



Scottish Information
Commissioner
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Decision Notice 025/2025

Offences recorded by speed cameras

Applicant: The Applicant

Authority: Chief Constable of the Police Service of Scotland

Case Ref: 202401434

Summary

The Applicant asked the Authority for details of offences recorded by the speed cameras which were switched off by Safety Cameras Scotland. The Authority considered the request under the EIRs and provided some information, but it withheld other information on the basis that disclosure would cause substantial prejudice to public safety. The Commissioner investigated and found that the Authority had considered the request under the wrong legislation. The requested information was not environmental information, and the Authority should have considered the request under FOISA. The Commissioner required the Authority to respond to the request under FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 47(1) and (2) (Application for decision by Commissioner)

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (definition of "the Act", "applicant", "the Commissioner" and "environmental information") (Interpretation); 5(1) (Duty to make environmental information available on request); 10(5)(a) (Exceptions from duty to make environmental information available); 17(1), (2)(a), (b) and (f) (Enforcement and appeal provisions)

Background

1. On 9 August 2024, the Applicant made a request for information to the Authority. He asked:

“Under Environmental Information Regulations, I wish to request the following:

Details of offences recorded by the 119 speed cameras which were switched off by Safety Cameras Scotland this summer. I would like the total for the year 2023 for each camera, plus their individual monthly totals for 2024 up to the point the cameras were switched off.

By way of explanation, cameras at these locations were made 'dormant' after a review found that - due to altered driver behaviour - they were no longer required.

Some had been in place for 25 years.

By providing me with the requested information, it would demonstrate if offending was still taking place around the time of de-activation.”

2. The Authority responded on 25 September 2024 in terms of the EIRs. It provided information relating to mobile camera sites, but withheld information relating to fixed, dual and red-light cameras under the exception in regulation 10(5)(a) of the EIRs.
3. On 27 September 2024, the Applicant wrote to the Authority requesting a review of its decision. He explained that he was dissatisfied with the Authority's decision because:
 - it had provided him with data for mobile sites, which he had not requested
 - he did not believe the exception in regulation 10(5)(a) of the EIRs had been correctly applied
 - in any event, the public interest favoured disclosure.
4. The Authority notified the Applicant of the outcome of its review on 25 October 2024, which fully upheld its original decision.
5. On 29 October 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to specified modifications. The Applicant stated that he was dissatisfied with the outcome of the Authority's review for the same reasons set out in his requirement for review.

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 12 November 2024, the Authority was notified in writing that the Applicant had made a valid application. The Authority was asked to send the Commissioner the information withheld from the Applicant. The Authority provided this information to the Commissioner and the case was subsequently allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Authority was invited to comment on this application and to answer specific questions, including why it had responded in terms of the EIRs.

Commissioner's analysis and findings

9. The Commissioner has considered all the submissions made to him by the Applicant and the Authority.

EIRs or FOISA?

10. "Environmental information" is defined in regulation 2(1) of the EIRs. Where information falls within the scope of this definition, a person has a right to access it under regulation 5(1) of the EIRs, subject to various restrictions and exceptions contained in the EIRs.
11. In this case, as stated above, the Authority responded to the request under the EIRs. During the investigation, the Commissioner asked the Authority why it considered the requested information to be environmental information.
12. The Authority confirmed that it should have responded in terms of FOISA. Given the terms of the request, the nature of the withheld information and the definition of environmental information, the Commissioner agrees.
13. Given that the request was not for environmental information, the Commissioner finds that the Authority was wrong to respond in terms of the EIRs and, in responding under the EIRs, it failed to comply with Part 1 of FOISA.
14. When informing the Commissioner that it should have responded in terms of FOISA, the Authority stated that it was likely that it would apply an exemption under FOISA to withhold the information it had withheld under the exception in regulation 10(5)(a) of the EIRs.
15. Given this, the Commissioner requires the Authority to provide the Applicant with a revised review outcome (in terms of section 21 of FOISA), which lists the exemption(s) that it is now seeking to apply, and which explains, in detail, why. This will enable the Applicant to make a new application in which he can fully challenge the Authority's reasons for withholding information from him. (For the avoidance of doubt, the Commissioner does not require the Authority to respond under FOISA in respect of the information it has already provided to the Applicant.)
16. The Commissioner's decision below states a compliance date of 21 March 2025 in line with the timescales he is required to follow. This is the latest day on which the Authority must issue a response; the deadline does not prevent the Authority from issuing one sooner.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

The Authority should have responded to the Applicant's request under FOISA rather than under the Environmental Information (Scotland) Regulations 2004 (the EIRs). In responding under the EIRs, the Authority failed to comply with Part 1 of FOISA.

The Commissioner therefore requires the Authority to provide a response to the Applicant's requirement for review, in terms of section 21 of FOISA and in respect of the withheld information only, by 21 March 2025.

Appeal

Should either the Applicant or the Authority wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Enforcement

If the Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

Cal Richardson
Deputy Head of Enforcement

4 February 2025