

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 July 2015

Public Authority: Highways England
Address: 4 South
Lateral
8 City Walk
Leeds
LS11 9AT

Decision (including any steps ordered)

1. The complainant has requested information relating to a fatal motorway crash including details of the signage in place and the status of the hard shoulder at the time of the accident. Highways England considered this information exempt on the basis of section 31(1)(a) and (c).
2. The Commissioner's decision is that Highways England has correctly relied upon the section 31(1)(a) exemption and the balance of the public interest favours maintaining the exemption. He requires no steps to be taken.

Request and response

3. On 6 March 2015, the complainant wrote to Highways England¹ for information relating to a fatal car crash on the M1 motorway. His request was for the following information:

¹ The request was submitted to the Department for Transport and passed to the Highways Agency to respond. The Highways Agency was an executive agency of the Department for Transport and has since been superseded by Highways England. For ease this notice will refer to Highways England.

"At the time of the accident was the hard shoulder being used as a live running lane?"

What information was displayed on the overhead gantry PRIOR to the scene of the accident?

Was a speed restriction in operation on the northbound carriageway of the M1 between J9 & J13?

What information relating to the status of the hard shoulder was available to the motorist?

How long had the vehicle been broken down (prior to the accident)?"

4. Highways England responded on 18 March 2015. It stated that it did hold information within the scope of the request but considered it exempt on the basis of section 31(1)(a) and 31(1)(c) of the FOIA.
5. Following an internal review Highways England wrote to the complainant on 5 May 2015. It stated that it upheld the decision to withhold the information within the scope of the request under section 31 of the FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 25 March 2015 to complain about the way his request for information had been handled. Following the internal review the complainant wrote again to the Commissioner on 6 May 2015. The complainant was particularly concerned with the decision of Highways England to refuse to confirm the status of the hard shoulder at the time of the accident.
7. The Commissioner considers the scope of his investigation to be to determine if Highways England has correctly applied the provisions of the FOIA, specifically section 31, to refuse to provide information within the scope of the request.

Reasons for decision

8. Section 31 of the FOIA states that –

"Information which is not exempt by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice - ...

(a) the prevention or detection of crime,

(c) the administration of justice.”

9. The Commissioner has first focused on subsection (1)(a) of this exemption as Highways England's arguments for the engagement of this exemption largely relate to the ongoing investigation by Bedfordshire Police into the accident. Highways England has explained that the information it holds relating to the status of the hard shoulder and the circumstances leading up to and surrounding the accident have been passed to the police as part of their ongoing investigation.
10. It is therefore Highways England's belief that disclosure of this information would be likely to prejudice the prevention or detection of crime by impacting on Bedfordshire Police's ongoing investigation. Highways England consulted with the police over this and they confirmed that the information in question would be a determining factor into the culpability of any of the parties and whether criminal charges would be brought.
11. The Commissioner accepts that Bedfordshire Police has a clear function in this regard, supported by his recent decision notice² which related to a request from the same applicant to the police force. This request was refused under section 30(1)(a)(i) of the FOIA – information is exempt from disclosure if it is held by the police for the purposes of an investigation that it has duty to carry out with a view to ascertaining whether an individual should be charged with an offence.
12. In considering whether the prejudice claimed is likely to occur the Commissioner has also referred back to his earlier decision notice in which he accepted the section 30 exemption was engaged. The fact that the Commissioner recognised that the information held by Bedfordshire Police was information held for the purpose of ascertaining if any individuals should be charged strengthens the argument in this case that disclosure of the requested information would result in a real and significant risk of prejudice to the investigation by the police and the prevention or detection of crime.
13. The Commissioner accepts the general argument that disclosure of information which is central to a police investigation could have a prejudicial effect on the process of considering bringing charges.

² FS50577249

However, in determining whether the likelihood of prejudice occurring is real and of substance he has considered the timing of the request.

14. The accident which is the subject of this request occurred on 14 February 2015 and the request in this case was made on 6 March 2015, fairly soon after the accident occurred. Bedfordshire Police have confirmed to Highways England that their investigation was still ongoing. In this respect the Commissioner accepts that the issue was still 'live' in that the investigation and decision whether to bring charges or refer the matter to the Crown Prosecution Service had not been made at the time of the request.
15. As the issue was still 'live' the likelihood of disclosure impacting on the police investigation and affecting the prevention or detection of crime would remain high.
16. The complainant does not consider that the information engages the exemption and has particularly argued that information on the condition of the road, the designation of the hard shoulder and any speed limits in place at the time of the accident would not be relevant to the investigation as they are facts that would have been established at the scene of the accident.
17. In response to these points, Highways England has established with Bedfordshire Police that this information is central to the investigation. In the Commissioner's decision on the request made to Bedfordshire Police he also addressed this point:

"The Commissioner has also confirmed with Beds Police that the requested information is critical to that investigation as the designation of the carriageway as a running lane or hard shoulder, coupled with any accompanying signage, is likely to be a major factor in determining the matter of any culpability of the drivers involved in the accident."

18. The Commissioner therefore considers that prejudice to Bedfordshire Police's investigation would be likely to occur if the information were to be disclosed.
19. As section 31 is a qualified exemption the Commissioner has gone on to consider whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosure.

Public interest arguments in favour of disclosure

20. The complainant has argued that it is in the public interest for information to be disclosed which would demonstrate whether Smart Motorways are being operated safely and effectively.

Public interest arguments in favour of maintaining the exemption

21. Highways England considers the arguments it presented with regards to the potential prejudice are also relevant considerations for the public interest. Specifically that there is a strong public interest in protecting the integrity of the police investigation.

Balance of the public interest

22. The Commissioner would firstly like to make it clear that he has not received extensive arguments in relation to the public interest from either party, most of the arguments he has been presented with relate to the potential prejudice that may result from disclosure. As such, when considering where the balance of the public interest lies in this case he has looked at the general arguments presented and given consideration to the wider public interest in disclosure of this specific information.
23. The Commissioner does give weight to the argument that when a serious accident has happened there will be appetite for the public to know the details in order to understand what happened and how. The complainant referred to the public interest in knowing that Smart Motorways are being safely and effectively run and the Commissioner does accept that the disclosure of the information would help the public to understand what happened in this case and allow for greater accountability.
24. Conversely, even the complainant recognised the key part information on signage and the designation of the hard shoulder may place in the decision to potentially prosecute any suspects should this information be seen to be pertinent to how the accident occurred. The Commissioner therefore consider the importance of this information and the potential impact disclosure could have on the police investigation should not be underestimated and he has placed significant weight in favour of withholding the information on this basis.
25. The Commissioner has taken into account the very strong public interest in not undermining the police investigation process which may result in referral to the Crown Prosecution Service for commencement of criminal proceedings. The public interest is still high in this regard as the police investigation is still live and the argument that disclosure would impact on the investigation is therefore still strong and carries weight.
26. The Commissioner finds that he has to take into account the decision he made previously when the same information was requested from Bedfordshire Police and he summarised some of the public interest arguments in that case as follows:

"The Commissioner accepts that there is a strong public interest in protecting information acquired by the police during their investigations. To disclose important evidence in a criminal investigation under the FOIA (without a sufficiently strong public interest in doing so) would undermine the existing procedures governing the disclosure of information in relation to criminal investigations. Such disclosure could impact on the running of the investigation and allow parties to make judgements prior to any case being properly heard in a court of law."

27. Whilst the Commissioner does appreciate there are differences in these cases and he must judge each request on its own merit he also recognises that to determine information should be disclosed when requested from one public authority when he has determined it can be withheld by another would seem incongruous; particularly when he accepts as detailed above that there is a strong public interest in not disclosing information which would undermine the running of an investigation.
28. Taking this into account the Commissioner considers that, in all the circumstances of the case, if Highways England were to disclose the requested information there would be a real and significant risk to Bedfordshire Police's ability to carry out its investigation and potentially bring charges and therefore the public interest favours maintaining the exemption.
29. The Commissioner accepts that the section 31 exemption is engaged and Highways England has correctly balanced the public interest test to maintain the exemption. He requires no steps to be taken.

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

Pamela Clements
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