



Our Ref: 000270/21

Your Ref:

Address Correspondence to: Information Management

Date 18 February 2021

Freedom of Information Act 2000

I write further to your request for information received 22/01/2021.

I note you seek access to the following information:

- 1) *How many miles of smart motorways do you have in your police force area? Please list these by motorway and junction sections.*
- 2) *Whether you are using fixed cameras on smart motorways to enforce compliance with "red X" signals and issue FPNs to motorists? If you have cameras but are not enforcing "red X" contraventions for any reason(s) please confirm this.*
- 3) *How many FPNs have been issued over the last two years (2019 and 2020) for non-compliance with "Red X" signals, either using cameras or by police officers? Note: if figures are not available by calendar year, please provide it for the last two financial years (2019/20 and 2020/21 to date).*
- 4) *Please advise how many incidents your officers have been called to in 2019 and 2020 to protect vehicles that were stranded (i.e. broken down or in accidents) in live vehicle lanes that are still open to traffic?*

Following receipt of your request, searches were conducted within Leicestershire Police to locate information relevant to your request.

Your request for information has now been considered and the information asked for is as follows: -

1. Leicestershire Police have a stretch of smart motorway within our Force area, this stretches from J23A to the Derbyshire border (4.2 miles).
2. Information relating to this question is considered exempt by virtue of Section 31 and 38 as set out below.
3. Leicestershire Police have issues *ZERO* FPNs over the last 2 years (2019 and 2020) for non-compliance with 'Red X' Signals.
4. Leicestershire Police do not hold this information, however it may be held by Highways England if you apply directly to them for this information.

Section 17 of the Freedom of Information Act 2000 requires Leicestershire Constabulary, when refusing to provide such information (because the information is exempt) to provide you the applicant with a notice which: (a) states that fact, (b)

specifies the exemption in question and (c) states (if that would not otherwise be apparent) why the exemption applies.

The exemption(s) applicable relate to your request are as follows:

- Section 31 – Law Enforcement
- Section 38 – Health and Safety

Section 31 is a prejudice based, qualified exemption and there is a requirement to articulate the harm that would be caused as well as carrying out a public interest test.

Public Interest Test

The public interest is not what interests the public, but what will be of greater good if released to the community as a whole. It is not in the public interest to disclose information that may compromise Leicestershire Police's ability to fulfil its core functions.

Section 31 – Evidence of Harm

Under the Act, we cannot, and do not request the motives of any application for information. We have no doubt that the vast majority of requests made under the Act are legitimate.

However, in disclosing information to one applicant, we are expressing a willingness to provide it to anyone in the world. This means that a disclosure to a genuinely interested and concerned person automatically opens it up for a similar disclosure, including those who would use the information to gain an advantage over the police.

In considering whether or not this information should be disclosed, consideration has been given to the potential harm that could be caused by disclosure.

Effective policing requires the active enforcement of the law, if a disclosure was made under the Act that provided information that may be used by criminally minded parties to evade detection, it would severely impact on the process of law enforcement.

Section 31 – Considerations favouring disclosure

There is a public interest in disclosure of the requested information as it would allow the public to discuss how public funds are spent during operational Policing and raise the Force's accountability. It would also aid transparency and allow any perceived failings to be discussed in the public domain.

Section 31 – Considerations favouring non - disclosure

I am of the opinion that it is not in the public interest to disclose sensitive information that relates to specific details regarding which cameras are actively enforcing contravention of 'red Xs'. This information if released into the public domain would reveal police tactics along with other information which is vital to Law Enforcement.

If released to the public this information would allow those minded to commit criminal activity the knowledge of where 'Red Xs' are and are not being enforced which would give them knowledge to avoid detection of their crimes.

Application of Section 38 – Health and Safety

I now turn to the application of Section 38 to your request. This exemption states that the information is applied where disclosure of information would, or would be likely to endanger:

- The physical or mental health of any individual ;
- Or the safety of an individual

This exemption is both a qualified and prejudiced based exemption and as a result I am required to evidence both the harm that disclosure would cause as well as evidencing the public interest test.

Harm in disclosure

The information that you have requested, would if released, be placed in the public domain for anyone to view. The nature of the information you have requested concerns the enforcement of 'Red Xs' on the motor way.

There is a real risk that if all the information that you requested was released, it would cause physical harm to individuals showing disregard to the law due to lack of enforcement or to other members of the public who may be unfortunate enough to be harmed by someone attempting to evade detection.

Factors favouring disclosure

It could be argued that there is a public interest in its disclosure as it would allow the law enforcement and the manner in which public funds are spent to be discussed in the public domain.

Factors favouring non disclosure

To disclose the information requested it would cause unnecessary risk to those minded to commit criminal activity and to members of the public. Although the fundamental role of the Freedom of Information Act 2000 is to facilitate disclosure, the interests of the affected parties will always be of paramount importance especially with regards to the effect disclosure would have on their' physical and mental health.

On this occasion I am satisfied that harm would occur and it would not be in the public's interest for disclosure to occur on this occasion.

Conclusion

I believe that on balance it is **not** in the public interest to release information which you have requested on this occasion for the reasons stated above. I appreciate that this is not the decision you had hoped for but I must consider the wider position under the Freedom of Information Act 2000 which I feel necessitates the need to refuse your request under this legislation.

Leicestershire Police provides you the right to ask for a re-examination of your request under its review procedure. Letters should be addressed to Information Manager, Corporate Services Department at the above address. If you decide to request such a review and having followed the Force's full process you are still dissatisfied, then you have the right to direct your comments to the Information Commissioner who will give it consideration.

Yours sincerely

Freedom of Information Officer
Leicestershire Police

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