

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 13 June 2023

**Public Authority:** Chief Constable of Dorset Police  
**Address:** Winfrith  
Dorchester  
Dorset  
DT2 8DZ

#### **Decision (including any steps ordered)**

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1. The complainant has requested information about accidents and speeding enforcement measures on a particular stretch of road. Dorset Police disclosed most of the requested information. However, it withheld information on some of the reasons why speeding tickets had been cancelled, citing sections 31(1)(a), (b) and (c) (Law enforcement) of FOIA.
2. The Commissioner's decision is that Dorset Police was entitled to rely on the cited exemptions to withhold most of the information. However, he found that a small amount of information was not exempt under section 31.
3. The Commissioner requires Dorset Police to take the following steps to ensure compliance with the legislation.
  - Disclose the information identified in the confidential annex which accompanies this notice, which has been supplied only to Dorset Police.
4. Dorset Police must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 1 August 2022, the complainant made the following request for information:
  - “The number of serious accidents (KSI) between Cooper Dean and Blackwater prior to the junction improvements
  - The number of serious accidents (KSI) between Cooper Dean and Blackwater after the completion of the junction improvements in June 2019 and prior to the average speed cameras being activated
  - The reason/s speed cameras are needed between Blackwater and Cooper Dean”.
6. On 9 August 2022, the complainant clarified the timescale covered by the first part of the request as being the three years prior to the junction improvements.
7. Also on 9 August 2022, the complainant submitted a further request for information:
  - “The number of technical upgrades to the average speed cameras between Blackwater Junction and Cooper Dean.
  - What issues these technical upgrades addressed and thus the reason they were needed
  - Whether these camera are using the latest versions of hardware and software available
  - If not what issues have been addressed in the latest versions that these cameras lack
  - The date of the latest upgrade
  - The number of speeding tickets issued since the latest upgrade
  - The number of people whose tickets have been overturned, broken down by the reasons for overturning them.”
8. Dorset Police replied on 7 September 2022. It responded to every point in each of the requests. For the final bullet point of the request of 9 August 2022, it said that of 15,446 speeding tickets issued, 1729 tickets were cancelled. It provided a breakdown of reasons for cancellations, in general terms (eg “Disqualified driver”), in 723 cases. However, it withheld the general reasons why tickets were cancelled in the remaining 1006 cases, citing the exemption at section 31(1)(a) of FOIA.

9. The complainant requested an internal review on 4 October 2022. Dorset Police completed the review on 10 February 2023. It upheld its application of section 31(1)(a) of FOIA.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 21 February 2023 to complain about the way his request for information had been handled. He disagreed with Dorset Police's decision to withhold information on the reasons for cancellation in the remaining 1006 cases. He also argued that the internal review had not been conducted by a suitably qualified person.
11. During the Commissioner's investigation, Dorset Police introduced sections 31(1)(b) and (c) as additional grounds for withholding the information.
12. The analysis below considers Dorset Police's decision to apply sections 31(1)(a), (b) and (c) of FOIA to withhold the remaining information. The Commissioner has commented on the internal review in the 'Other matters' section at the end of this notice.
13. The Commissioner has viewed the withheld information, which comprises several categories of reasons for cancellation, together with the corresponding number of tickets cancelled under each.

## **Reasons for decision**

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### **Section 31 – Law enforcement**

14. Section 31 of FOIA creates an exemption from the right to know if disclosing the information would, or would be likely to, prejudice one or more of a range of law enforcement activities.
15. In this case, Dorset Police is relying on sections 31(1)(a), (b) and (c) of FOIA to withhold the information. These subsections state that information is exempt if its disclosure would, or would be likely to, prejudice:
  - (a) the prevention or detection of crime;
  - (b) the apprehension or prosecution of offenders; and
  - (c) the administration of justice.

16. In order to engage a prejudice-based exemption there must be likelihood that disclosure would, or would be likely to, cause prejudice to the interest that the exemption protects. Three criteria must be met:
  - Firstly, the actual harm which the public authority alleges disclosure would, or would be likely to, cause, must relate to the applicable interests within the relevant exemption;
  - Secondly, the public authority must be able to demonstrate that some causal relationship exists between disclosure and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice 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 whether disclosure 'would be likely' to result in prejudice or whether disclosure 'would' result in prejudice.
17. Consideration of the exemption is a two-stage process: even if the exemption is engaged, the information must be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.
18. The three subsections have not been applied to the withheld information as a whole; a combination of different subsections have been applied, to withhold different cancellation categories.
19. Broadly, a group of categories was withheld under section 31(1)(a) and (b). Another group of categories was withheld under section 31(1)(b) and (c).
20. Rather than differentiate between the subsections of the exemption, Dorset Police has presented one set of arguments. The Commissioner recognises that there is clearly some overlap between subsections 31(1)(a), (b) and (c). He has therefore considered them together.

### **The applicable interests**

21. It is necessary to consider whether the prejudice predicted by Dorset Police is relevant to the law enforcement activities referred to in sections 31(1)(a), (b) and (c).

22. The Commissioner recognises in his published guidance on section 31<sup>1</sup> that section 31(1)(a) will cover all aspects of the prevention and detection of crime. With regard to section 31(1)(b), he recognises that this subsection: "... could potentially cover information on general procedures relating to the apprehension of offenders or the process for prosecuting offenders". The guidance states that section 31(1)(c) "...will protect information if its disclosure would undermine particular proceedings".
23. The Commissioner is satisfied that the arguments presented by Dorset Police, which concern the impact of disclosure on law enforcement and the course of justice, refer to prejudice to the prevention or detection of crime, the apprehension or prosecution of offenders and the administration of justice. The appropriate applicable interests have therefore been considered.

### **The nature of the prejudice**

24. The Commissioner next considered whether Dorset Police has demonstrated that a causal relationship exists between the disclosure of the withheld information and prejudice to the activities that sections 31(1)(a), (b) and (c) are designed to protect. In his view, disclosure must at least be capable of harming the interests in some way, ie have a damaging or detrimental effect on them.
25. Dorset Police told the complainant that knowledge of the withheld information would be likely to encourage some drivers to exceed the speed limit, in the belief that they could avoid being prosecuted. It told the Commissioner:

"Providing this level of detail would give road users who are intent on speeding, or who have been caught speeding, with a variety of ways that they may be able to avoid or cancel enforcement measure. This would greatly impact the Force's ability to take enforcement action against those who carry out this illegal and dangerous act and reduce the impact of speed cameras as a preventative measure of keeping the roads safe."
26. On the evidence provided, and having considered the withheld information, the Commissioner is satisfied that Dorset Police has demonstrated a causal link between the disclosure of the information, and a detrimental impact on the prevention or detection of crime, the

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf>

apprehension or prosecution of offenders and the administration of justice.

### **Likelihood of prejudice**

27. Dorset Police said that disclosure “would be likely” to prejudice the activities which sections 31(1)(a), (b) and (c) are designed to protect. It explained:

“The Force regularly faces challenge from members of the public who are subject to enforcement due to speeding, with many aiming to identify loopholes for why they should not have to respond to or pay tickets that have been issued to them. By providing the reasons in the table above, it would be likely that those with such an intention would use the information for the purposes of avoiding justice.

In addition, the stretch of road which this request relates to has been criticised by members of the public who feel they have wrongly received speeding tickets, including the creation of a Facebook group which has been joined by over 200 people. You can find more in this news article: [link redacted]

Disclosure of this information could provide individuals who continue to ignore the speed limit with potential ways to avoid being held to account.”

28. The Commissioner recognises the importance of protecting information which, if disclosed, would be likely to undermine law enforcement activities and the course of justice.
29. Having considered the arguments put forward by Dorset Police, and the withheld information itself, the Commissioner is satisfied that most of the speeding ticket cancellation categories would be useful to someone with an interest in replicating the circumstances which led to those cancellations. He is satisfied that this information could assist someone to successfully “game the system”, and avoid prosecution, or other enforcement, for speeding.
30. This could encourage faster driving, beyond legal maximum speed limits, and it could facilitate the avoidance of legal consequences for speeding.
31. The Commissioner is therefore satisfied that the disclosure of most of the speeding ticket cancellation categories, together with the corresponding number of tickets cancelled, would be likely to be prejudicial to the prevention or detection of crime, the apprehension or prosecution of offenders and the administration of justice. In those cases, as the Commissioner accepts that the outcome of disclosure

predicted by Dorset Police would be likely to occur, he is satisfied that, for each group of categories referred to in paragraph 19, the exemptions provided by sections 31(1)(a), (b) and (c) are properly engaged. He has gone on to consider the public interest test in respect of this information, in paragraphs 35 - 47, below.

32. However, as regards one category of reasons for ticket cancellation (and the corresponding number of tickets cancelled), he is not satisfied that its disclosure would be likely to result in the outcomes described above. The Commissioner is unable to explain how he has reached this decision in the body of this notice, without revealing the withheld information itself. He has instead set out his analysis in a confidential annex to this notice, which has been provided to Dorset Police.
33. For that one category, the Commissioner does not accept that the outcome of disclosure predicted by Dorset Police would be likely to occur. Dorset Police cited sections 31(1)(a) and (c) to withhold that information and the Commissioner's decision is that those sections are not engaged.
34. As the Commissioner is satisfied that the cited sections are not engaged, Dorset Police must take the steps set out in paragraph 3, above, in respect of this information.

### **Public interest test**

35. Section 31 is a qualified exemption. The Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption at sections 31(1)(a), (b) and (c) of FOIA outweighs the public interest in disclosing the remaining information.

### **Public interest arguments in favour of disclosure**

36. The complainant argued:

"... it is not in the public interest to punish people who are innocent and have erroneously been accused of an offence that would be overturned if the police released the information they are withholding.

The police take the opposite view and seem to think it is far better to punish the innocent than to let a single guilty person go free...

It is totally feasible that the means to defend oneself is directly linked to whether an individual has the means to to [sic] hire a lawyer who knows what information the police are hiding. If this knowledge was public everyone would have a more equitable access to justice."

37. Dorset Police said:

"Disclosure would be in line with the aims of the FOI Act in being open and transparent with information held by a public authority.

Providing the reasons that tickets have been cancelled would provide members of the public with full and transparent information about how these are issued and processed by Dorset Police.

'Other' accounts for over 50% of the reasons for cancelled tickets, so the use of this exemption would mean that the public are not provided with the information related to a majority of the cancelled tickets."

### **Public interest arguments in favour of maintaining the exemption**

38. Dorset Police said:

"Disclosure of requested information would not be in the public's interest if there is a possibility it could be used to avoid the consequences of speeding.

...

The Police have a duty to protect and serve their communities, and the safety of the public is of paramount importance to the policing purpose. This information could be exploited by individuals who are intent on speeding, and indeed do speed, putting other road users at risk of physical harm."

39. It also argued that law enforcement and the protection of public safety are two of the fundamental duties of policing. Any harmful effect to the delivery of these services would not be in the public interest.

### **Public interest balancing test**

40. When balancing the opposing public interests in a case, the Commissioner will decide whether it serves the public interest better to disclose the requested information or to withhold it because of the interests served by the relevant exemption. If the public interest in maintaining the exemption does not outweigh the public interest in disclosure, the information must be disclosed.

41. The Commissioner accepts that there is a presumption running through FOIA that openness is, in itself, to be regarded as something which is in the public interest. He also recognises the need to ensure transparency and accountability on the part of the police. He also accepts that there is, undoubtedly, public curiosity about the circumstances in which apparently valid speeding enforcement tickets have been cancelled.

42. However, in carrying out this exercise, the Commissioner considers that appropriate weight must be afforded to the public interest inherent in



the exemption - that is, the public interest in avoiding likely prejudice to law enforcement matters. Clearly, it is not in the public interest to disclose information that might compromise the police's ability to accomplish its core function of law enforcement, and by so doing, place the public at increased risk of harm.

43. The complainant has argued that it is not in the public interest for police forces to punish "innocent" people, and that more speeding tickets might be "overturned" if the withheld information was in the public domain.
44. On that point, the Commissioner notes that Dorset Police has stated that tickets have been **cancelled**, rather than **overturned**. None of the withheld reasons for cancellation concede that speeding did not take place. He therefore disagrees with the complainant that disclosure would aid the course of justice in the way he has described. Further, the Commissioner understands that the basis for any intended enforcement action or prosecution for speeding will be provided to those concerned, so that they may challenge this at court, if they wish. Accordingly, he has placed little weight on the complainant's public interest arguments.
45. In the Commissioner's view, policing techniques can only be properly effective when full policing capabilities are not publicly known; disclosure of the withheld information would be to the detriment of the wider public, as those seeking to evade the law may be able to ascertain how best to do so. Members of the public may also be put at unnecessary risk if some drivers believe they can avoid the consequences of exceeding the lawful speed limit and are emboldened to do so.
46. The Royal Society for the Prevention of Accidents' website states the following regarding the consequences of speeding:

"Exceeding the speed limit and travelling too fast for the conditions were assigned by police officers as contributing to 27% of fatal collisions in 2020, as well as 16% of collisions in which a serious injury occurred and 13% of total collisions.

In Great Britain in 2020, 202 people were killed in collisions involving someone exceeding the speed limit, with a further 1,368 people seriously injured and 2,803 slightly injured. A further 115 people died when someone was travelling too fast for the conditions.

Inappropriate speed also magnifies other driver errors, such as driving too close or driving when tired or distracted, increasing the chances of these types of behaviour causing a collision."<sup>2</sup>

47. The Commissioner therefore recognises that it is not in the public interest for people to avoid speed limit enforcement penalties by exploiting loopholes. Genuinely held concerns about the speed limit assigned to a particular road should be addressed with the appropriate local authority responsible for setting the limit<sup>3</sup>.
48. Having carefully balanced the opposing factors involved in this case, the Commissioner is satisfied that the public interest in maintaining the exemption provided by sections 31(1)(a), (b) and (c) outweighs the public interest in disclosure.

## **Other matters**

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### **Section 45 code of practice – internal review**

49. There is no obligation under FOIA for a public authority to provide an internal review process. However, it is good practice to do so and, where a public authority chooses to offer one, the section 45(1) FOIA code of practice ('the code') sets out, in general terms, the procedure that should be followed.
50. The code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
51. In this case, Dorset Police took 90 working days to complete the internal review. The Commissioner therefore considers that Dorset Police failed to comply with the 'timeliness' requirement of the code, and he has made a separate record of this, for monitoring purposes.
52. The complainant also raised with the Commissioner, concerns about the adequacy of Dorset Police's internal review process. In the opinion of the complainant, the person reviewing his request was neither suitably qualified nor sufficiently experienced to conduct internal reviews.

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<sup>2</sup> <https://www.rosopa.com/road-safety/advice/drivers/speeding>

<sup>3</sup> <https://www.gov.uk/request-speed-limit-change>

53. The code states that an internal review should include a fair and thorough review of handling issues and of decisions taken pursuant to FOIA. There should be a fresh decision taken on a reconsideration of the relevant factors. The review should be undertaken by someone who did not deal with the request and preferably by someone senior to the person who took the original decision where this is reasonably practicable. There should be a full re-evaluation of the matter, taking into account the matters raised by investigation of the complaint. The code does not specify any particular qualifications that the reviewers should hold.
54. The Commissioner has considered the complainant's representations about what he regards as deficiencies in the internal review process, but he does not see in them evidence that the guidelines set out in the code have not been followed. The review was conducted by the force FOI Manager, who was not involved in the original decision and who was senior to the original reviewer. The review addressed the points the complainant had raised, albeit the Commissioner accepts he does not agree with the final outcome.
55. Accordingly, the Commissioner does not find that Dorset Police failed to comply with the code of practice as regards the adequacy of the review it conducted.

## Right of appeal

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56. 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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

57. 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.

58. 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 .....**

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