

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 22 February 2007

Public Authority: South Yorkshire Police
Address: PO Box 3289
Sheffield
S9 2WQ

Summary Decision

The complainant requested a copy of a photograph of a police crew bus caught speeding. The public authority refused to release the information on the basis it was exempt under sections 30, 38 and 40 of the Act. The Commissioner's decision is that the exemptions at sections 38 and 40 were not engaged and that whilst section 30 was engaged, the public interest in disclosing the information was not outweighed by the public interest in withholding it. Consequently, the complaint is upheld.

The Commissioner's Role

1. The Commissioner's role is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

The Request

2. The complainant, a journalist employed by the BBC, has advised that on 9 January 2006 the following information was requested from the South Yorkshire Safety Camera Partnership ("SYSCP") in accordance with section 1 of the Act:

A copy of the photograph (or photographs, or video pictures) of the crew bus caught speeding on Carr House Road on 2nd January 2004.

3. South Yorkshire Police ("SYP") employ all staff of SYSCP and provide and operate all IT systems. SYSCP is not a separate legal body and consequently, is part of SYP.
4. In its letter to the complainant dated 31 January 2006, SYSCP refused to disclose the requested information and claimed that the information was exempt. To support its position SYSCP relied on sections 30, 38 and 40 of the Act.

5. In addition, a “harm test” was carried out. SYSCP stated that whilst it appeared an offence had been committed, the photograph was not substantive proof of its commission, for example the vehicle may have been an emergency vehicle which could be exempt from speed limits under section 87 of the Road Traffic Regulation Act 1984. SYSCP further argued that the photograph showed two individuals but the quality did not enable either to be identified. Consequently, SYSCP felt that should the photograph be released, there was a risk that the individuals, or others wrongly identified would be vilified and as a consequence, their mental or physical health would suffer. In addition, SYSCP stated that it is for the courts to determine the guilt or otherwise of a suspect, not the media, as defined in Article 6 of the Human Rights Act 1998.
6. On the 31 January 2006, the complainant requested an internal review of the decision. In its email dated 28 April 2006, the SYP Appeals Tribunal confirmed it had reviewed and upheld the original decision of SYSCP.

The Investigation

7. On 28 April 2006 the complainant contacted the Commissioner to complain about the way his request for information had been dealt with by SYSCP. The complainant specifically asked the Commissioner to consider the release of information requested under the Act.
8. On 8 August 2006, the Commissioner contacted SYSCP in order to obtain a copy of the withheld information and clarify certain issues that arose as a result of his review of the explanations provided to him.

Analysis

9. The Commissioner has considered:
 - SYSCP’s response to the complainant’s request for information,
 - the content of the information,
 - SYSCP’s response to his queries,
 - his published guidance on section 30 and
 - a recent information tribunal decision in *Toms v The Information Commissioner*.
10. The Commissioner will now deal with this case by considering the public authority’s application of sections 30, 38 and 40. A full text of the relevant sections of the Act referred to are contained in the legal annex.

Exemptions

Section 40 (2)

11. SYSCP contends that the photograph is exempt under this section as the information comprises personal data.
12. Personal data relating to a third party is exempt from disclosure under the Act where the conditions referred to in section 40(3) are satisfied.
13. Personal data is defined in the Data Protection Act 1998 as:

“data which relate to a living individual who can be identified -
(a) from those data, or
(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,
and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual”.
14. The requested information is a blurred photograph of 2 individuals in an unidentified police vehicle which is a crew bus with “POLICE” marked on its bonnet. On the admission of SYSCP, the 2 individuals in the photograph are not identifiable due to the quality of the photograph. Consequently, it cannot be the individual’s personal data as their identity cannot be ascertained. It is the Commissioner’s view therefore that section 40 is not engaged and the information may not be withheld under this exemption.
15. Section 40 of the Act provides an absolute exemption. There is therefore no need to consider the public interest test which the Commissioner notes SYSCP erroneously applied.

Section 30

16. Information which has been held at any time by a public authority for any of the purposes listed within Section 30 is exempt, subject to the public interest test. As Section 30 is a class based exemption it is not necessary for the public authority to demonstrate that disclosure would prejudice the conduct of an investigation in order to engage the exemption.
17. The Commissioner notes that SYSCP did not specify which part of the section applies. However, the Commissioner accepts that the exemption at section 30(1)(a)(i) of the Act is engaged . This is on the basis that the photograph was held by SYSCP for the purpose of an investigation which it has a duty to conduct with a view to it being ascertained whether a person should be charged with a speeding offence. Information such as this is used to determine the identity of individuals who are driving a particular vehicle at a particular time when it exceeds the speed limit.

Public Interest Test

18. The Commissioner is mindful that there is an inherent public interest in protecting the ability of public authorities to carry out investigations and to conduct criminal proceedings. Parliament's decision to include a class-based exemption in Section 30 arguably demonstrates that it recognised that there would be an inherent harm in disclosing information obtained for the purposes of an investigation.
19. However, he also notes Parliament's decision to make Section 30 a qualified exemption so that the information itself is only exempt from disclosure where the public interest in maintaining the exemption outweighs the public interest in disclosure. In reaching a decision on this matter the Commissioner has considered his published guidance on this exemption. The guidance notes that the timing of a request is likely to be a critical consideration when weighing up the public interest. This is because "the public interest in the disclosure of information is likely to be weaker while an investigation is being carried out. However, once an investigation is completed, the public interest in understanding why an investigation reached a particular conclusion, or in seeing that the investigation had been properly carried out, could well outweigh the public interest in maintaining the exemption".
20. In addition, the guidance states that "public authorities should not assume that they should not release all information relating to ongoing investigations. Much will depend on the effect of disclosure. There will be a stronger case for maintaining the exemption where confidentiality of the information is critical to the success of the investigation. In cases where a prosecution has collapsed for reasons of procedural failure or mismanagement on the part of the investigating or prosecuting authority, there will be a stronger public interest argument in favour of the disclosure of information about this and other, similar investigations".
21. The Commissioner also notes the recent Information Tribunal judgment which dealt with the application of Section 30 (1). In the case of *Toms v The Information Commissioner*, the Information Tribunal stated, with regard to the consideration of the public interest in relation to section 30 (1) that:

"In striking the balance of interest, regard should be had, inter alia, to such matters as the stage or stages reached in any particular investigation or criminal proceedings, whether and to what extent the information has already been released into the public domain, and the significance or sensitivity of the information requested" (para 8).
22. Taking into account the point above, the Commissioner has approached his analysis of the public interest in this case by considering the following questions:

What stage has the investigation reached?
Has a prosecution collapsed or not been pursued because of procedural failure or mismanagement on the part of the investigating authority?
Is the withheld material significant to the investigation?

Has similar information been released in the past by this, or any other public authority?

What stage has the investigation reached?

23. The Commissioner understands that the investigation into the speeding offence is closed. Speeding offences are statute barred and therefore a prosecution must be bought within six months of the date of the alleged offence. He notes that the complainant was informed that no prosecution was bought in this case; the quality of the photograph showed 2 individuals but did not enable either to be positively identified. The alleged offence took place in January 2004 and therefore there was no prospect of a prosecution being bought at the time the request was submitted because this was well after the six months had expired.
24. SYSCP has suggested that the public interest favours maintaining the section 30 exemption in this case because it is still possible that a further investigation into the whole circumstances of the case may be conducted if additional evidence came to light. The Commissioner accepts that there is a public interest in ensuring that investigating authorities are able to pursue their enquiries and that releasing evidence gathered to date could hinder their ability to do this.
25. In addition, the Commissioner recognises the public interest in ensuring that a person who may be charged with an offence is able to receive a fair trial. Arguably placing evidence that the public authority intends to use against the accused into the public domain prior to any hearing would likely compromise the ability of that person to receive a fair trial.
26. However the Commissioner does not consider these to be strong arguments in this case. This is because he notes that any prosecution for the speeding offence is now out of time. Further he has not been provided with any evidence that the public authority intends to reopen its investigation or that there is a realistic prospect of further evidence being found.

Has a prosecution collapsed or not been pursued because of procedural failure or mismanagement on the part of the investigating authority?

27. The complainant was informed that the photograph requested was of poor quality and that therefore it was not possible to positively identify the driver. The Commissioner considers that there is a public interest in ensuring that public authorities responsible for enforcing speed limits are accountable where the prospects of a successful prosecution are reduced because of the methods used to gather evidence or the quality of that evidence. In this case the Commissioner considers that the requested information would allow the public to better assess the effectiveness of the public authority's activities and to determine whether it had complied with its own procedures.
28. The efficacy of speed cameras is also a popular topic of public debate. In particular, the Commissioner notes that there have been a number of cases reported in the press which demonstrate the problems faced by police forces that are unable to identify drivers, including their own officers, due to the poor quality

of photographs taken by safety cameras. In particular, the complainant provided an article with his submissions which reported the case of an unmarked police vehicle in Hampshire which was caught doing 48 miles per hour in a 30 miles per hour zone. In that case Hampshire Constabulary was forced to mount a prosecution against itself for failing to give information about the driver. The Commissioner is satisfied that the requested information would inform the ongoing debate in this regard and that there is a public interest in doing so.

29. In addition, the requested material would help the public to assess, from a more informed standpoint, whether justice has been served in respect of a police officer in the same way as a civilian, which the Commissioner is also satisfied is in the public interest.

Is the information significant to the investigation?

30. The Commissioner acknowledges that the photograph requested is central to the investigation because it forms the main evidence against the unidentified driver of the vehicle.. In many cases the public interest in ensuring that such evidence is not placed in the public domain prior to any prosecution being considered in court would be strong. However, in this case given that the investigation is no longer being conducted and that no prosecution has been pursued he does not consider this argument to have significant weight.

Has similar information been released in the past by this, or any other public authority?

31. The Commissioner has also taken into account the fact that other public authorities have been prepared to release information similar to that requested by the complainant. The complainant made a request to a different police force for copies of several photographs capturing police officers driving above the speed limit. In response the police released one photograph of a marked vehicle but refused to supply material depicting unmarked police cars used in covert operations, on the basis that to do so would prejudice law enforcement.
32. In this case the vehicle shown is an unmarked crew bus rather than a vehicle used in covert operations. Further, the registration details are not visible and therefore the Commissioner is satisfied that concerns regarding prejudice to law enforcement pertinent to the case mention above do not apply in this instance.
33. He is mindful that other public authorities have been able to release similar information to the disputed material in this case, without causing detriment to their ability to investigate.
34. Having considered all the points mentioned above, the Commissioner has concluded that in this particular case the public interest arguments in favour of maintaining the exemption in Section 30 do not outweigh those in favour of disclosure.

Section 38

35. Information is exempt under this section if its disclosure would or would be likely to endanger the physical or mental health of any individual, or endanger the safety of any individual.
36. As stated in paragraph 8 above, the Commissioner has seen the requested information which is a blurred photograph of 2 individuals in an unidentified vehicle. The Commissioner does not accept that SYSCP has demonstrated that the release of the information would be likely to result in an endangerment of any individual's health or safety as referred to at paragraph 4 above. Following a review of all the circumstances of this case, the Commissioner does not accept that the disclosure of such a photograph would endanger the physical or mental health or safety of any individual. The Commissioner does not accept that disclosing the photograph will lead to vilification of the individual driving the vehicle nor any other individual suspected to be him. As such, the Commissioner does not accept it will lead to endangerment of any individual's health and safety, physical or mental.
37. Consequently, section 38 is not engaged and the information may not be withheld under this exemption.
38. Section 38 is a qualified exemption and is subject to the public interest test. As the exemption is not engaged, there is no need to consider the test.

The Decision

39. The Commissioner's decision is that the public authority has not dealt with the request for information in accordance with the Act in that the information has been inappropriately withheld.

Steps Required

40. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

The requested information as disclosed to the Commissioner by SYSCP in a letter dated 19 September 2006 should be released to the complainant.

41. The public authority must take the steps required by this notice within 35 calendar days from the date of this notice.
42. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act, and may be dealt with as a contempt of court.

Right of Appeal

43. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 22nd day of February 2007

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 30 (1) provides that:

“(1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-
 - (i) whether a person should be charged with an offence, or
 - (ii) whether a person charged with an offence is guilty of it,
- (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
- (c) any criminal proceedings which the authority has power to conduct.

Section 38 provides that :

“(1) Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual.”

“(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, have either of the effects mentioned in subsection (1).”

Section 40(2) provides that:

“(2) Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or second condition below is satisfied.

(3) The first condition is-

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

- (i) any of the data protection principles, or
- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”