Freedom of Information request 847-12

Please highlight the section of the freedom of information act/data protection act which precludes you from releasing the CC TV footage.

RESPONSE

Freedom of Information Act 2000

There are a number of exemptions which could apply to the non-disclosure of CCTV footage. This would depend on the specific case, such as whether information contained third party data or if it was collected for a specific purpose. The exemptions which could be considered are:

Section 31 – Law enforcement
Section 40 – Personal Information

If CCTV contained data which would not identify living individuals as defined by the Data Protection Act then this may be considered for disclosure under the Freedom of Information Act. CCTV images which would identify living individuals would be considered personal data which may not be disclosed.

Section 40(3) of the Freedom of Information Act states:

“(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”
When a Freedom of Information request is disclosed, it is disclosed to the public at large. Anyone, anywhere in the world can request a copy of a Freedom of Information request and if personal information was ever disclosed under this Act is would therefore be available to anyone, thus contravening the protection of personal data under the Data Protection Act.


**Data Protection Act 1998**

The definition of data as defined by the Data Protection Act 1998 is:

““personal data” means data which relate to a living individual who can be identified—

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller”.

In relation to the role of law enforcement Section 29(1) states:

“Personal data processed for any of the following purposes—

(a) the prevention or detection of crime,

(b) the apprehension or prosecution of offenders, or

(c) the assessment or collection of any tax or duty or of any imposition of a similar nature, are exempt from the first data protection principle (except to the extent to which it requires compliance with the conditions in Schedules 2 and 3) and section 7 in any case to the extent to which the application of those provisions to the data would be likely to prejudice any of the matters mentioned in this subsection.”

British Transport Police collects CCTV for the purpose of law enforcement and on occasions where there are ongoing proceedings then disclosure of CCTV could prejudice the course of justice. Therefore, data may not be disclosed.

Also CCTV may be exempt from disclosure because the data contains third party data. Section 7(4) states:

“(4)Where a data controller cannot comply with the request without disclosing information relating to another individual who can be identified from that information, he is not obliged to comply with the request unless—
(a) the other individual has consented to the disclosure of the information to the person making the request, or

(b) it is reasonable in all the circumstances to comply with the request without the consent of the other individual."

Any requests for personal data must be dealt with under the Data Protection Act 1998.

In order to request personal data under the Data Protection Act applicants must make a Subject Access Request. The British Transport Police Subject Access Request forms can be downloaded from http://www.btp.police.uk/pdf/SAR%20Request%20Form.pdf.