

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 July 2019

Public Authority: Highways England
Address: National Traffic Operations Centre
3 Ridgeway
Quinton Business Park
Birmingham
B32 1AF

Decision (including any steps ordered)

1. The complainant has requested from Highways England (HE) the names of the local authorities with litter clearing responsibilities it intends to issue a briefing note to.
2. The Commissioner's decision is that, on a balance of probabilities, HE does not hold information within the scope of the request.
3. The Commissioner does not require HE to take any steps.

Request and response

4. On 29 October 2018, the complainant wrote to HE and requested information in the following terms:

"Please refer to this e-mail from Highways England to [Redacted]

Please let me have a copy of the following items referred to in it.

1. *The mandatory requirements*
2. *The briefing note produced to help partnership working*
3. *The similar note to be issued to Local Authorities with litter clearing*

responsibilities on HE trunk roads

4. The names of those local authorities"

5. HE responded on 27 November 2018. It provided the information requested under points 1-2 of the request. In regard to point 3, it said it sent the complainant a draft of the briefing note to be issued to local authorities with litter clearing responsibilities, this was eventually provided on 29 January 2019. In regard to point 4, it said that as the briefing note had not yet been issued it does not hold the names of the local authorities it would be sent to.
6. On 29 November 2018 the complainant wrote to HE. In regard to point 4 he said: *"You either hold a list of local authorities with litter clearing responsibilities or you do not. The fact that you have yet to send them a particular document because it is still in draft is irrelevant."*
7. On 25 January 2019 HE conducted a review and wrote to the complainant maintaining its original position.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. His complaint was specifically that HE did not provide him with the information under point 4 of his request.
9. The Commissioner has considered whether on the balance of probabilities, HE holds the names of the local authorities with litter clearing responsibilities it intends to send the briefing note (mentioned at point 3 of the request) to.

Reasons for decision

Section 1 of the FOIA – information held

10. Section 1(1)(a) of FOIA states that, *"Any person making a request for information to a public authority is entitled – to be informed in writing by the public authority whether it holds information of the description specified in the request"*. Section 1(1)(b) of FOIA states that, *"If that is the case, to have that information communicated to him"*.
11. In scenarios where there is some dispute about the amount of information that a complainant believes might be held, the Commissioner, following the lead of a number of First-tier Tribunal

decisions, applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.

12. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.

The complainant's submission

13. The complainant believes that the information is held because HE does not need to issue the briefing note in order to have created a list of intended recipients (the name of the local authorities). He says that local authorities work in co-ordination and partnership with HE generally when undertaking their litter clearing responsibilities, for example, when HE closes a lane for maintenance work they inform the local authority so their workers can access the verges in safety to remove litter, and therefore HE would generally hold the identity of the local authorities the briefing note would be sent to.

HE's submission

14. HE has confirmed to the Commissioner that it did not hold a list of the local authorities it intended to send the briefing note to at the time the request was received. It has clarified that although it stated in the email dated 1 October 2018 that it would issue the briefing note directly to local authorities, it in fact intended and still intends to send the document to the authorities via the Department for Transport (the DfT) and the Housing, Communities and Local Government Ministry (the Ministry) because it says that this is the most efficient way of ensuring it captures all the relevant local authorities. HE also explained that although its regional operations departments will have contact with local authorities within their regions, HE does not hold a centralised general list of all local authorities. Because of the scope of the request (for a list of all local authorities the document was to be issued to), HE's intention to disseminate the document via the DfT and Ministry and the understanding that a general list of all local authorities is not held by it, HE says it did not conduct searches for the requested information.

The Commissioner's view

15. The Commissioner notes the scope of the request is for the names of the local authorities the briefing note would be sent to, she also notes that HE has clarified and confirmed its intention to send the document via the DfT and the Ministry and not directly to local authorities. The Commissioner has considered HE's explanation as to why no searches were carried out for the information. She is satisfied that in the circumstances of this case it was not necessary to carry out any searches. The Commissioner has concluded that on the balance of probabilities, HE does not hold the names of the local authorities with litter clearing responsibilities the briefing note would be sent to.

Other matters

16. During the course of the Commissioner's investigation the complainant said that the scope of his request was for a general list of all local authorities held by HE. The Commissioner however notes the wording of the request under point 4, specifically; referring to point 3 ("*The similar note to be issued to Local Authorities with litter clearing responsibilities on HE trunk road*") and asking for "the names of those local authorities". It is therefore her view that the scope of the request at point 4 is the names of local authorities with litter clearing responsibilities the briefing note would be sent to and not a general list of all local authorities with litter clearing responsibilities held by HE.

Right of appeal

17. 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

18. 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.
19. 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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