



Scottish Information
Commissioner

**Decision 139/2006 Mr James Robertson and the
Chief Constable of Lothian and Borders Police**

Information relating to mobile safety camera operations

**Applicant: Mr James Robertson
Authority: Chief Constable of Lothian and Borders Police
Case No: 200600440
Decision Date: 26 July 2006**

**Kevin Dunion
Scottish Information Commissioner**

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Decision 139/2006 Mr James Robertson and the Chief Constable of Lothian and Borders Police

Information relating to mobile safety camera operations – section 35(1)(a) and (b) – law enforcement – section 39(1) – health and safety – information not held – section 17

Facts

Mr Robertson submitted an information request to the Chief Constable of Lothian and Borders Police (the Police) seeking various information relating to a particular mobile safety camera location on a particular date, and about mobile safety camera operations in general. The Police's response provided some of the information requested, and noted that some of the information sought was not held. Mr Robertson was advised that site specific information he had requested was exempt from disclosure under the terms of sections 35(1)(b) and 39(1) of the Freedom of Information (Scotland) Act 2002 (FOISA). The decision to withhold site specific information under sections 35(1)(b) and section 39(1) was upheld following an internal review of the matter. Mr Robertson then applied for a decision by the Commissioner in relation to his request.

Outcome

The Commissioner found that the Police had failed to act in accordance with Part 1 of FOISA by refusing to supply the information sought by Mr Robertson about the number of alleged offences recorded at the specified camera location. The Commissioner found that the exemptions in sections 35(1) and 39(1) of FOISA did not apply to this information and that the Police had acted in breach of section 1(1). The Commissioner required the Police to supply this information to Mr Robertson.



Appeal

Should Mr Robertson or the Police wish to appeal against this decision, there is a right of 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. This decision is concerned with information relating to the operation of mobile safety cameras by the Lothian and Borders Safety Camera Partnership (the Partnership). Before going on to consider the specific request in more detail, it is worth providing some background information on the Partnership and its operations.
2. The Partnership is made up of the City of Edinburgh Council, West Lothian Council, Scottish Borders Council, Lothian and Borders Police and the Scottish Executive. It is a non-profit, non-tax revenue funded organisation, funded by the penalties people pay for travelling outwith the speed limit and failing to comply with red lights.
3. Lothian and Borders Police is the lead partner in the Partnership, and the information under consideration in this case is held for the purposes of FOISA by the Chief Constable of Lothian and Borders Police (referred to as “the Police” throughout this decision).

Safety Camera Operations

4. The Partnership operates a number of fixed and mobile safety cameras across the Lothian and Borders area. Fixed cameras include several monitoring traffic lights at a number of locations in Edinburgh, and others that capture speeding offences. Motorists' speeding offences can also be captured by mobile camera units.
5. The Partnership deploys its mobile camera units at 43 mobile sites throughout the Lothians and Borders. Every week four camera vans are sent to various locations. The locations to which mobile vans are to be sent each week are published in advance.
6. All camera units (whether fixed units or mobile vans) are sited in order to be visible to motorists.



7. Where an alleged speeding or red light offence is detected by a safety camera, a Notice of Intended Prosecution is issued to the registered owner of the vehicle concerned. The owner must confirm who was driving the vehicle at the time of the alleged offence by returning a form to the Partnership.
8. Following this, a Conditional Offer of a Fixed Penalty (referred to below as a “conditional offer”) may be made. This offer is made to the driver of the vehicle to settle the matter without going to court. The Fixed Penalty is £60 and three points on the driver’s licence. If the driver accepts this offer, their licence and the fine must be sent or taken to the District Court specified in the offer.
9. Some offences, due to the excessiveness of the speed involved, may not lead to a conditional offer. In these cases, a report will be sent to the Procurator Fiscal for consideration of prosecution.

The information request

10. Mr Robertson made an information request to the Police in a letter dated 12 December 2005. He noted that a “speed tax camera van” had been present at the northerly end of the A720 Edinburgh city bypass on that morning. Under the terms of FOISA, Mr Robertson asked:
 - a) How many “alleged speed-tax camera offences” were recorded by this unit while in operation on that day, and also in any/all such publicly funded operations over the past three years?
 - b) What was the value of the “tax” collected by the consequent fixed penalty fines issued by this unit on 12 December at this location?
 - c) How many alleged speed offences had been recorded or estimated on this stretch of road in advance of the deployment of the camera on that date, in toto and for each of the previous years?
 - d) How many road traffic accidents (involving serious or fatal injuries to I) pedestrians and II) other motorists had occurred in each year in the preceding three years at this stretch of road?
 - e) What was the rationale for siting the camera at this point?
 - f) What was the average cost of operating a mobile camera van per hour, per day and per annum?
11. The Police responded to this request in a letter dated 5 January 2006. Points (a) – (e) below summarise the Police’s response to the requests in (a) – (e) of paragraph 10 above respectively:



- a) Information about offences recorded at the specific site was not held. However, the Police went on to note that if it had been held, this information would be exempt from release under sections 35(1)(b) and 39(1) of FOISA because the operational effectiveness of the camera would be undermined and the safety of drivers and other members of the public would be put in danger. The Police noted that “this cannot be said to be in the public, or indeed, in anyone’s interest”. I understand this final comment to indicate that, if the information had been held, the public interest in maintaining these exemptions would outweigh the public interest in disclosure of the information.

In response to the second part of request a (seeking total offences recorded at all camera sites over the past three years), the Police noted that as the Partnership had only been in existence since June 2003, figures could not be supplied for the full three year period. However, the number of Notices of Intended Prosecutions issued between June 2003 – April 2004 and for the year 2004 – 2005 was supplied.

- b) In response to the request for the amount of “tax” collected following the camera operations on 12 December 2005, the Police stated that financial information was not broken down by individual camera sites and so they were unable to ascertain the value of the fixed penalty fines issued by this, or any camera, on any day. The Police did confirm the income and expenditure of the Partnership for the financial years 2003-04 and 2004-05.
- c) In response to request (c), the Police confirmed that the positioning of safety cameras was not based on the number of speeding drivers but on the number of accidents/casualties in the area. The police noted that estimated figures for the number of offences were not held, and that numbers on the operation of one camera at one site were exempt under sections 35 and 39 of FOISA for the reasons set out in (a).
- d) In response to the request for details of the number of accidents on this stretch of road, the force provided tables showing statistics on road traffic accidents at all camera locations within Edinburgh and the surrounding area.
- e) In response to the request for the rationale for the siting of the camera at the location specified, the Police noted that the area had been subject to complaints about the high incidence of speeding and information about collisions showed that a significant proportion relate to motorists travelling at inappropriate speeds in an area where there are a number of slip roads with merging traffic and traffic light junctions. Casualty data was provided for the area immediately to the East of the Gogar roundabout nearby, and further information was provided on accidents in the wider area.



- f) In response to the request for information about the costs of operating a mobile camera, the Police advised that they do not work out operating costs per hour, per day, or per annum. However, information was provided on the hourly salary of Camera Enforcement Assistants, as one part of the total operating costs. The applicant was also referred to the total operating costs of the Partnership provided in response to request (a), which included expenditure by the Local Authority, Courts and the Scottish Executive, as well as the Safety Camera Unit within the Police.

The Police finally noted that there was no such thing as a speed tax, and that motorists who chose not to comply with prevailing speed limits were a significant risk to themselves and others.

12. Mr Robertson sought a review of the Police's handling of his request for information in a letter dated 21 January 2006.
13. The Police responded to this request in a letter dated 5 February 2006. This upheld the initial decision to refuse to disclose information that was site specific under the terms of sections 35(1)(b) and 39(1) of FOISA. The Police stated that, in effect, by disclosing such detailed information, any analysis over time might enable the recipient to determine the operational deployment strategy. The letter stated that should this information be made public, then errant motorists with this knowledge would, it was believed, compromise safety on the road.
14. The Police also confirmed at this stage that, contrary to the initial response, information confirming the number of alleged offences detected at specific sites was held. However, the level of fines issued was confirmed not to be held. The Police noted that not all alleged offences resulted in conditional offers being made, and the collection of fines was the concern of the Courts administration. Further, the Police noted that they had no mechanism in place to establish which fines related to specific camera operations or locations.
15. Mr Robertson then applied to me for a decision in relation to this matter. His letter of application, received on 24 February 2006, appealed to me to compel the disclosure in the public interest of such information, and in terms of the statutory obligations set out in FOISA.

Investigation

16. Mr Robertson's case was allocated to an investigating officer. His application was then validated by establishing that he had made an information request to a Scottish public authority (i.e. the Police) and that he had appealed to me only after asking the Police to review their response.



17. On 14 March 2006, the investigating officer wrote to the Police informing them that an appeal had been received and that an investigation into the matter had begun. The Police were invited to comment on the case in terms of section 49(3)(a) of FOISA.
18. The Police were also asked to provide to my Office the site specific information that was being withheld and a range of further information to inform my investigation. The Police were also asked for a detailed analysis of the application of the exemptions relied upon in this case.
19. The Police's response to this letter was received on 5 April 2006. The investigating officer subsequently sought further background information in an email dated 12 April 2006. A response to this second request for information was received on 20 April 2006.
20. Although I do not summarise below all of the submissions received in the course of my investigation from both parties, I have taken all of these into consideration when reaching my decision in this case.

The Commissioner's analysis and findings

21. Before considering whether the Police were correct to judge information to be exempt from release from FOISA, I will first consider whether the Police have correctly and fully identified the information they hold that would fulfil the requests made by Mr Robertson (set out in paragraph 10 above).
22. The Police's initial response to Mr Robertson indicated (in terms of section 17 of FOISA) that information was not held in response to part (a) of Mr Robertson's request, which sought the number of offences detected at the A720 Edinburgh city bypass on 12 December 2005.
23. Following an internal review, the Police subsequently confirmed that the site specific information requested in (a) was actually held and this initial response was incorrect. The Police have confirmed that the number of offences is recorded for each camera site (mobile or fixed) on a day by day basis. However, the Police maintain that this information is all exempt under sections 35(1) and 39(1) of FOISA. I will consider this matter separately below.
24. Composite figures were supplied, however, showing the total number of Notices of Intended Prosecution issued by the Partnership in each of the two years since its creation. As the Partnership did not come into being until June 2003, I am satisfied that the Police do not hold this information for the whole three year period sought by Mr Robertson.



25. The Police have noted that not all alleged offences recorded in camera operations result in prosecution. Police officers within the safety camera unit are responsible for determining whether an offence has actually been committed and the prosecution process will only begin where these officers are satisfied that a prima facie case exists. Factors such as poor video evidence or legal exemptions can influence decisions in this respect.
26. Alongside the number of alleged offences recorded at each camera location, the Police also hold details for each day of operations of the number of these alleged offences where conditional offers were made, where reports were made to the Procurator Fiscal, and where no action was taken.
27. Part (b) of Mr Robertson's request sought the value of the "tax" collected by the consequent fixed penalty fines issued by the mobile unit on 12 December.
28. Once conditional offers are issued, it is a matter for the District Court to collect fines or pursue matters further if the owner of the vehicle appeals against the decision or fails to pay. The Police have confirmed and I accept that they do not hold information that would show how many fines were actually paid (and so the income generated by these) following the issue of notices relating to offences recorded on a particular date at a specific site.
29. Therefore, I am satisfied that the Police do not hold information that would reveal the amount paid in fines as a result of conditional offers made following mobile camera operations on 12 December 2005. I also note that at the time of Mr Robertson's request being received by the Police on 15 December 2005, it is highly unlikely that any fines resulting from operations on the 12 December would at that point have been paid.
30. Part (c) of Mr Robertson's request sought the number of alleged speed offences recorded or estimated for the A720 site in advance of the camera deployment on 12 December 2005, in toto and for each previous year.
31. In response, the Police confirmed that information estimating the number of offences was not held. However, records are held revealing the number of alleged offences recorded at each site on each day of operations, and so the Police also hold information on the total number of alleged offences recorded at this site in total since the Partnership's creation.
32. As the Police have withheld this information under section 35(1) and 39(1), I will consider the application of these exemptions to this information below.
33. I am satisfied that the Police have supplied all relevant information held in response to parts (d) – (f) of Mr Robertson's request. In particular, I note and accept that the Police do not hold information that would reveal the costs of mobile camera operations on an hourly, daily or annual basis.



Consideration of exemptions

34. Having established the information that is held by the Police that would fulfil parts (a) and (c) of Mr Robertson's request, and which has not already been supplied, I will now consider whether exemptions within Part 2 of FOISA have been correctly applied to the following information:
- a) The number of alleged offences recorded by the mobile camera unit sited at the northerly end of the A720 Edinburgh city bypass on 12 December 2005.
 - b) The number of alleged offences recorded at this site prior to 12 December 2005, in total, and for each of the years for which records are held by the Police.

Law enforcement – section 35(1)

35. Section 35(1) of FOISA specifies that information is exempt information if its disclosure under FOISA would, or would be likely to, prejudice substantially one or more of a number of specified law enforcement functions.
36. In their initial response to Mr Robertson, and following a review of the request, the Police indicated that the information withheld was exempt from release under section 35(1)(b) which applies if disclosure under FOISA would, or would be likely to, prejudice substantially the apprehension or prosecution of offenders. In its submissions to my Office, the Police have also asserted that the information is exempt under section 35(1)(a), which applies if disclosure under FOISA would, or would be likely to, prejudice substantially the prevention or detection of crime.
37. 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 risk of damage from disclosing the information would be real or very likely, not simply a remote possibility. The harm caused or likely to be caused must be significant, not marginal, and it would have to occur or be likely to occur in the near (certainly the foreseeable) future and not in some distant time.
38. The exemption in section 35 is a qualified exemption, which means that the application of this exemption is subject to the public interest test contained in section 2(1)(b) of FOISA. 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 maintaining the exemption 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.



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

39. I take the view that the term “the prevention or detection of crime” encompasses any action taken to anticipate or prevent crime, or to establish the identity and secure prosecution of 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.
40. The Police have stated that through analysis of single site information, an individual may be able to assess how often mobile cameras are in use, and consequently may drive faster at these locations and elsewhere.
41. The Police also referred me to research by the Scottish Executive and the Department for Transport. The Scottish Executive research (“The speeding driver: who, how and why?”, 2003) found that 51% of Scottish drivers said they would slow down near speed cameras at familiar sites. The Department for Transport research (“Vehicle speeds in Britain 2004”) found that more than 50% of drivers exceeded the speed limit on both non-built-up roads and restricted roads (with a 30mph speed limit).
42. The Police suggested that, by inference, the same number of drivers would drive in excess of the speed limit if they knew that cameras were not in operation. They stated that the release of the information under consideration would compromise safety at camera sites and elsewhere.
43. The Police also noted my decision 030/2006, in which I upheld a decision by the Chief Constable of Grampian Police (Grampian Police) to withhold information relating to the number of drivers caught speeding at each fixed camera location in Grampian in 2004/05. In this case, I accepted that this information was exempt under sections 35(1)(a) and (b) and 39(1) of FOISA, and that the public interest in maintaining these exemptions outweighed the public interest in disclosure of the information.
44. In fixed camera operations, camera housings are continuously and visibly present at fixed locations, but the cameras within these are not operational at all times. In decision 030/2006, I noted Grampian Police’s comments 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. Therefore, with fixed cameras, their effectiveness in deterring motorists from speeding is based on the perception that they *may* be active at any time. The Police submitted that, for camera enforcement to be effective, there must be the perception that the chance of being recorded is high at all sites.



45. In decision 030/2006, I accepted the arguments by Grampian Police that information relating to detection at particular sites might be analysed in such a way as to create the impression that the chance of detection at certain sites was low. The result of such analysis would be to limit the deterrent effect of fixed cameras at these sites. I judged that Grampian Police had acted in accordance with Part 1 of FOISA in withholding information relating to the number of detections at individual fixed camera sites. My decision on this matter was similar to those reached by the (UK) Information Commissioner under the terms of the Freedom of Information Act 2000 following requests for site specific information about fixed camera units operated by English police forces.
46. However, having only previously considered whether information relating to *fixed* camera units should be released, I must in this case establish whether the same considerations arise in relation to mobile safety camera operations.
47. Following the receipt of the Police's initial submission, the investigating officer made a request for further background information on mobile camera operations, and on how site specific information about these might be analysed to undermine their effectiveness in deterring motorists from speeding and apprehending those who do.
48. The Police suggested that through analysis of site and date specific data, a recipient of information could calculate how long and how often a camera was deployed at a location. Although accepting that such an analysis would lack accuracy, the Police (noting that there is a significant and active anti-speed detection/safety camera lobby) suggest that a person might identify a pattern in deployment and could then publicise details of these operations in advance.
49. The Police also noted that my decision in this case would be highly persuasive in relation to future similar requests for information concerning mobile camera operations at specific sites. Through disclosure of information relating to one site on one date in this case, the Police suggest it would be difficult to prevent full disclosure of the Partnership's mobile unit deployment strategy over time.

Conclusion on the application of section 35(1)(a)

50. In forming a view on the application of the exemptions in FOISA to the information in this case, I have taken into consideration the nature of the safety camera operations to which they relate. In particular, I have noted that these operations are quite different from those of the fixed safety cameras to which the request under consideration in decision 030/2006 relates.



51. Fixed cameras work as a deterrent because their presence indicates that there is a possibility of detection for a speeding offence, whether or not this is actually the case. Like fixed cameras, mobile cameras also have the deterrent effect caused by visibility. Mobile units are liveried akin to road policing vehicles and are marked as police vehicles.
52. When operational, mobile units are always positioned in order to be visible to motorists. Following guidance from the Scottish Safety Camera Programme, the liveried vehicles should be visible from a minimum distance of 60 metres where speed limits are 40mph or less, and from a minimum distance of 100 metres where speed limits are higher than 40mph.
53. I agree that mobile safety camera operations are an important and effective part of police operations to deter drivers from driving at excessive speed, and to apprehend and prosecute offenders who drive in excess of the speed limit. There is clear evidence that such activities lead motorists to reduce their speed and I accept the Police view that the deterrence value of the mobile units' visibility is an essential strand in reducing road casualties.
54. The nature of the deterrent effect created by mobile camera units is quite different from that created by fixed camera units. Unlike fixed cameras, mobile cameras are not present at a specific location at all times. With mobile cameras, the deterrent is caused primarily by the physical presence of the unit and, secondarily, by the knowledge that it may be present at specific sites over the course of a week, through the weekly publication of this information by the Partnership. However, where a driver reaches any mobile camera location, they will be able to determine conclusively at any time whether there is a possibility of detection or not, through the simple presence or absence of a clearly marked vehicle.
55. This is a significant distinction. A driver approaching a visible fixed camera cannot know for certain whether the camera is operational or not, but may be deterred by knowing that there is a possibility that excessive speed will be detected. Effectively then the driver is deterred from speeding when approaching a specific location, when either seeing the camera, or through previous knowledge, being aware that it is there. With mobile cameras, even when approaching a location which drivers may know from experience has been commonly used to site mobile units, it will be readily established whether a unit is present on any particular occasion and, if it is absent, then there is limited deterrent effect. I accept that the knowledge that cameras are being deployed in the area generally may have an overall deterrent effect on driving at excessive speeds, but that general information is put into the public domain for this very purpose.



56. In the light of these observations, I do not accept that the disclosure of the site specific information requested by Mr Robertson would or would be likely to prejudice substantially the prevention or detection of crime, as it relates to the operation of mobile safety camera units.
57. In reaching this conclusion, I have considered what insights into the Partnership's deployment strategy that are not already available publicly, might be gained through analysis of the site specific information under consideration. In doing so, I have considered the effect of disclosure not just of information about alleged offences recorded at one site on one day, but also those recorded at each mobile sites on each day.
58. Presented with this information for all sites on a day by day basis, a person might, for example, assume that if no detections were made at a site on a particular date, that no camera had been deployed there on that date. However, this would not necessarily be correct, as it is also possible that a unit was present for a period, but no alleged offences were recorded. This information could not be used to establish for certain the deployment of units on each day.
59. A person might attempt to analyse the data based on the assumption that the greater the number of detections, the longer a unit had been present at a particular site. However, this would again not necessarily prove accurate. The number of detections at each site does not necessarily reflect the length of period for which a unit was deployed on a particular day. The times and periods for which mobile units are deployed are not uniform. Without a clear indication of how long a unit had been deployed for on a particular day, or at what time, it would be difficult to make any meaningful analysis of the number of detections in relation to traffic flow data. Therefore, I would suggest that no pattern of deployment could be established in this respect without access to more detailed information about the length and time of deployment alongside the daily recorded offences.
60. Having considered the information supplied to me by the Police, I do not see how any analysis of value could be made by motorists that would allow any prediction of deployment patterns within the Partnership's mobile camera locations. I cannot see how any such analysis could be used to undermine the deterrent or enforcement effect of mobile camera operations.
61. I do not accept that a person could use this information to identify with any degree of accuracy systematic patterns within mobile camera deployment that cannot already be identified through simple reference to the weekly deployment information that is currently published and observation of the visible presence or absence of the unit at any location at particular times over a period of weeks or months.



62. Therefore, I am not persuaded that release of information about the number of alleged offences recorded at the A720 site on either
- a) 12 December 2005, or
 - b) in toto, and for the years in advance of this date for which the Police hold records
- would, or would be likely to, prejudice substantially the prevention or detection of crime. Consequently, I find that this information is not exempt in terms of section 35(1)(a) of FOISA.

Section 35(1)(b) – the apprehension or prosecution of offenders

63. Section 35(1)(b) has a narrower scope than that of the exemption under section 35(1)(a), although 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 or prosecution of specific offenders or to more general techniques (such as the investigative processes used).
64. The Police have stated that most of the arguments made in relation to section 35(1)(a) also apply to section 35(1)(b). Because the Police had argued that their ability to prevent and detect speeding offences would be substantially prejudiced through the disclosure of the information requested by Mr Robertson, they stated that this disclosure would also prejudice substantially the apprehension and prosecution of those committing speeding offences.
65. I have rejected the Police's case in relation to section 35(1)(a) and also conclude for the same reasons that section 35(1)(b) does not apply in this instance.

Section 39(1) – health and safety

66. This exemption applies where disclosure of information under FOISA would, or would be likely to, endanger the physical or mental health or the safety of an individual.
67. Section 39(1) is, like section 35(1), a qualified exemption. Once again, where the exemption is judged to apply, a public authority must, in terms of section 2(1)(b), consider whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information. If the public authority considers that the public interest would be better served by the information being released, then the public authority must release the information.



68. The Police have pointed out research by the Department for Transport, which concluded that about one third of all road collisions involve drivers travelling at excessive or inappropriate speed. They also note that the enforcement of speed limits and encouraging drivers to improve their behaviour in this regard will pay long term and sustainable road safety benefits.
69. Provision of information that would compromise this position by allowing errant motorists to drive/ride on the road network knowing where and when speed detection operations are taking place ultimately poses a significant risk to public safety.
70. Once again, I do not question the importance of effective measures to deter motorists from driving at excessive speeds, and the benefit of such measures for the safety of public roads. There is clear evidence that where motorists are deterred from driving at excessive speed, this can and does lead to a reduction in accidents and casualties. I also agree that where such measures are undermined there will be an increased threat to the safety and health of road users.
71. In my briefing on this exemption I noted that section 39(1) does not contain the usual harm test; instead of the “substantial prejudice” test, the section talks about the endangerment of health and safety. The harm test in section 39(1) has therefore been set a lower level, but there must still be an apprehension of danger before the exemption can be relied on.
72. In the case of road users, there is of course an existing risk to individual health and safety. Accidents on the roads take place for a variety of reasons, leading to injury and death. The question I must consider here is whether, through disclosure of the information requested by Mr Robertson, the risk to the health and safety of individuals would be increased.
73. The Police’s case in relation to this exemption is based on the assumption that disclosure of site specific information would enable drivers to identify patterns in camera deployment, thereby undermining the deterrent effect of camera operations, leading to increased driving at excessive speed. If this chain of events were likely, then it would also be likely that disclosure would endanger the physical or mental health or safety of individual road users.
74. However, as I stated in paragraphs 56 – 61 above, I do not accept that release of the information under consideration would enable the identification of the kind of patterns posited by the police. I do not accept that the level of danger to individual road users would or would be likely to increase as a result of disclosure of the information of the type sought by Mr Robertson, nor that the release of the information would, or would be likely to, endanger the physical or mental health or the safety of an individual.



75. I have therefore concluded that the exemption in section 39(1) has been incorrectly applied by the Police in this instance.

Public interest

76. In this case, I have found that none of the exemptions relied upon by the Police apply, and so it is not necessary for me to go on to consider the public interest contained in section 2(1)(b) of FOISA.

Decision

I find that the Chief Constable of Lothian and Borders Police (the Police) failed to act in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) responding to Mr Robertson's request for information.

I find that information relating to the number of alleged speeding offences recorded at the site on the A720 Edinburgh City Bypass

(a) on 12 December 2005, and

(b) in toto, and for the annual periods for which information is held in advance of this date

is held by the Police and is not exempt from release under sections 35(1)(a), 35(1)(b) or 39(1) of FOISA. By refusing to supply this information to Mr Robertson on these grounds, I find that the Police failed to act in accordance with section 1(1) of FOISA.

I require the Police to supply this information to Mr Robertson within 2 months of the receipt of this notice.

Kevin Dunion
Scottish Information Commissioner
26 July 2006