

Freedom of Information 2000 (FOIA)

Decision notice

Date: 5 December 2024

Public Authority: Chief Constable of Greater Manchester Police
Address: GMP Headquarters
Central Park
Northampton Road
Manchester
M40 5BP

Decision (including any steps ordered)

1. The complainant made a request for information relating to the number of speeding fines issued between junctions 24 and 25 near Bredbury from 2014 to 2023. Greater Manchester Police (GMP) refused to confirm nor deny whether the requested information was held citing section 31(3) (law enforcement) and section 38(2) (health and safety) of FOIA.
2. The Commissioner's decision is that GMP was not entitled to rely on section 31(3) or section 38(2) of FOIA to neither confirm nor deny whether it holds the requested information.
3. The Commissioner therefore requires GMP to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request which confirms or denies that the requested information is held. If the requested information is held, it should either be disclosed or GMP should issue a refusal notice explaining why it is exempt from disclosure.
4. GMP must take these steps within 30 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 24 January 2024, the complainant wrote to GMP and requested information in the following terms:

"Please provide me with the number of occasions when speeding fines were issued for speeding along the clockwise stretch of the M60 where there are average speed cameras between junctions 24 and 25 near Bredbury during the calendar year 2023. For clarity, this is a 50mph limit stretch of the motorway that leads up to a right-hand bend on the clockwise carriageway. I am not seeking any speeding offences captured in that stretch of motorway by any other means, for instance a police patrol, only those captured by the above mentioned speed cameras.

Please also provide me with the equivalent figures for each of the previous nine years, from and including 2014. As you will gather, in all I'm seeking figures covering a ten-year period."

6. On 6 March 2024 GMP responded to all of the requests refusing to confirm nor deny whether the information was held and refused the request citing section 31(3) and 38(2) of the FOIA.
7. On 15 April 2024 GMP conducted an internal review maintaining its original response.

Scope of the case

8. The complainant contacted the Commissioner on 19 April 2024 to complain about the way in which his request had been handled.
9. The Commissioner has considered whether GMP was entitled to neither confirm nor deny that it held the requested information by virtue of sections 31(3) and 38(2) of FOIA.

Reasons for decision

Neither confirm nor deny (NCND)

10. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in the request. This is commonly known as "the duty to confirm or deny". However, there are exemptions to this duty, whereby a public authority may NCND whether it holds the requested information.

11. The decision to use a NCND response will not be affected by whether a public authority does, or does not, in fact hold the requested information. The starting point, and main focus for NCND in most cases, will be theoretical considerations about the consequences of confirming or denying whether or not a particular type of information is held.
12. A public authority will need to use the NCND response consistently, over a series of separate requests, regardless of whether or not it holds the requested information. This is to prevent refusing to confirm or deny being taken by requesters as an indication of whether or not information is in fact held.
13. GMP has taken the position to NCND holding any of the requested information in its entirety, citing sections 31(3) and 38(2) of FOIA. The issue that the Commissioner has to consider is not one of disclosure of any requested information that may be held, it is solely the issue of whether or not GMP is entitled to NCND holding any information of the type requested by the complainant.
14. Put simply, in this case the Commissioner must consider whether or not GMP is entitled to NCND holding information relating to numbers of speeding fines between junctions 24 and 25 of the M60 for 2014 to 2023.

Section 31 – law enforcement

15. Section 31(3) of the FOIA states that: "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, prejudice any of the matters mentioned in subsection (1)"
16. Subsection (1) provides a relevant list of activities relating to law enforcement and at part (g) refers to 'the exercise by any public authority of its functions for any of the purposes specified in subsection (2),'
17. In this case, GMP has relied on the NCND exclusion on the basis that confirming or denying whether it holds the information within the scope of the request would be likely to prejudice GMP's functions set out in section 31(2) of FOIA.
18. The Commissioner has been provided with arguments from GMP, however he was not persuaded that section 31(3) of FOIA is engaged and his reasons are set out in a confidential annex sent exclusively to GMP. The Commissioner is unable to set out GMP's arguments and his findings in this decision notice without undermining GMP's position.

Section 38 – health and safety

19. Section 38(1)(b) of FOIA states that:

“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.”

20. Section 38(2) removes the duty to confirm or deny:

“if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1)”.

21. In section 38 the word ‘endanger’ is used rather than the word ‘prejudice’ which is the term used in other similar exemptions in FOIA. However, in the Commissioner’s view the term endanger equates to prejudice.

22. The Commissioner has been provided with arguments from GMP and he has decided that GMP was not entitled to rely on section 38(2) of FOIA to refuse to confirm or deny whether it holds any information. His reasons are set out in a confidential annex for the same reason as that explained at paragraph 18.

23. To conclude, the Commissioner has considered all the arguments put forward and finds that GMP was not entitled to give a NCND response under section 31(3) or 38(2) of FOIA. GMP is directed to comply with the steps at paragraph 3 above.

Right of appeal

24. 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

25. 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.
26. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Robyn Seery
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF