

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 May 2016

Public Authority: Highways England
(formerly Highways Agency)

Address: 4 SOUTH, Lateral
8 City Walk
Leeds
LS11 9AT

Decision (including any steps ordered)

1. The complainant has requested information about a particular speed limit and closed lane on the M25. Highways England has refused to comply with the request which it says is vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is that the request is vexatious and that Highways England correctly applied section 14(1) to it.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 29 September 2015, the complainant wrote to Highways England (HE) and requested information in the following terms:
"Pls provide all info the HA hold on the temporary speed limit and closed lane between junctions 17 and 16 on the M25 today anti-clockwise at 10.07 despite the absence of any incident."
5. HE responded on 22 October 2015. It refused to comply with the request, which it said was vexatious under section 14(1) of the FOIA.
6. Following an internal review, HE wrote to the complainant on 19 November 2015. It maintained its position that the request is vexatious.

Scope of the case

7. The complainant contacted the Commissioner on 1 December 2015 to complain about the way his request for information had been handled.
8. The Commissioner has focussed his investigation on whether HE is correct to apply section 14(1) to the complainant's request.

Reasons for decision

9. Section 14(1) of the FOIA says that a public authority does not have to comply with a request for information if the request is vexatious.
10. The term "vexatious" is not defined in the FOIA. The Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests. In short they include:
 - Abusive or aggressive language
 - Burden on the authority
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance
11. 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.
12. The Commissioner's guidance suggests 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 upon it and balance this against the purpose and value of the request.
13. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request. The Commissioner considers that the background and history of the request may be relevant here but has nonetheless considered all the circumstances of the case.

14. In its submission, HE has told the Commissioner that between March and September 2015, the complainant submitted 10 FOIA requests, with the request that is the subject of this notice being the tenth. HE provided the Commissioner with a summary of the requests. The majority concern HE's rationale for particular road works, road closures and speed restrictions. HE provided information to the complainant in relation to eight of the earlier requests from 2015, and directed the complainant to where information relevant to the ninth request is already published.
15. HE says that the complainant volunteered in his requests that he does not consider that Highways England appropriately enforced the speed limits or road closures in question. In its previous responses, HE says that it has provided full reasoning for the speed limits and closures. HE says it has sought to explain to the complainant the reasons behind the use of variable speed limits and details of its policies and procedures for dealing with incidents that require lane closures or a police presence. Despite consistently providing the requested evidence, HE has continued to receive similar requests from the complainant. It says the complainant has not been able to uncover any impropriety regarding HE's use of speed limits or lane enclosures. HE has therefore taken the view, at this point, that it is not in the public interest to continue to divert resource in order to defend its position on the issue of speed limits and road closures. HE has concluded that the complainant's requests are frivolous, a misuse of formal procedure and that they are calculated to cause HE irritation and distress.
16. HE has detailed for the Commissioner the impact on it of complying with the complainant's eight complaints submitted between April and September 2015. These requests were substantially similar in terms of topic although each request was for new information. Each request centred on the reason, or justification, for either a variable speed limit or a lane closure. The requests are often focussed on the M25.
17. HE acknowledges that the requests, individually, are not likely to breach the appropriate cost/time limits as set out in section 12 of the FOIA. It says that nevertheless they each required a considerable effort to respond to fully. To respond to his requests, HE has provided the complainant with the following:
 - Details of the timelines of the speed limit/road closure incidents - HE says that this information has to be collated from Command and Control logs compiled in its Regional Control Centres in liaison with colleagues from its Customer Operations Directorate. Depending on the length of the incident, or the number of concurrent incidents, HE says that compiling this information may take several hours.

- Details of the limits in place on the overhead gantries - HE says that this information is provided by interrogating a separate system, called HALOGEN. The information then needs to be checked for accuracy.
 - Details of remedial or repair works undertaken by its contractors - HE says that, as above, this information may take several hours to source depending on the length and complexity of the incident(s) and will usually involve a search of paper records completed on site by the service provider.
18. HE has provided the Commissioner with arguments to support its position that the impact on it of complying with the request that is the subject of this notice is disproportionate, because the request has no inherent purpose or value.
 19. As detailed above, HE has provided a full response to each of the complainant's earlier, substantially similar, requests. HE says that the complainant has not been able to uncover any evidence of impropriety and therefore it believes that the value of the current request, and any further requests, is increasingly diminished.
 20. HE notes that in his request for an internal review, the complainant says that *"...it would seem to be entirely in the public interest for such use, where it does not appear to be legitimate, to be questioned and evidenced via FOI legislation."* HE says that it appreciates that it is in the public interest to demonstrate the safe and effective working of Smart Motorways, such as the M25. (A smart motorway is a section of motorway in Great Britain which uses active traffic management techniques to increase capacity by using variable speed limits and hard shoulder running at busy times.) HE says that it considers that its responses to the complainant's previous requests have fully defended HE's position and its appropriate use of variable speed limits, on multiple occasions. It says it cannot see any justification for HE to continue to do this in the future.
 21. From the correspondence it has received from the complainant, HE says it also does not believe that the complainant's pattern of request will stop. It says that each request, despite being met with a full response on each occasion, has given rise to further correspondence. HE considers it is reasonable to assume that the complainant will be unwilling to accept HE's arguments and will continue to submit FOI requests.
 22. The Commissioner considers that HE has put forward a strong argument for the request in this case being vexatious. Although responding to this individual request may not cause a significant distraction to HE, it

appears to be the latest in a series of similar requests that, cumulatively, the Commissioner considers to have placed a significant burden on HE. The Commissioner's view is that this burden is disproportionate because the complainant's requests have not uncovered any evidence that HE's use of speed restrictions and closed lanes have been improper. The complainant told the HE that its use of these techniques does not appear to be legitimate. However, the complainant has not provided HE or the Commissioner with any evidence to support this assertion, which would justify HE carrying out the work needed to respond to his current request.

23. Having considered his guidance on vexatious requests and all the circumstances of this case, the Commissioner is satisfied that the request is vexatious and HE is correct not to comply with it under section 14(1) of the FOIA. The request does not have any wider value and responding to it would be a disproportionate burden.

Right of appeal

24. 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

25. 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.
26. 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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