



NORFOLK
CONSTABULARY
Our Priority is You

Norfolk Constabulary

Freedom of Information Department
Jubilee House
Falconers Chase
Wymondham
Norfolk NR18 0WW

Tel: 01953 425699 Ext: 2803

Email: freedomofinformation@norfolk.pnn.police.uk

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Dear

Freedom of Information Request Reference N^o: FOI 003385/16

I write in connection with your request for information received by the Norfolk Constabulary on the 13th September 2016 in which you sought access to the following information:

October the 1st sees a year since legislation came in banning adults from smoking in cars containing children.

I'd like to request some figures for Norfolk –

- How many people have been stopped in their cars for this offence
- How many occasions/people have been issued a £50 fixed penalty for this offence
- How many occasions/people have people been summonsed for this offence.

In addition I'd like to request to see any written advice/policy given to roads policing officers on dealing with adults smoking with children in cars.

Response to your Request

When responding to a request for information under the terms of the Freedom of Information Act, a public authority is not obliged to provide information if the authority estimates that the cost of the retrieval of the information requested would be in excess of £450 (equivalent to 18 hours work).

The costs criteria relates to a request in its entirety, which means that if we cannot retrieve all of the information requested within the costs limit, we are not obliged to retrieve *any* of the information requested.

The Norfolk Constabulary estimates that to retrieve all the information you have requested would exceed cost in excess of £450.

In order to establish what relevant information is held we have contacted our Central Ticket Office. They have advised that they have no records of this offence being dealt with by way of a Traffic Offence Report. However, it is possible that a vehicle has been stopped and an officer has issued a warning to the driver in relation to this offence. The details of this would be recorded in the officer's Pocket Note Book (PNB) but the figures are not centrally collated.

To provide you with any relevant information held it would be necessary for all officers to review their PNB entries since 1st October 2015. There are approximately 1,500 police officers within the Constabulary, therefore this would significantly exceed the appropriate limit for dealing with a Freedom of Information request, in terms of costs, and therefore Section 12(1) of the Freedom of Information Act applies.

Section 12(1) of the Freedom of Information Act states that a public authority is not obliged to:

“...comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit”.

The Freedom of Information (Appropriate Limit and Fees) Regulations 2004, defines the ‘appropriate limit’ for the Norfolk Constabulary as £450, and specifies that this sum equates to 18 hours work at a standard rate of £25 per hour.

In accordance with Section 17 of the Freedom of Information Act (2000), this serves as a Refusal Notice for your request.

Advice and Assistance

Although excess cost removes the Constabulary’s obligations under the Freedom of Information Act, as a gesture of goodwill, I have supplied information, relevant to your request, which was retrieved or available before it was realised that the fees limit would be exceeded. I trust this is helpful, but it does not affect our legal right to rely on the fees regulations for the remainder of your request.

The following guidance has been received from the National Police Chiefs’ Council:-

Local authorities can issue fixed penalty notices for offences related to smoking in private vehicles carrying children and forces should pass information to local authorities via a traffic offence report (or similar) where officers detect such offences so that appropriate enforcement action is taken by local authorities.

The Smoke-free (Private Vehicles) Regulations 2015

This note sets out information on the enforcement of the Smoke-free (Private Vehicles) Regulations 2015. The regulations require all private vehicles to be smokefree when they are enclosed, contain more than one person and a person under 18 is present in the vehicle.

It is an offence:

- for someone to smoke in a private vehicle with someone under age 18 present (section 7(2) of the Health Act 2006); and
- for a driver not to stop someone smoking (section 8(4) of the Health Act 2006)

Alternative to use of the PentiP system

Fixed penalty notices can be issued for both of these offences and the penalty amount is £50 if it is paid within 29 days, which is reduced to £30 if it is paid within 15 days.

It is not possible to use the PentiP system to issue fixed penalty notices for fines that are reduced in this way. It is not considered proportionate to amend the legislation or to amend the PentiP system to accommodate these offences at this stage. Instead, police forces can record details of these offences on a traffic offender report (TOR) and pass the information to the local authority to continue with enforcement action as appropriate.

Local authorities are enforcement authorities for smokefree legislation and can issue fixed penalty notices for these offences and take legal action through the courts as appropriate. Environmental health teams usually lead on this legislation. Forces should contact their local council via their criminal justice departments to agree the local arrangements and the relevant contact details for passing on details of offences. It is recommended that the details of the local arrangements are recorded.

Information required by local authorities

In order to take follow up enforcement action, the local authority will need confirmation that:

- there were more than two people in the vehicle
- there was someone under 18 in the vehicle
- someone was smoking in the vehicle

The local authority will also need age identification and contact details for each person the officer considers has committed an offence. This includes each person who was smoking and the driver of the vehicle. In some cases the driver may also have been smoking so could have committed two offences. This information can be recorded on the TOR (or appropriate report mechanism) and passed on to the local authority for consideration via the process or criminal justice unit completing the “back office” processing.

Work and public vehicles have been subject to smokefree legislation since 2007, they are not covered by these regulations and enforcement for these offences is carried out by local authorities.

Anyone who smokes in a smokefree private vehicle will be guilty of an offence, regardless of their age.

The regulations apply to enclosed vehicles. Any vehicle that is enclosed wholly or partly by a roof is covered. A convertible car, or coupe, with the roof completely down and stowed, is not enclosed and therefore is not covered by the regulations. A vehicle with a sunroof open or all the windows open would be enclosed.

The regulations do apply to motorhomes, campervans and caravans when they are being used as a vehicle but do not apply when they are being used as living accommodation.

More information on the legislation and why it has been introduced, prepared by the Chartered Institute of Environmental Health, is available here <http://www.cieh.org/WorkArea/DownloadAsset.aspx?id=57530>

There is a decision-making flow chart on page 22, which gives advice on when an offence has taken place.

Local collaboration

Local authorities have extensive experience of implementing smokefree legislation and forces may want to call on that by working in partnership on this legislation.

When the regulations were introduced, the Government advised that it expected that most often police forces will enforce this measure in conjunction with their wider functions on road safety. For example, when running a local operation to check compliance with the laws on seatbelts or child car seats, officers can also check for anyone smoking or discuss the offences with the driver if there is tobacco in the car. Forces can invite local authority enforcement officers to take part in such exercises as they have experience of discussing smokefree legislation with people and will be able to issue fixed penalty notices as appropriate.

The Government has said that the measure of success will be in changes in attitude and behaviour, not number of enforcement actions and that it wants to ensure that people know the dangers of smoking in vehicles carrying children and change their behaviour. Local authorities therefore also carry out awareness raising work which has an important role in generating high levels of compliance and could be an another area for local collaboration.