

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 28 June 2011

Public Authority: Home Office
Address: Seacole Building
2 Marsham Street
London
SW1P 4DF

Summary

The complainant requested information regarding specific types of speed camera. The Home Office provided the majority of the requested information and it confirmed that it did not hold information relating to two of the types of speed camera specified by the complainant. The Commissioner initially investigated whether or not the remaining requested information was held by the Home Office and whether section 12(2) of the Act had been correctly applied. During the Commissioner's investigation the Home Office performed further searches and was able to confirm that it did not hold the remaining requested information. The Commissioner accepts that the searches most likely to find the requested information were performed and therefore, on the balance of probabilities, the requested information is not held by the Home Office.

The Commissioner's Role

1. The Commissioner's duty 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 made the following request on 16 April 2010:

'I am pleased to see on the Home Office website <http://scienceandresearch.homeoffice.gov...> that "The Home Office aims to ensure that the type approval process

is open and transparent".

I also note from the website that "up to three police forces or safety camera partnerships undertake tests independent of each other for ACPO"

I note that Gatso BV Type + AUS(1992) and Gatso Type 36(1992) were granted Type Approval by Ken Clarke, and LTI 20.20 Ultralyte 100(1992) approved by Paul Boeting.

Question 1. For each of these 3 cameras please advise of the names of the police forces or testing agencies(TA) who have completed the testing process on behalf of ACPO and who, and when, within these police forces or TA has signed off the tests as being completed with assurance.

Question 2. Please advise how the Home Office Scientific Branch (HOSB) is involved in the Type Approval process, and if they actually do any checks themselves.

Question 3. Presumably the HOSB simply produce a final Type Approval document which is then presented to a minister to be automatically signed off which then makes it legal. Please correct me if I am mistaken in this belief. Please advise me if the same person at HOSB has been responsible for submitting the Type Approvals between 1992 and 2000.'

3. The Home Office responded to the request on 12 May 2010. It provided the majority of the requested information to the complainant. However, in relation to part 1 of the request, only information relating to the testing of the LTI 20.20 Ultralyte 100 camera was provided. It stated that it did not hold information regarding the other two cameras mentioned in part 1 of the request i.e. the Gatsometer BV Type 24+AUS ('Gatso 24') and Gatsometer BV Type 36 ('Gatso 36').
4. The complainant requested an internal review of the Home Office's initial response on 13 May 2010. He believed the Home Office to be incorrect in stating that it did not hold information regarding the Gatso 24 and 36 speed cameras.
5. The Home Office's internal review decision was provided to the complainant on 9 July 2010. This confirmed that the Home Office's initial response had been incorrect. It explained that a full search of all Home Office records had not initially been performed; the Home Office Scientific Development Branch (HOSDB) was the only branch which had been searched.

6. However, in undertaking the internal review, further searches of other branches of the Home Office confirmed that other information was held relating to part 1 of the request. This was the names of the constabularies involved in the testing of the Gatso 24 and 36 cameras. These were provided to the complainant. The Home Office found itself in breach of section 1(1) of the Act as it had not confirmed to the complainant that it held this information in its initial response and had not provided the complainant with this information. However the Home Office also informed the complainant that to confirm whether any further information was held, beyond that already found, would exceed the appropriate costs limit under section 12(2).

The Investigation

Scope of the case

7. On 14 October 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He stated that he considered his request to the Home Office to be incomplete.
8. The complainant made further requests for information which flowed from the responses provided by the Home Office's internal review. The Commissioner considers these to constitute new information requests, which fall outside the scope of the substantive request of 16 April 2010. Therefore these further requests do not form part of his decision in this notice.
9. The Commissioner wrote to the complainant on 7 January 2011 to clarify what the complainant believed was left to be resolved regarding his request. The Commissioner explained that the only part of the request which appeared to remain unanswered was the following section of part 1 of the request, in relation to the testing of the Gatso 24 and 36 speed cameras:

'...who, and when, within these police forces or TA has signed off the tests as being completed with assurance'.
10. On 10 January 2011, the complainant responded to the Commissioner's request for clarification. The complainant believed the information already provided to him was unreliable and questioned why *'...information is being withheld on the grounds that it may be "inaccessible in unstructured files" and too difficult to retrieve'*. This follows from the Home Office stating in its internal review that there was a limited amount of technical information available for devices approved

before 1993. The Home Office confirmed that this included the Gatso 24 and Gatso 36 cameras.

11. The Commissioner responded to the complainant on 14 January 2011. He explained that whether the information so far provided to the complainant was reliable or not, went beyond the scope of an investigation under section 50 of the Act and could not be considered. The Commissioner therefore confirmed that the scope of the investigation would be whether or not the Home Office held any information regarding '...who, and when, within these police forces or TA has signed off the tests as being completed with assurance' with regard to the Gatso 24 and 36 speed cameras.
12. The complainant responded on 15 January 2011, accepting the scope of the investigation.

Chronology

13. The Commissioner contacted the Home Office on 14 January 2011 to outline the scope of his investigation. He also asked a number of questions regarding whether any information was held relating to the Gatso 24 and 36 speed cameras, and in particular in respect of '...who, and when, within these police forces or TA has signed off the tests as being completed with assurance'.
14. The Home Office provided its initial answers to the Commissioner on 18 February 2011. These were put to the complainant as the basis of a possible informal resolution. The Commissioner explained the Home Office's opinion that it did not hold the requested information as it is the property of the Association of Chief Police Officers (ACPO). It is ACPO who perform the testing of speed cameras and confirm Type Approval to the Home Office (Type Approval being confirmation that a camera has been passed following testing). The Home Office further explained that the searches it had performed both of electronic and paper records had produced no results.
15. The Commissioner explained to the complainant that he had contacted ACPO to confirm whether or not it held the requested information and that ACPO had stated that they may hold the information and if the complainant requested the information a search may be made for it. The Commissioner did however explain to the complainant that for the purposes of the Act, ACPO¹ is not a public authority and is under no obligation to respond to a request. The Commissioner also advised the

¹ In March 2010 the [Ministry of Justice](#) confirmed that ACPO will be included under the Act and legislation to effect the change is expected to come into force in October 2011.

complainant of ACPO's suggestion that he contact the separate Police forces disclosed in the Home Office's earlier response.

16. The Commissioner did however point out that having reviewed the Home Office's internal review response again it appeared that further information may be held regarding the requested information. This is because the Home Office had stated in its internal review that it may hold a limited amount of technical data relating to the speed cameras discussed in the complainant's request (amongst other cameras). However, it had also asserted in its internal review that to even come to a conclusion as to whether it held any further relevant information would necessarily exceed the appropriate costs limit under section 12(2) of the Act; that is, £600 or 24 hours work at £25 per hour for a central government public authority such as the Home Office.
17. The Commissioner requested that the complainant respond to the Home Office, confirming whether he wished to withdraw his complaint and contact ACPO and the Police forces as suggested or whether he wished the Commissioner to pursue his complaint in relation to the Home Office's application of section 12(2) of the Act.
18. On 19 April 2011, the complainant responded to the Commissioner, providing his decision. The complainant explained that he wished the Commissioner to pursue the investigation, on the basis of the Home Office's application of section 12(2) of the Act.
19. On 4 May 2011 the Commissioner put questions to the Home Office regarding its application of section 12(2) of the Act. The Home Office's response was provided to the Commissioner on 7 June 2011; it also provided a clarified response to the Commissioner on 10 June 2011. This clarification was issued following queries by the Commissioner during a telephone conversation with the Home Office regarding whether any of the remaining requested information was held.
20. In attempting to calculate the amount of time necessary to perform the relevant searches, and therefore use these timings in support of its section 12(2) arguments, the Home Office in fact performed the relevant searches. As a consequence it then confirmed to the Commissioner that it does not any further information relevant to the complainant's request. It then became apparent to the Commissioner that section 12(2) of the Act no longer applied and he only need consider whether or not the remaining requested information was held.
21. It is from the Home Office's submissions that the following analysis is based.

Findings of fact

22. Submissions from the Home Office and the complainant refer to the Home Office Scientific Development Branch (HOSDB). This has now changed its name to the Centre for Applied Science and Technology (CAST). It is referred to as CAST in the Home Office's submissions and the analysis to follow.

Analysis

Substantive Procedural Matters

23. Section 1(1) of the Act provides that:

'Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.'

24. The effect of section 1(1)(a) and (b) is that a public authority is under a duty to confirm to a requestor whether or not it holds the requested information and if it does, to provide it to the requestor unless it can rely on one of the Act's exemptions.
25. In determining whether a public authority holds requested information, the Commissioner makes enquiries that will satisfy the civil standard of proof, that is, on the balance of probabilities, whether the public authority holds the requested information.
26. In deciding where the balance of probabilities lies, the Commissioner will consider the searches carried out by the public authority, the extent of those searches, the quality and thoroughness of the searches and the results the searches yielded. He will also consider any other information or explanation offered by the public authority which is relevant for his consideration of this matter.
27. As mentioned, the Home Office provided submissions to the Commissioner on the basis that section 12(2) of the Act applied in relation to the complainant's request. However, in conducting its analysis of the searches necessary to identify where in the Home Office relevant information might be held, it was able to identify that it does not hold any relevant information.

28. The Home Office again pointed out to the Commissioner that it considers ACPO to be the holder of the requested information. However, it did identify two branches of the Home Office which it considered may hold relevant information. These were the Public Order Unit (POU) in the Crime and Policing Group (CPG) and the Home Office Science Directorate, in particular CAST.
29. It explained that POU currently undertakes road crime policy work and that its involvement in Type Approval work has been going on for many years. It further explained that POU would have retained the majority of the paperwork generated by the Type Approval process, apart from the technical information which is more likely to be held by CAST. The Commissioner accepts that these branches of the Home Office were therefore the most relevant ones to search to confirm whether information was held, given the subject matter with which both branches are concerned.
30. The Home Office has confirmed that both POU and CAST hold its records in electronic and hard copy formats. For its electronic and hard copy records both branches use electronic filing systems. The Home Office has confirmed to the Commissioner that both the electronic and hard copy filing systems were searched by the Home Office using relevant key search terms, which seemed the most likely to return the requested information.
31. The Home Office confirmed that its key word searches of the electronic records in both branches returned records which may have held potentially relevant information. The key word searches of the hard copy filing system also returned several paper records which may have been relevant to the complainant's request. Having seen the titles of files which these searches returned, the Commissioner is satisfied that these seemed the most likely to hold the requested information.
32. The Home Office has confirmed that, having reviewed the records which all of the searches returned, no information relevant to the complainant's request is held by it. The Commissioner accepts that the Home Office performed the searches that were most likely to return the requested information and this was undertaken in the branches of the Home Office most likely to hold it.

Conclusion

33. The Commissioner notes that the Home Office's original refusal notice was incorrect in that it stated that it did not hold any information relating to Gatso 24 and 36 speed cameras. This was rectified in its internal review, where it provided the details of the constabularies involved in the testing of these cameras.

34. The Home Office explained that it did not believe it held the remaining information being considered in this request. However, to conclude definitively whether or not it held the requested information would exceed the appropriate costs limit and so it cited section 12(2) of the Act. The Home Office then performed the searches for the requested information. It was able to confirm that no further information is held. The Commissioner, particularly having considered the Home Office's actions during the course of his investigation, is satisfied with the nature of the searches undertaken. He therefore accepts that on the balance of probabilities it is unlikely that the Home Office holds the remaining requested information.
35. The Commissioner has not gone on to consider the Home Office's application of section 12(2) of the Act to the requested information in this Notice. Searches for the requested information were performed. From these searches it was shown that the requested information is not held. The Commissioner therefore considers it unnecessary to consider whether the appropriate limit would be exceeded to even ascertain if further information is held.

The Decision

36. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act. It correctly confirmed that on the balance of probabilities it did not hold the remaining requested information.

Steps Required

37. The Commissioner requires no steps to be taken.

Right of Appeal

38. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 28th day of June 2011

Signed

**Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act 2000

General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled -

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that -

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

Section 12(2) provides that -

"Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit."