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Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 October 2017

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

Decision (including any steps ordered)

1. The complainant has requested information relating to temporary closures of the Dartford Crossing.
2. The Commissioner's decision is that Highways England (HE) has correctly applied section 24(1) (national security) to the withheld information.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 19 November 2016, the complainant wrote to Highways England and requested information via https://www.whatdotheyknow.com/request/dartford_crossing_operating_proc (<http://bit.ly/2nPUWyF> in the following terms:

"As a daily user of the tunnels, my journey is often delayed by seemingly strange processes.

I would like to request the documented operating manual/procedures covering the following processes: -

a) The temporary closure of the west (left-hand side as you travel into Essex) tunnel to vehicles not otherwise controlled:

PROTECT

PROTECT

- *for congestion within the tunnel or on the north side of the river here, please also provide the research or other references for the reasons that closure is appropriate and necessary.*
- *for the movement of high risk vehicles*
- *for the extraction of vehicles considered unsuitable for this tunnel*
- *for the extraction of vehicles either that are deemed to require escort or other control*
- *for the extraction from this tunnel of vehicles breaking down or in accidents*
- *The process of dealing with fires/evacuation, including engaging the engagement of any fire prevention/suppression mechanisms*

b) The temporary closure of the east (right-hand side as you travel into Essex) tunnel to vehicles not otherwise controlled:

- *for congestion within the tunnel or on the north side of the river here, please also provide the research or other references for the reasons that closure is appropriate.*
- *for the extraction of vehicles considered unsuitable for this tunnel*
- *for the extraction of vehicles either that are deemed to require escort or control*
- *for the extraction from this tunnel of vehicles breaking down or in accidents*
- *The process of dealing with fires/evacuation, including the engagement of any fire prevention/suppression mechanisms*

c) The triggers for and process for the reversal of the flow(s) to accommodate the suspension of bridge (complete or partial).

d) The process of recovery of accidents/breakdowns on the bridge

e) The process of recovery of accidents/breakdowns not on the bridge or in tunnels but otherwise still within the domain of your control.

f) Please also provide the documents defining the geographic area for which all the disclosed procedures apply; including all documented procedures for notifying the bodies responsible for those area immediately beyond you control.

However, the request was withdrawn and on 20 November 2016 the request was refined, also via the WDTK website

https://www.whatdotheyknow.com/request/dartford_crossing_operating_pro_c_2

(<http://bit.ly/2nCXhOB>) for:

PROTECT

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I would like to request the documented operating manual/procedures covering the following processes :-

a) The temporary closure of the west (left-hand side as you travel into Essex) tunnel to vehicles not otherwise controlled:

- for congestion within the tunnel or on the north side of the river*
- here, please also provide the research or other references for the reasons that closure is appropriate and necessary.*
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- for the extraction of vehicles considered unsuitable for this tunnel*
- for the extraction of vehicles either that are deemed to require escort or other control*
- for the extraction from this tunnel of vehicles breaking down or in accidents*
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b) The temporary closure of the east (right-hand side as you travel into Essex) tunnel to vehicles not otherwise controlled:

- for congestion within the tunnel or on the north side of the river here, please also provide the research or other references for the reasons that closure is appropriate.*
- for the extraction of vehicles considered unsuitable for this tunnel*
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f) Please also provide the documents defining the geographic area for which all the disclosed procedures apply; including all documented

PROTECT

procedures for notifying the bodies responsible for those area immediately beyond your control.

5. Highways England sought clarification of the request on 12 December 2016 and this was provided the same day. Highways England provided its response on 27 January 2017 and refused to provide the requested information citing section 24(1) of the FOIA as its basis for doing so.
6. Following an internal review Highways England wrote to the complainant on 7 March 2017 and maintained its original response.

Scope of the case

7. The complainant contacted the Commissioner 20 March 2017 to complain about the way his request for information had been handled.
8. The complainant explained that the request was for parts of the operating procedure manual defining the actions permissible and taken by the controllers of the Dartford crossing against certain scenarios that cause undue delay on a daily basis to thousands of commuters.
9. At internal review the complainant asked some additional questions as he had concerns that the operator of the tunnel and bridge can claim 'National Security concerns' for what is a major crossing point at the time of request only a minor road.
10. He went on to state that given the highly inefficient actions that occur on a daily basis around the aspects of the operation requested, his suspicion was that no manual existed.
11. The Commissioner considers the scope of this case to be to determine if the HE has correctly applied section 24(1) to the withheld information.

Reasons for decision

Section 24 – national security

12. Section 24(1) states:

“Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.”

13. Section 24(1) provides an exemption from the duty to disclose where this is reasonably required for the purposes of national security.

PROTECT

Consideration of this exemption involves two stages; first, the exemption must be engaged due to the requirements of national security. Secondly, this exemption is 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.

14. The FOIA does not define the term national security. However in *Norman Baker v the Information Commissioner and the Cabinet Office*¹ the Information Tribunal was guided by a House of Lords case, *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, concerning whether the risk posed by a foreign national provided grounds for his deportation. The Information Tribunal summarised the Lords' observations as follows:

- "national security" means the security of the United Kingdom and its people;
- the interests of national security are not limited to actions by an individual which are targeted at the UK, its system of government or its people;
- the protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;
- action against a foreign state may be capable indirectly of affecting the security of the UK ; and
- reciprocal co-operation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security.

15. Furthermore, in this context the Commissioner interprets 'required for the purposes of' to mean reasonably necessary. Although there has to be a real possibility that the disclosure of requested information would undermine national security, the impact does not need to be direct or immediate. The exemption will, therefore, be engaged if it is reasonably necessary for the purpose of safeguarding national security for the requested information to be withheld.

16. HE explained that paragraph 39 of the ICO guidance on section 24 states:

¹ (EA/2006/0045)

PROTECT

“Under section 24(3) a Minister can issue a certificate stating that either the exemption from the duty to communicate the information, (section 24(1)), or exemption from the duty to confirm whether the requested information is held (section 24(2)), is required for the purpose of safeguarding national security”.

17. It considered that the use of the word ‘can’ indicates that the provision is permissive; and that the requirement is not mandatory. Therefore, a ministerial certificate was not obtained from the Secretary of State for Transport but the exemption was based on the outcome of the public interest test carried out by staff with the relevant expertise in the subject.
18. In its response to the complainant dated 27 January 2017, HE provided additional information regarding particular requirements to maintain a safe environment for all users of the tunnels.
19. HE stated that the current national security threat level is at ‘substantial’ meaning that a terrorist attack is considered highly likely and recent attacks in continental Europe and the Middle East have involved the use of heavy goods vehicles for an attack purpose.
20. In addition to this, there have been attacks at transport hubs, most notably at Brussels airport and Maalbeek metro station in central Brussels.
21. The Commissioner accepts that the above demonstrates that transport networks are likely targets for terrorist attacks but must also consider whether disclosing the requested information would be likely to increase the risk of such an attack.
22. The Commissioner has reviewed a copy of the withheld information, running in excess of 250 pages. It details how HE would deal with major incidents and emergencies, as well as access points for emergency vehicles. It also contains details relating to maintenance procedures and safety patrols.
23. The Commissioner is satisfied that disclosure of this information could assist any individual or organisation in planning a targeted attack on the crossing which carries thousands of goods and passenger vehicles on a daily basis.
24. Taking all the above into account, the Commissioner’s view is that in this case, the exemption from the duty to disclose in relation to the information in question is reasonably required for the purposes of national security. She therefore considers that the exemption provided by section 24(1) of the FOIA is engaged.

PROTECT

Public interest test

25. Section 24 is a qualified exemption and so it is nevertheless necessary to consider whether the public interest favours maintaining the exemption or disclosing the information.
26. In forming a conclusion on the balance of the public interest in this case, the Commissioner has taken into account the considerable public interest inherent in the maintenance of the particular exemption, as well as the specific factors that apply in relation to the requested information.

Public authority's arguments in favour of disclosing the information

27. There is a clear public interest in the work of government being closely examined to encourage the discharging of public functions in the most efficient and effective way.
28. There is an important public interest in the work of public bodies being transparent and open to scrutiny to increase diligence and to protect the public purse.
29. The complainant has not advanced any public interest arguments in favour of disclosing the requested information.

Public authority's arguments in favour of maintaining the exemption

30. The Dartford crossing has been classified by the Department for Transport and by the Centre for the Protection of the National Infrastructure (CPNI), as a high category risk Critical National Infrastructure and is one of the highest category risks on the national road infrastructure.
31. The release of any information relating to procedures and processes for tunnel operations would be of potential value to a terrorist organisation which could use this information in searching for perceived vulnerabilities.
32. The procedures and method statements for the Dartford tunnels and QE2 bridge include details on managing the extraction of high risk goods vehicles (heavy goods vehicles carrying hazardous loads) and this material could be used by terrorist groups to identify potential weaknesses, helping the terrorists to develop an attack strategy and placing the structures at severe risk.
33. The Dartford crossing plays an important role in the national connectivity of the strategic road network. Any attack on this crucial gateway would have significant implications not only for public safety

PROTECT

but for the national and regional economy. It is not in the public interest to publish any details of the procedures for managing goods vehicle movements at the Dartford crossing.

Balance of the public interest

34. In any situation where section 24(1) is found to be engaged, the Commissioner must recognise the public interest inherent in this exemption. Safeguarding national security is a matter of the most fundamental public interest; its weight can be matched only where there are also equally fundamental public interests in favour of disclosure of the requested information.
35. In this case the public interest in the maintenance of the exemption concerns preserving the ability of HE to ensure security of the Dartford crossing and connectivity of the strategic road network. The Commissioner finds the public interest in these efforts not being undermined or circumvented weighs overwhelmingly in favour of the maintenance of the exemption.
36. The Commissioner does not consider that the public interest in disclosing the information matches the weight of the public interest in avoiding a disclosure that could be detrimental to national security. The finding of the Commissioner is, that the HE has correctly applied section 24(1) of the FOIA to the withheld information and the public interest in the maintenance of the exemption outweighs the public interest in disclosure.

Section 10 – time for compliance

37. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
38. Section 8(1) of the FOIA states that requests for information should be in writing, bear the name and address of the applicant, and describe the information requested. The Commissioner considers that the request in this case fulfilled these criteria, and therefore constituted a valid request under the FOIA for recorded information.
39. Section 10(1) of the FOIA provides that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
40. The request was received on Sunday 20 November 2016, therefore a response was due on 16 December 2016. HE requested clarification on 12 December 2016 and the complainant responded the same day.

PROTECT

41. The Commissioner's guidance² states:

Section 10 of the Act sets out the time frames within which a public authority must respond to an FOIA request.

- It applies whenever the public authority has:
 - o a duty under section 1(1)(a) confirm or deny whether the information is held;
 - o a duty under section 1(1)(b) to provide information that is held to the requester;
 - o a duty under section 17 to issue a refusal notice explaining why a request has been refused.
- Authorities must respond to requests promptly, and by the twentieth working day following the date of receipt of the request.
- A working day is any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.
- Where required, an authority may claim a reasonable extension of time to consider the public interest test. An extension beyond an additional 20 working days should be exceptional.
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- If the authority needs further details to identify or locate the information, then the 20 working days will commence the day after it receives the required clarification from the requester.

42. In this case HE requested clarification within 20 working days and therefore the response was not then due until 9 January 2017. HE wrote to the complainant advising that it needed additional time to consider the public interest test.

43. Although it is not best practice to inform a requestor that an extension is required on the twentieth working day, it is permissible. The final response was then issued a further 15 working days later on 27 January 2017.

² <https://ico.org.uk/media/for-organisations/documents/1165/time-for-compliance-foia-guidance.pdf>

PROTECT

Other matters

44. The complainant raised concerns about Highways England's process of tracking requests. He stated that the response was issued via the link to the withdrawn request of 19 November 2016 rather than the refined request made on 20 November 2016.
45. The Commissioner has no remit to specify how a public authority monitors or tracks the progress of requests, only that it should follow the guidance she provides.

PROTECT

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Right of appeal

46. 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

47. 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.

48. 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**