

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 May 2018

Public Authority: Highways England
Address: Bridge House
1 Walnut Tree Close
Guildford
GU1 4LZ

Decision (including any steps ordered)

1. The complainant submitted an information request containing 6 questions related to traffic signs shown on the M1 motorway on a specific date and time period. Highways England (HE) provided some of the requested information and stated that it did not hold any further information.
2. The Commissioner's decision is that, on the balance of probabilities, HE does not hold information further to that already provided.
3. However, she found that HE breached section 10(1) of the FOIA due to the time it took to respond to the request.
4. The Commissioner does not require HE to take any steps.

Request and response

5. On 21 June 2017, the complainant wrote to HE and requested information in the following terms:

"I have received a notice of intended prosecution for speeding at M1-4434B J31-J30 at 20.50 on 16/6/2017.

...

Question 1.

Can you confirm what signs were showing and what they were showing in minutes before 20.50 on the signs leading up to the camera site? Can the location of these signs be described in relation to camera site please?

...

Question 2

Which was the cause for the speed limit being set at below 70?

Question 3

What was specific incident or level of congestion which led to the setting of the limit?

...

Question 4

If this was the cause or similar cause, what time the incident was logged and at what time was the incident logged as having been cleared and where the incident was. Can this be described in relation to the camera site?

Question 5

Who initiated the response to this incident and then was responsible for notifying the end of the incident and will be able to provide information on timings?

Question 6

If the assumptions made in framing these questions is in some way adrift is there any other relevant information about the reason for the setting or the sequence which is readily available, such as narrative in a log or other record which can be provided please? ..."

6. HE acknowledged receipt of the request on 22 June 2017.
7. In the absence of a substantive response, the complainant contacted HE by phone on 21 July 2017 and subsequently wrote an email reminding HE to respond to his information request.
8. Following a response from HE on 3 August 2017 stating that the signs were set in response to an incident, the complainant engaged in a lengthy correspondence (through e-mail and telephone) with HE and a contracting company which is responsible for maintaining the specific parts of the M1 motorway.

9. On 18 October 2017, the complainant received a substantive response, which according to the complainant provides most of the information requested, but still fails to respond to Q1 and Q5.
10. On the Commissioner's query whether an internal review was provided to the complainant, HE asserted that it treated the request under normal business practices and did not offer an internal review to the complainant.

Scope of the case

11. The complainant contacted the Commissioner on 24 October 2017 to complain about the way his request for information had been handled.
12. In the course of the complainant's correspondence with the Commissioner, on 5 February 2018 the complainant confirmed that he still considers Q1 and Q5 as outstanding questions requiring a response.
13. HE informed the Commissioner that it provided all the information in relation to Q1 and therefore it considered this question to be answered, while in relation to Q5 it stated that it did not hold the requested information.
14. The focus of this notice is to determine whether HE handled the request in accordance with the FOIA. In particular this notice covers whether HE provided all the recorded information within the scope of the request.
15. The complainant was advised that the Commissioner can only consider what is held. It is outside the Commissioner's remit to determine what information should be held, or to require a public authority to create information.
16. In addition, the Commissioner has examined whether HE complied with its obligations to respond in timely manner as provided in section 10(1).

Reasons for decision

Section 1(1) – General right of access

17. Section 1 of the FOIA provides a general right of access to recorded information held by public authorities. Any person making a request for information to a public authority is entitled to be informed in writing by the public authority within 20 working days whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him unless a valid reason exists for not doing so under the legislation.

18. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information was not held and she will consider if the authority is able to explain why the information was not held.
19. For clarity, the Commissioner is not expected to reach a categorical conclusion on whether the information was held. She is only required to make a judgement on whether the information was held "on the balance of probabilities".¹
20. The complainant claims that HE must be in possession of information beyond what was already provided and expressed his belief that he is entitled to have access to this information.

The HE's position

21. As is the practice in a case such as this, the Commissioner asked the public authority a number of questions to establish whether further information is held.
22. In addition, the Commissioner asked HE to revisit the request and make sure that all the necessary searches were conducted in an attempt to confirm that no further information is held and requested explanations in relation to Q5.
23. In relation to Q1, HE stated that with the purpose of responding to the complainant's request they have been in contact through telephone and email. HE explained that it does not have a system in place which create "...logs of telephone conversations so I am unable to provide any further details as to what information was relayed to [the complainant] at the time." However, HE provided email correspondence with the complainant and the documents which were shared in order to respond to the complainant.
24. The documents that HE provided to the Commissioner, which were shared as attachments with the complainant, consist of four excel spreadsheets and two screenshots of specific part of a table which reflect the situation of the specific part of the M1 motorway, in relation to which the information was requested.
25. In relation to Q5, HE stated that the complainant was advised that, according to the information received from the sub-contracting company, it was a *Traffic Safety Control Officer* employed by the company who requested the closure of a lane of the M1 motorway at the

¹ This approach is supported by the Information Tribunal's findings in *Linda Bromley and Others / Environment Agency* (31 August 2007) EA/2006/0072

time of the event. However, HE explained that it does not hold personal details, such as names and contact details of the officers on duty which are employed by the sub-contracting company.

26. Therefore, HE confirmed that it did not hold the information falling within the scope of Q5, at the time of the request.

The complainant's position

27. The complainant claims that the provided information does not answer his Q1, stating that it "...referred to the displays approaching the speed cameras. That has never received a response and would have been critical in providing a defence..."
28. While, in relation to Q5 the complainant stated that HE "...repeatedly avoided a response by referring to subcontractors, Costain. They too were unable to provide an answer..."

The Commissioner's conclusion

29. The Commissioner has reviewed the copies of the requested documents that HE has provided to the complainant and the correspondence it had in the course of handling the complainant's requests.
30. The Commissioner notes that in relation to Q1, HE has demonstrated that it provided the information which it has been holding at the time of the request. In addition it demonstrated that it has undertaken necessary steps, by contacting the sub-contracting company to retrieve the requested information.
31. In relation to Q5, the Commissioner is satisfied with the provided explanation by HE, that it does not hold personal information of the sub-contracting company's officers on duty.
32. The Commissioner has therefore concluded, on the balance of probabilities, that no further relevant recorded information is held by HE.
33. The issues in relation to the procedural part of handling of this request have been addressed in this decision notice as other matters (see paragraphs: 36 – 39).

Section 10 – time for compliance

34. Section 10(1) of the FOIA says that a public authority must comply with a request as soon as possible and within 20 working days following the date of receipt of the request.

35. In this case, the complainant submitted his request on 21 June 2017 and did not receive a response until 3 August 2017. Therefore, HE breached section 10(1) on this occasion.

Other matters

36. The Commissioner would like to address specific issues which were noted in the course of investigation of this complaint.
37. The Commissioner noted that HE, in deciding to treat the complainant's information request as "*normal business practices*", disregarded statutory requirements deriving from the FOIA. Namely, HE did not respond in a timely manner or state clearly what relevant information it held as per the requirements of sections 1 and 10 of the FOIA.
38. The Commissioner reiterates that public authorities do not have the discretion to decide whether to apply FOIA or apply "*normal business practices*" when a valid information request is submitted. Although there was no requirement for him to do so, in this case the complainant was specific when making his request that he intended it as a request for recorded information made under the FOIA. This should have resulted in it being particularly clear to the HE that it was not open to it to disregard the requirements of the FOIA in relation to this request.
39. The HE should review its FOI procedures and ensure that the FOIA requirements are met in relation to every valid information request.

Right of appeal

40. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

41. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
42. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

**Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
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