

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 October 2016

Public Authority: Highways England
Address: Bridge House
1 Walnut Tree Close
Guildford
Surrey
GU1 4LZ

Decision (including any steps ordered)

1. The complainant has requested information on penalty charges issued at the Dartford Crossing, including breakdowns by country and figures on non-compliance. Highways England provided some of the information but withheld that which broke down non-compliance by country and individual vehicle on the basis of section 36(2)(c) and 31(1)(d) of the FOIA.
2. The Commissioner's decision is that Highways England has correctly applied section 36(2)(c) and the public interest favours maintaining the exemption. The Commissioner therefore requires no steps to be taken.

Request and response

3. On 6 January 2016, the complainant wrote to Highways England and requested information in the following terms:
 - 1) *"How many vehicle movements have there been through the Dart Crossing?"*
 - 2) *How many vehicle owners should have been issued with a penalty charge because they went through the crossing and had not paid the appropriate fee?*
 - 3) *In relation to Q.2 how many of these were (i) UK registered vehicles, (ii) foreign registered vehicles?*

- 4) *In relation to foreign registered vehicles in Q.3 please provide a league table showing the nation's vehicles that contravened the regulations the most frequently, showing the top ten nations and the amount of offences linked to the vehicles of that nation?*
 - 5) *In relation to the response to Q.3 how many tickets asking for a fine to be paid have been issued to (i) UK registered vehicles and (ii) foreign registered vehicles? For each of these groups, how many have been paid?*
 - 6) *Please provide a league table showing the number of offences broken down by each country showing the number of cases where a fine has either been issued or not paid or a fine could have been issued but was not issued. Please provide the top ten nations and the number of cases relevant to each country?*
 - 7) *Which single vehicle is responsible for using the crossing on the most occasions without paying the relevant charge and so has collected the most penalty fees. What country is this vehicle registered too and how many offences has it clocked up and how many of these fines have been paid?"*
4. Highways England responded on 2 February 2016. It answered questions 1-4 and partially answered question 5 but stated data relating to non-UK penalty charge notice (PCN) payments and debt recovery would be published in due course and was therefore exempt from disclosure on the basis of section 22 of the FOIA – information intended for future publication. Highways England also sought to rely on section 22 in relation to information held for question 6. For question 7 Highways England considered the information to be personal data and therefore exempt from disclosure under section 40(2) of the FOIA.
 5. Following an internal review Highways England wrote to the complainant on 11 April 2016. It stated that it would be withdrawing its reliance on section 22 but now considered the remaining information exempt on the basis of section 36(2)(c) and 31(1)(d). Highways England also sought to apply these exemptions in addition to section 40(2) in relation to the information requested in question 7.

Scope of the case

6. The complainant contacted the Commissioner on 25 April 2016 to complain about the way his request for information had been handled.
7. The Commissioner considers the scope of her investigation to be to determine if Highways England has correctly applied sections 36(2)(c),

31(1)(d) or 40(2) to withhold the information requested in question 5, 6 and 7 of the request.

Reasons for decision

Section 36 – prejudice to the effective conduct of public affairs

8. Highways England cited section 36(2)(c), which provides an exemption where disclosure would, or would be likely to, prejudice the effective conduct of public affairs in a way other than specified elsewhere in section 36. The Commissioner's approach is that section 36(2)(c) should also be cited only where the prejudice identified would not be covered by any of the other exemptions in Part II of the FOIA.
9. This exemption can only be cited on the basis of a reasonable opinion from a specified qualified person (QP). In the case of government departments, the QP is any Minister of the Crown. The task for the Commissioner when deciding whether this exemption is engaged is to reach a conclusion on whether the opinion of the QP was objectively reasonable. This exemption is also qualified by the public interest, which means that the information must be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.
10. As to whether this exemption is engaged, the first issue to cover here is whether this exemption was cited on the basis of an opinion from a QP. Highways England has stated that the exemption was cited on the basis of an opinion from Andrew Jones MP (the then Parliamentary Under Secretary of State for Transport) and a further opinion was offered by the current Minister of State for Transport, John Hayes, following the complaint to the Commissioner. On this basis, the Commissioner accepts that the opinions were given by a valid QP.
11. The next step is to consider whether that opinion was reasonable. Highways England supplied to the ICO copies of the submissions that were prepared for the QP's in order to assist in the formation of their opinions. This shows that the reasoning for citing section 36(2)(c) was that release of the information would inhibit the ability of Highways England to effectively collect the road user charge and so would prejudice the effective conduct of public affairs.
12. The information in question is figures on the numbers of PCN's issued and paid by UK and non-UK drivers, a breakdown by country and information on the single vehicle responsible for the most individual PCN's. The Commissioner notes that Highways England did disclose information on vehicles that should have been and were issued with

PCN's but it is the detail on the payments of these charges that has been withheld, for example information on the number of PCN's not paid, PCN's not paid broken down by the country of origin of a vehicle etc. which has been withheld. The Commissioner considers this is a clear distinction and this was made known to the QP in the submissions.

13. The submission advised the QP that prejudice *would* result through disclosure, rather than *would be likely* to result. Therefore there should be a real and significant likelihood of this prejudice occurring rather than a remote possibility. The question here is, therefore, whether it was reasonably objective for the QP to hold the opinion that there was a real and significant likelihood of prejudice occurring.
14. Having viewed the content of the withheld information, the Commissioner recognises that Highways England considers that disclosing information on PCN's that are not paid, specifically broken down by country would prejudice the ability of Highways England to collect road user charges. Further detail on this is provided in a confidential annex to the decision notice.
15. On balance, the Commissioner accepts that the QP's opinion in this case was objectively reasonable. The exemption provided by section 36(2)(c) is therefore engaged.
16. The next step is to consider the balance of the public interest. Having accepted that the opinion of the QP that prejudice would result was reasonable, the role of the Commissioner here is not to challenge or reconsider the conclusion on the reasonableness of that opinion. Instead, her role is to consider whether the public interest in disclosure outweighs the concerns identified by the QP.
17. Having found that the QP's opinion was reasonable, appropriate weight must be given to that here. It would not be in the public interest to disclose information that would undermine the ability of Highways England to effectively operate the Dartford Crossing and the charging system in place there. In terms of how much weight this argument should carry; it will depend on the severity, extent and frequency of the prejudice occurring.
18. In this case, the Commissioner considers there is a genuine risk of the disclosure of this information - overall figures for non-compliance, breakdown by country and details of an individual case of persistent non-payment - encouraging non-compliance by other drivers. The reasons for this are as previously set out in the confidential annex.
19. Accepting that disclosure would have a real risk of increasing non-compliance; the Commissioner also accepts the argument of Highways

England that this will result in diversion of resources to manage this increase and try to recover charges. This would not be in the public interest as it would place an additional burden on Highways England and may divert it from focusing on its other work.

20. In addition to this, Highways England argues that the collection of road user charges is in the public interest as it helps to reduce congestion by managing demand for the Dartford Crossing and the income collected is used to fund transport improvements. Therefore disclosing information which would prejudice the collection of these charges would be contrary to the public interest.
21. Turning to factors in favour of disclosure of the information, Highways England recognises that disclosure may add value to the information which has already been provided. Figures on the overall compliance rates and top ten numbers of cases by country have already been provided. Adding to this by providing information on the rates of compliance would assist in the public building a picture of the effectiveness of the charging system at the Dartford Crossing. The Commissioner accepts this argument carries some weight as there will always be a public interest in disclosing information which promotes accountability – in this case by showing how successful the Dartford Crossing is and how well Highways England are performing when it comes to collecting charges.
22. The Commissioner does consider there to be valid public interest arguments in favour of disclosure of the information. Showing how effective Highways England are at enforcing the charges would increase transparency and allow for a greater degree of scrutiny as to how well it is operating the road user charging regime.
23. That being said, Highways England have released overall figures for compliance rates which go some way to meeting this public interest. It is the breakdown by country and individual vehicle which Highways England have strongly argued would inhibit its ability to effectively operate the charging regime by encouraging non-compliance. This in turn would prejudice the effective conduct of public affairs. The Commissioner, by accepting the exemption is engaged, has acknowledged there is a strong argument for withholding this information. She considers there is a strong possibility that releasing the remaining information would provide road-users from countries with lower levels of compliance the impetus to consider future non-compliance. This would not be in the public interest as it would make collecting debts more difficult, damage public confidence in the road user charging regime and divert Highways England resources away from other functions. All of these are arguments that the Commissioner accepts carry weight in favour of maintaining the exemption and she has

therefore concluded that in this case these arguments outweigh the arguments in favour of disclosure.

24. The Commissioner therefore concludes that Highways England has correctly withheld this information under section 36(2)(c). She has not gone on to consider the other exemptions cited.

Right of appeal

25. 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

26. 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.
27. 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

Jill Hulley
Senior Case Officer
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