

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 22 September 2023

Public Authority: National Highways
Address: Bridge House
1 Walnut Tree Close
Guilford
Surrey GU1 4LZ

Decision

1. The complainant has requested information about resurfacing work carried out on a section of the M6 motorway after an incident. The Commissioner's decision is that, on the balance of probabilities, National Highways does not hold the requested information and there has been no breach of regulation 12(4)(a) of the EIR.
2. The Commissioner does not require further steps as a result of this decision notice.

Request and response

3. On 31 March 2023, the complainant wrote to National Highways referring to a previous email from it about an incident on the M6 motorway on 23 December 2022 and requested information in the following terms:

"Enquiries into this matter have found that the safety inspection of the 6, 13, 20 and 28 December 2022 identified no safety critical defects."

"This clearly is not the case as in an earlier e-mail to yourselves I stated that this whole section of road had been resurfaced and all the cats eyes in the inside lane whole section of road had been resurfaced and all the cats eyes in the inside lane had been replaced. Clearly there is evidence

then that repairs to this section of road were required. As such I would like to apply under the freedom of information act for the following.

1. Copies of the inspection reports you have highlighted.
2. Documentation and Information on when and why this section of road was highlighted for repair and the reason for the repairs.”
4. On 2 May 2023, National Highways responded to the request. It provided the complainant with inspection records stating “No Actionable defects found.” It applied section 40 of the FOIA (personal information) to withhold personal information within the records.
5. The complainant replied back to National Highways on the same day and asked it to carry out a review of its handling of the request. Referring to the incident, he said it had not provided any information (underlining added for emphasis) “about why after the incident this whole section of road on the inside lane was resurfaced.”
6. On 26 May 2023, National Highways carried out a review and wrote to the complainant. It said it had failed to provide information about work that had been carried out. It provided a summary of resurfacing works (including road marking and stud replacement) that had been carried out. It said the hard shoulder was resurfaced in March 2022, lane 1 was resurfaced in 2020 and disclosed the related plans, and lane 2 was resurfaced in 2013. It concluded that by failing to provide this information it had breached section 1(1)(a) of the FOIA.

Scope of the case

7. On 16 July 2023, the complainant contacted the Commissioner to complain about the way his request for information had been handled. He said that the information provided only showed resurfacing work that had been carried out on the motorway before the date of the incident but not after it. He believes the section of the road where the incident took place was ‘repaired’ in early 2023 (after the incident), and that National Highways holds information about this, but is refusing to provide it in order to prevent a claim being pursued against it.
8. The Commissioner considers the scope of his investigation, is to determine whether, on the balance of probabilities, National Highways holds information relating to why, after the incident, the road was resurfaced. The complainant sought this information in their request for a review and confirmed to the Commissioner that this was their focus during the investigation.

Reasons for decision

Would the requested information be environmental?

9. The Commissioner notes that this request relates to resurfacing of a road on the M6 motorway – which is a measure / activity likely to have an impact on the elements of the environment. He is therefore satisfied the information (if it were held) would be environmental and thus the request should have been dealt with under the EIR – though this makes it no more, or less, likely that information is held.

Regulation 12(4)(a) - information not held

10. When there is some dispute between the information held by a public authority and the information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
11. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

The complainant's position

12. The complainant said that he believes the section of the road where the incident took place was resurfaced in early 2023 (after the incident) and this is when the 'cat's eye' (reflective road stud) that caused the incident was 'repaired.' He believes that National Highways holds information about this, but is refusing to provide it in order to prevent a claim being pursued against it.
13. The complainant said that the road had been resurfaced after the incident and provided a recent photograph of the road. He said that a difference in colour on the road surface between 'lane 1' and the other lanes, indicates that work was carried out after the incident. He also said that National Highways has not provided accurate information. This is because the picture shows 'current road works' being undertaken at the location of the incident on the motorway, and National Highways said there was no further work planned at the location.

National Highways' position

14. As part of his investigation, the Commissioner asked National Highways to satisfy itself that it had carried out appropriate searches (including carrying out additional searches) for the requested information and to set out what these searches were.
15. National Highways explained that the information is not held because its enquiries and searches concluded that the road was not resurfaced after the date of the incident.
16. National Highways said that if information was held about resurfacing work carried out after the incident, it would be held electronically within two systems. The Pavement Management Asset System (P-AMS) and the Contract Events Management Analytics and Reporting system (CEMAR). The systems contain information about all resurfacing, road markings and stud replacement works carried out on the entire network and contract information / work orders awarded to contractors. It conducted searches of these systems as well as inspection reports held from the date of the incident up to the date of the request using the location of the incident, which, was MP 458/0 to MP 456/0 as keywords.
17. National Highways confirmed that all information on the systems about resurfacing work carried out at MP 458/0 to MP 456/0 had been located, it also made enquiries with the team that deals with resurfacing work. The information shows that, re-surfacing work to lane 1 was carried out in October 2020, including road marking and studs to lane 1 and 2. Lane 2 was resurfaced in 2013, and the subsequent lane 1 works replaced the road markings and studs. 'Upgrade works' were carried out to the hard shoulder in March 2022. The work is expected to be guaranteed for five years but could last 10 years. This information was provided to the complainant in the review.
18. National Highways said that it carried out further searches of the systems and identified that road markings and studs were replaced on the southbound carriageway at MP456/3 to MP453/8 and MP450/0 to MP446/0 between July and September 2022. It provided the Commissioner with records from its systems showing the history of the resurfacing work at the location.
19. National Highways said that the next resurfacing work planned for all three lanes at MP 458/0 to MP 456/0 is expected to be delivered in the financial year of 2025-26, and that no resurfacing work is planned for the 'inside lane.' It also confirmed that no resurfacing work is being undertaken at the location of the incident currently, and explained that 'deck repairs' being made to Lowther Bridge has resulted in measures

being implemented to manage traffic.

20. National Highways confirmed that all information held within site inspection records about inspections of MP 458/0 and MP456/0 had been located. It explained that safety inspections are used to identify critical defects which require prompt attention as they pose an immediate or imminent hazard to road users. It further explained that where a claim relating to an incident may be received, National Highways uses inspection records to identify when the location was last inspected. The information shows that inspections of the location of the incident took place on 6, 13, and 20 December 2022 and also 4 and 10 January 2023 (before and after the incident), and states "no actionable defects found." It provided the Commissioner with a 16 page 'Site History Report.'
21. National Highways said that in regard to business requirements to hold information within the scope of the request, it does not hold any information about work carried out after the incident date. This is because no work was identified as needed or was carried out between the date of the incident and the date of the request. The information it has identified only relates to resurfacing work that was carried out at the location before the date of the incident, and there is a business requirement for it to hold this information.
22. National Highways also confirmed that no information within the scope of the request has been deleted / destroyed.

The Commissioner's view

23. In respect of whether National Highways holds information about why resurfacing work was carried out after the incident, the Commissioner is satisfied that regulation 12(4)(a) of the EIR is engaged.
24. The Commissioner notes that the request assumes that resurfacing work took place after the incident and the complainant is seeking the reason for this. He also notes that an assumption is not fact. In order to determine whether National Highways holds the information, it has carried out searches to determine whether the road was in fact resurfaced after the incident.
25. The Commissioner notes the internal enquiries made by National Highways, the searches carried out across two systems, the searches of inspection reports, the keywords used and the likelihood that this would identify information about why and when roads have been resurfaced.

26. The Commissioner has reviewed all the information provided by National Highways from P-AMS, CEMAR and the inspection reports. He notes that there is no evidence that resurfacing work was carried out at the location after the incident (only before it), subsequent inspections found "no actionable defects found," and that the next resurfacing work is planned for 2025-26.
27. The Commissioner notes that National Highways' business requirement to hold information about why resurfacing work has been carried out relates to work that is required that has been identified / carried out. He also notes National Highways confirmation that no information within the scope of the request was held but then deleted or destroyed.
28. The Commissioner has viewed the photograph provided by the Complainant. He notes that there appears to be a difference in the the colour of the road surfaces of the individual lanes. However, he also notes that the information provided by National Highways confirms that resurfacing work was carried out on individual lanes in recent and differing years before the date of the incident. He also notes that no actual work appears to currently be taking place in the picture, only that cones line a section of the motorway, and also National Highways explanation of current deck repairs to Lowther Bridge resulting in measures being implemented to manage traffic.
29. It is the Commissioner's view that, as no information appears to be held indicating resurfacing work that took place at the location after the incident, on the balance of probabilities, it is very unlikely that National Highways holds information relating to why such work was carried out. The Commissioner is therefore satisfied that regulation 12(4)(a) is engaged and he does not require National Highways to take any further steps in this case.

Right of appeal

30. 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

31. 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.
32. 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

Cressida Woodall
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