explanation of the exemptions they were relying upon in not disclosing the information to Mr Ewen and other documentation which had been requested by the Investigating Officer.



19. As mentioned above, sections 35(1)(a) and (b) of FOISA exempt information if its disclosure would, or would be likely to, prejudice substantially the prevention or detection of crime or the apprehension or prosecution of offenders respectively. Although there is no definition under FOISA as to what would constitute substantial prejudice, it is my view that in order for a public authority to be able to rely on this exemption, it would have to show that the damage caused by disclosing the information would be real or very likely, not hypothetical. The harm caused must be significant, not marginal, and it would have to occur in the near future and not in some distant time.
20. The exemption in section 35 is a qualified exemption, which means that the application of this exemption is subject to the public interest test. Where a public authority finds that this exemption applies to the information that has been requested, it must go on to consider whether, in all circumstances of the case, the public interest in withholding the information is outweighed by the public interest in disclosing the information. If the two are evenly balanced, the presumption should always be in favour of disclosure.
21. As with the section 35 exemptions, the exemption in section 39(1) also contains a harm test, in that the exemption will apply if the disclosure of information would, or would be likely to, endanger the physical or mental health or safety of an individual. It should be noted that, unlike the harm test in section 35 (and, indeed, most other exemptions subject to a harm test) the test is simply one of “endangerment”, not “substantial prejudice.” Endangerment is, I believe, a lower test than substantial prejudice. The term is not defined under FOISA, but it is my view that there must be an apprehension of danger before the exemption can be relied upon.
22. The exemption contained in section 39(1) is also a qualified exemption and, as such, the application of the public interest test outlined in paragraph 20 above is relevant.

The application of section 35(1)(a) – prevention or detection of crime

23. In order for a public authority to be able to rely on this exemption, it would have to show that disclosure of the information which has been requested by Mr Ewen would, or would be likely to, prejudice substantially the prevention and detection of crime.
24. I take the view that the term “the prevention and detection of crime” encompasses any action taken to anticipate and prevent crime, or to establish the identity and secure prosecution of the persons suspected of being responsible for crime. This could mean activities in relation to a specific (anticipated) crime or wider strategies for crime reduction and detention.



25. In its submissions to my Office, the Police submitted that the release of the information requested by Mr Ewen would indicate the number of motorists who have been detected speeding at each of the twenty-seven fixed camera locations which are monitored by the North East Camera Safety Partnership (NESCAMP). The Police comment that although the public are aware that fixed cameras are active only on a rotational basis, details of the periods for which the cameras are active are not in the public domain. The Police contend that although Mr Ewen has not asked for the hours of operation of the cameras, it is possible to estimate the likelihood of a camera being active by correlating information on the number of motorists detected at a specific site with traffic flow data available from local authorities. The Police believe this information would reveal the likelihood of detection for speeding offences at each of the twenty seven fixed camera locations in the Grampian Area. The Police believe that there is little doubt that such analysis would be undertaken and published to the 200,000 Grampian residents who read Mr Ewen's newspaper. The Police indicate that the analysis would give the impression that the chances of being recorded speeding in particular locations is low, encouraging motorists to use higher speeds at these locations. The Police submit that, for camera enforcement to be effective, there must be the perception that the chance of being recorded is high at all sites.
26. The Police comment that research for the Scottish Executive ("The Speeding Driver: who, how and why?" published in 2003) shows that 51% of Scottish drivers say they would slow down near speed cameras, where the driver is aware of the location of the camera, but would not necessarily moderate their speed for the rest of the journey. The Police contend that widespread publication of figures showing that cameras in particular locations are unlikely to be active would serve to reduce the number of drivers lowering their speed at these locations.
27. In considering the substantial prejudice test, the Police sought to justify why release of this information to Mr Ewen would prejudice substantially the prevention and detection of crime. The Police state that, as fixed camera locations are sited according to strict casualty-reduction criteria, any information that encourages use of higher or excessive speeds at those sites is likely to result in an increase in injuries to pedestrians and road users. The Police state that clearly this would prejudice substantially attempts by the Police to safeguard the physical health and safety of individuals in those situations. The Police also contend that publication of a 'league table' revealing the likelihood of detection at the fixed camera sites in Grampian would prejudice substantially the prevention of speeding offences.
28. As I have already stated, when considering qualified exemptions, it is not enough for a public authority to justify why it feels that the information that it is withholding would be within the scope of this exemption; the public authority must also go on to consider the public interest test.



29. In considering the public interest test, the Police looked at the public interest in disclosing the information and the public interest in withholding the information. It then sought to balance this to determine whether the public interest in withholding the information outweighs that in disclosing the information. The arguments raised by the Police are detailed below:

For disclosure

- **Accountability:** it would be in the interest of the public to assess whether safety cameras are used to their potential to prevent and detect speeding offences. This includes evidence to show that speeding offences are detected by each camera.
- **Public awareness:** it would be in the interest of the public to have demonstrated the road safety issues that require safety cameras to be located at particular sites.

Against disclosure

- **Prevention of crime:** it is not in the interest of the public for the Police service to release site-specific performance data that leads to an increase in the number of speeding offences. Rather, it is in the public interest for roads to be kept safe.
- **Health and safety of individuals:** it is not in the interest of the public for the Police service to release information that leads to an increase in the number of injuries to road users and pedestrians caused by speeding vehicles. Rather, it is in the public interest for roads to be kept safe.

After balancing the arguments in favour of and against disclosure, the Police concluded that the prevention of crime and safeguarding of health and safety of individuals are more important than release of information to enable public awareness and accountability. As a result, the Police decided not to release the information to Mr Ewen.

30. The Police advise me that in considering this and the other exemptions, they sought guidance from Association of Chief Police Officers in Scotland and the Association of Chief Police Officers.



31. Having considered the submissions from the Police, I am satisfied that the information which has been withheld would be exempt under section 35(1)(a) on the basis that the release of the information would, or would be likely to, prejudice substantially the prevention or detection of crime. It is clear that fixed safety cameras are used as a strategy for crime reduction and research such as that carried out by the PA Consulting Group et al (referred to in paragraph 10 above) shows that the introduction of speed cameras has reduced excessive speeding and that these reductions are sustained over time. I note, in particular, the statement from the PA Consulting Group et al research (page 5) that there is a 31% overall reduction in the proportion of vehicles breaking the speed limit at new camera sites. This was most noticeable at fixed camera sites, where the number of vehicles exceeding the speed limit dropped by 70%, compared to 18% at mobile sites.
32. I am satisfied that the release of the information sought by Mr Ewen would make the public aware of which cameras are not always in use and will lead to drivers not moderating their speed in these areas and potentially causing accidents which these cameras are there to try to prevent.
33. As I am satisfied that the information is exempt under section 35(1)(a), I am required to go on to consider the application of the public interest test. In doing so, I have taken into account the submissions made by the Police and by Mr Ewen. I have considered the points raised by Mr Ewen in terms of the PA Consulting Group et al report and I can see that there are legitimate arguments as to why the release of numbers of drivers caught speeding at fixed camera sites would be in the public interest, particularly given that one of the conclusions drawn from the report by the authors was that of all the national safety camera partnership areas, the only one which had shown an increase in personal injury collisions since the introduction of the cameras is Grampian. I also note that Grampian was one of only two areas which showed an increase in the number of deaths since the introduction of these cameras. I have also taken into consideration the other points relating to the public interest made by Mr Ewen.



34. Mr Ewen has commented that all cameras should have film in them and should be sited at accident blackspots and that the policy should be about enforcing the law, not shaping public perception. However, it is not my role to consider whether a policy adopted by the Police is correct; my role is to determine whether the Police have applied FOISA correctly in this case. I am persuaded by public interest arguments raised by the Police against disclosure and, on balance, am satisfied that the public interest in withholding the information sought by Mr Ewen outweighs that in disclosure of the information. The release of the information is, I believe, likely to lead to an increase in speeding at those camera sites which drivers believe are less likely to be operational. Given that the cameras should only be positioned at accident black spots, this is likely to increase the number of accidents. I believe that the public interest in reducing the number of accidents outweighs the public interest arguments raised by Mr Ewen.
35. Although I am satisfied that the information which has been withheld by the Police is exempt from disclosure under section 35(1)(a), I will also consider the application of the other exemptions.

The application of section 35(1)(b) – apprehension or prosecution of offenders

36. In order for a public authority to rely on this exemption, it would have to show that disclosure of the information would, or would be likely to, prejudice substantially the apprehension or prosecution of offenders.
37. This term has a narrower scope than that of the exemption under section 35(1)(a). However, I accept that there is likely to be a considerable overlap between the two exemptions. I consider that section 35(1)(b) relates to all aspects of the process of identifying, arresting or prosecuting those suspected of being responsible for unlawful activity. Again, this term could refer to the apprehension and prosecution of specific offenders or more general techniques (such as the investigative processes used).
38. In its submissions to my Office, the Police relied on the same submissions to justify the use of the exemption under section 35(1)(b) as it did for the use of the exemption under section 35(1)(a). Details of these submissions are given in paragraphs 25-27 and 29-30 above.
39. In its submissions to my Office, the Police provided information in respect of the procedure that is followed when an individual is recorded speeding by a fixed safety camera and the steps that are then taken by the Police to identify the driver of the vehicle. The information also shows the actions that are taken to punish the individual for the commission of the offence.



40. The Police applied the same justification for showing that release of this information would prejudice substantially the apprehension or prosecution of offenders and also when considering the public interest test as it did for the exemption under section 35(1)(a).
41. In looking at the information which has been withheld from Mr Ewen, together with the submissions from the Police, I satisfied that the information would be exempt under section 35(1)(b). I am satisfied that this is the case as I accept the submissions from the Police that if the public were to be made aware of which fixed safety cameras are operational at any one time then it may be the case that drivers would moderate their speed near these cameras but where they know that a camera is not operational they may not act in the same manner. I therefore accept that it would be difficult for the Police to identify and prosecute those drivers who exceed the speed limit at sites where cameras are not operational and that this would have a substantially prejudicial effect on the apprehension or prosecution of offenders.
42. As I am satisfied that the information requested is exempt under section 35(1)(b), I am now required to consider the public interest test. In taking into account the submissions from the Police and Mr Ewen, I have again considered the comments from Mr Ewen on the public interest, such as that the release of the information would allow the public to determine whether the safety cameras are being used to their potential. However, I am of the view that the release of this information will lead to an increase in the number of incidents of speeding. Further, I also accept that where there is a perception by the public that all fixed safety cameras are active this acts as a deterrent to stop drivers speeding at these locations and that this would impact on the ability of the Police to enforce the law. There is a clear public interest in ensuring that the Police can enforce the law and therefore, on balance, I am satisfied that the public interest in withholding this information outweighs that in disclosure of the information.

The application of section 39(1) – Health and safety

43. In order for a public authority to be able to rely on this exemption, it must show that disclosure of the information would, or would be likely to, endanger the physical or mental health or the safety of an individual. I consider that this exemption is sufficiently broad to cover information that may indirectly harm a person or a group of persons. It is broad enough to cover harm which could occur in the future as well as immediate harm. Danger to physical health could mean a danger to a person as a result of physical injury, illness or disease.
44. In its submissions to my Office, the Police relied on the same submissions to justify the reliance on the use of the exemption under section 39(1) as it did for reliance on the exemptions under sections 35(1)(a) and (1)(b). Details of these submissions are given in paragraphs 25-27 and 29-30 above.



45. As mentioned above, the Police submitted that research for the Scottish Executive shows that 51% of Scottish drivers say that they would slow down near safety cameras, where the driver is aware of the location of the camera, but would not necessarily moderate their speed for the rest of the journey. The Police contend that widespread publication of figures showing that cameras in particular locations are unlikely to be active would serve to reduce the number of drivers lowering their speeds at those locations. In its submissions, the Police state that, as fixed camera locations are sited according to strict casualty reduction criteria, any information that encourages use of higher or excessive speeds at those sites is likely to result in an increase in injuries to pedestrians and road users. In considering the harm test, the Police indicate that clearly this would prejudice substantially the physical health and safety of individuals in those situations.
46. In looking at the information which has been withheld from Mr Ewen, together with the submissions from the Police, I am satisfied that the information would be exempt under section 39(1), on the basis that the release of the information would, or would be likely to, endanger the physical health of an individual. I accept the point that to make the public aware of which cameras are and are not active at a particular time may result in drivers only moderating their speed at sites where they know that the fixed safety cameras are operational. I accept that this could lead to an increase in speeding offences and, as a consequence, a potential increase in injuries to individuals.
47. As I am satisfied that the information requested is exempt under section 39(1), I am now required to go on to consider the public interest test. In taking into account the submissions from the Police and Mr Ewen, I have taken account of the information from the report submitted by Mr Ewen, which shows that of all the Camera Safety Partnership areas only Grampian showed an increase in the number of personal injury collisions. I also note that the report submitted by Mr Ewen indicates that out of only two areas which showed an increase in the number of killed and seriously injured, one of these was Grampian. I agree that this demonstrates that there would be a public interest in making these figures available, as if the public were aware of this information it may help them to determine whether in fact the fixed safety cameras are effective in terms of where they are currently sited and that this may provide a basis for Grampian Police to consider whether spending should be increased in relation to safety cameras..
48. However, I accept the argument put forward by the Police, that it is not in the interest of the public for the Police to release information which leads to an increase in the number of injuries to road users and pedestrians caused by speeding vehicles. Rather, it is in the public interest for roads to be kept safe. I also accept that where there is a perception by the public that all fixed safety cameras are active this acts as a deterrent to stop drivers speeding at these locations. On balance, therefore, I am satisfied that the public interest in withholding this information outweighs that of disclosure.



Decision

I find that, in withholding information about the number of drivers caught speeding at each fixed camera location in Grampian in 2004/05, the Chief Constable of Grampian Police dealt with Mr Ewen's request for information in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002. I find that the exemptions in sections 35(1)(a) and (1)(b) and section 39(1) were relied upon correctly by the Police and, as a result, that section 1(1) was applied correctly.

Kevin Dunion
Scottish Information Commissioner
23 February 2006