

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 August 2021

Public Authority: Highways England
Address: Piccadilly Gate
Store Street
Manchester
M1 2WD

Decision (including any steps ordered)

1. The complainant has requested Highways England (HE) to disclose the number of emails or communications between certain emails addresses and any HE email address for the 2018/19 financial year. HE refused to comply with the request citing section 14(1) (vexatious requests) of the FOIA.
2. The Commissioner's decision is that HE is entitled to refuse to comply with the request in accordance with section 14(1) of the FOIA.

Request and response

3. On 19 February 2020 the complainant wrote to HE and asked HE to provide a breakdown of the number of emails or communications sent between certain email addresses [email addresses redacted but relating to one named individual) and any HE email address over a four year period. HE refused this request under section 12 of the FOIA and this was upheld by the Commissioner in her decision notice dated 23 February 2021. The Commissioner however ordered HE to provide the complainant with advice and assistance in accordance with section 16 of the FOIA. HE complied and provided the complainant with advice and assistance, which then led to a new information request being made on 30 March 2021; this request is the subject of this decision notice.

4. On 30 March 2021, the complainant wrote to the public authority and requested information in the following terms:

"Please could you provide the information for the 2018/19 financial year for both email addresses".
5. The public authority responded on 28 April 2021. It refused to comply with the request citing section 14(1) of the FOIA.
6. The complainant requested an internal review on 30 April 2021.
7. HE carried out an internal review and notified the complainant of its findings on 1 June 2021. It upheld its previous application of section 14 (1) of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 6 June 2021 to complain about the way his request for information had been handled. He disagrees with the application of section 14(1) and considers this request is a continuation of his request dated 19 February 2020 made in accordance with HE's advice and assistance as a result of the decision notice the Commissioner served on 23 February 2021.
9. The Commissioner considers the scope of her investigation to be to determine whether HE is entitled to rely on section 14(1) of the FOIA in this case.

Reasons for decision

Section 14(1) – vexatious requests

10. Under section 14(1) of the FOIA a public authority is not required to comply with a request for information if the request is vexatious.
11. The term 'vexatious' is not defined in the FOIA but the Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in her published guidance and, in short, they include:
 - Abusive or aggressive language
 - Burden on the authority – the guidance allows for public authorities to claim redaction as part of the burden

- Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance
12. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
 13. The Commissioner's guidance goes on to suggest that, if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.
 14. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
 15. Although the complainant's request of 30 March 2021 follows on from an earlier request dating back to February 2020, and was made as a result of the advice and assistance HE was ordered to provide as a result of the Commissioner's decision notice of 23 February 2021, it is a new request for information in its own right and HE is obliged to consider it as such. As a result HE has to consider it afresh based on the circumstances at the time it was made and this will include the period between February 2020 (the date of the complainant's earlier request) and March 2021 (the date of the new request he made as a result of the advice and assistance HE provided).
 16. During February 2020 and March 2021 the complainant made a further seven requests to HE (in June 2020) all relating to the same topic as the February 2020 request and the March 2021 request, and targeting a named individual, which HE has said the complainant has a personal grudge against. HE refused these requests in accordance with section 14(1) of the FOIA and notified the complainant accordingly on 26 June and 27 July 2020. The complainant referred these requests to the Commissioner on 25 July 2020 and the Commissioner was actively considering HE's application of section 14(1) of the FOIA to these

requests at the time the complainant made the request being considered here.

17. The Commissioner upheld the application of section 14(1) of the FOIA and issued a decision notice on 24 April 2021, which can be accessed here:

[IC-47759-P9M3 \(ico.org.uk\)](#)

18. The Commissioner is satisfied that section 14(1) of the FOIA applies to the complainant's request of 31 March 2021 for the same reasons outlined in the Commissioner's decision notice of 24 April 2021. The request of 31 March 2021 is a new request in its own right and HE is entitled to consider the circumstances at that time. As stated in paragraph 14 above, HE is entitled to take any relevant background and history to the request into account under section 14(1). It was therefore appropriate for HE to consider the events that occurred between the February 2020 and March 2021 request. As the Commissioner upheld the application of section 14(1) of the FOIA to the complainant's requests of 15 June 2020 (as outlined in the decision notice of 24 April 2021, link provided above) it follows that it will apply to any requests made after this date relating to the same topic, theme and named individual.

Right of appeal

19. 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

20. 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.
21. 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

Samantha Coward
Senior Case Officer
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SK9 5AF