

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 27 August 2014

**Public Authority:** Department for Transport  
**Address:** Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to the assessment of the performance of contractors involved in litter collection, including any sample inspection reports. The Department of Transport (DfT) did respond to the concerns raised in this letter within the timescale for compliance but failed to state whether the information was held and therefore has breached the requirements of section 1(1)(a) of the FOIA.
2. The DfT has referred the request to the Highways Agency (an executive agency of the DfT) who has stated that they would rely on exemptions under the FOIA to refuse to provide this information. As such the Commissioner does not require any further steps to be taken.

#### Request and response

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3. On 27 March 2014 the complainant wrote to the DfT and requested information litter collection in the following terms:

*"I cannot see anything in the contract that says how the Agency assesses the performance of the contractor in regard to litter and takes remedial action where necessary. Can you provide me with any documentation that demonstrates that there is a process in place? This might, for example, be in the form of sample inspection reports (made by Agency staff as opposed to the contractor inspecting his own work) and follow up reports showing that Agency staff have checked that*

*remedial action has been taken to rectify any sub-standard performance."*

4. The DfT responded in a letter dated 8 April 2014 which did not make reference to the FOIA but did refer to penalties issues to Contractors which addressed part of the information request.

## **Scope of the case**

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5. The complainant contacted the Commissioner on 18 July 2014 to complain about the DfT's failure to respond to his request. The Commissioner wrote to the DfT to ask it to respond to the request and in response the DfT explained that the issues raised in the complainant's letter of 27 March were addressed in a letter from the DfT on 8 April 2014.
6. The Commissioner considers the scope of this case to be to determine if the DfT has complied with its duties under section 1 and section 10.

## **Reasons for decision**

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### **Section 10(1) – time for compliance**

7. Section 1 of 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.*"
8. Section 10(1) of the FOIA requires that a public authority must provide a substantive response within the time for compliance, which is 20 working days following the date of receipt.
9. The DfT has provided evidence that a response was sent to the complainant's letter of 27 March 2014. This response was within the statutory timescale but the Commissioner notes that it did not make it clear the response was provided under the FOIA and did not fully address the complainant's request.
10. Although the DfT did respond within 20 working days by failing to state in the response whether the information was held it has breached section 10(1) as well as section 1(1)(a) of the FOIA.

11. As the request has been passed to the Highways Agency who has indicated they would apply exemptions to withhold this information, the Commissioner does not require the DfT to take any remedial steps in this case.

## Right of appeal

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12. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

13. 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.
14. 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 .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**