

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 September 2020

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

Decision (including any steps ordered)

1. The complainant requested various information from Highways England Company Limited ("Highways England").
2. The Commissioner's decision is that Highways England failed to respond to the request within 20 working days and therefore breached Section 10 of the Freedom of Information Act ("the FOIA").
3. As a response has been issued, the Commissioner does not require Highways England to take any further steps.

Background

4. The request for information was a follow up to a separate request dated 13 May 2020 and sought clarification of the response received to that request. The requested information related to monitoring of ongoing works and costs of repairs to the road network within the geographical operational area known as Area 10 (Cheshire, Greater Manchester, Merseyside and South Lancashire); the obligations placed on Highways England and its contractor. Highways England advised the complainant it changed its processes to make safe and repair a damaged asset from 1 April 2019. Therefore the new request for information dated 4 June 2020 sought information about the process prior to April 2019.

Request and response

5. On 4 June 2020, the complainant wrote to Highways England via the WhatDoTheyKnow website and requested information in the following terms:

"What was the process pre 04/2019?"

1. How before and after 04/2019, do you, Highways England monitor the installation that is accruing costs on a daily basis? What checking is in place, what responsibility does the contractor have to keep you advised and keep the period of installation to a minimum?

Repairs being carried out 'as quick as possible' is informal

2a. Am I correct in assuming there is:

i. No monitoring of the installations current in place or those pre-04/2019

ii. No policy that sets out the criteria for installation of the barrier

iii. No policy that requires a contractor to notify you of the installations, the date they were installed and of the ongoing costs

2b

Is the visual inspection 'twice in every 24 hours' an Authority policy (if so, please provide a copy) or established elsewhere.

The 'Chapter 8' requirements in the 'Traffic Signs Manual', as you may expect, relate to signage as opposed to temp VRS.

2d

See above as the request is seeking the 'reporting procedure to Highways England about ongoing/accumulation costs i.e. the need to justify, mitigate'

2e

I note payment is made 'based on records/invoices provided by the M&R to demonstrate the costs incurred' but the request is seeking the 'process for establishing necessity/requirement pre-payment of invoice'; how is established that the Varioguard was required and for the period charged?

3

Is there a threshold or thresholds above which you must be notified or costs are limited? I understand AD has removed the

invoice threshold but I am assuming there are estimated costs that give rise to alarm/alert i.e. that Highway England is to be advised of a potential claim in excess of £x? In turn, that the Varioguard potentially giving rise to large costs, this may trigger such an alert.

Is there a threshold or thresholds for such purposes or does the contractor have authority to repair as they see fit, without need to convey cost (or potential cost) pre-issuance of an invoice?."

6. The complainant wrote to Highways England to chase a response on 10 July 2020. On the same date, Highways England responded to the complainant and explained that it had responded to the request, but had sent that response to an incorrect email address.
7. Highways England provided a response to the complainant via the WhatDoTheyKnow website on 10 July 2020.

Scope of the case

8. The complainant contacted the Commissioner on 10 July 2020 to complain about the way his request for information had been handled and he specifically requested a decision notice recording the late response provided by Highways England.
9. The scope of this case is whether Highways England complied with its obligations under section 1 of the FOIA (general right of access to information held by public authorities) and section 10 (time for compliance with the request).
10. This decision notice deals purely with the timeliness of the response to the request submitted to Highways England on 4 June 2020.

Reasons for decision

11. Section 1(1) of the FOIA states that:

Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.*

12. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and “not later than the twentieth working day following the date of receipt.”
13. From the evidence provided to the Commissioner in this case, it is clear that in failing to issue a response to the request that reached the complainant within 20 working days, Highways England breached section 10(1) of the FOIA.

Right of appeal

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

15. 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.
16. 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
Water Lane
Wilmslow
Cheshire
SK9 5AF