

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 December 2020

Public Authority: Highways England

Address: Piccadilly Gate
Store Street
Manchester
M1 2WD

Decision (including any steps ordered)

1. The complainant has requested information about penalty charge notices for late payment of the Dartford crossing charge. Highways England's response indicated that it did not hold some of the requested information. It has subsequently confirmed that its primary position is that complying with parts of the request would exceed the appropriate cost and time limit under section 12(1) of the FOIA.
2. The Commissioner's decision is as follows:
 - Highways England is not obliged to comply with parts 1 to 3 of the complainant's request as the cost of doing so would exceed the appropriate limit under section 12(1) of the FOIA. The Commissioner finds that no breach of section 16(1) occurred (advice and assistance).
3. The Commissioner does not require Highways England to take any remedial steps.

Request and response

4. On 14 August 2019 the complainant wrote to Highways England (HE) and requested information in the following terms:

"I would like to make a freedom of information request regarding the exercise of discretion on issuing penalty charge notices for late payment of the Dart Charge.

The information I would like is:

[1] - the number of crossings per year where payment was made late for a crossing and a PCN was issued;

[2] - the number of PCNs issued per year where there were payments made but not allocated for the vehicle at the date of PCN issuance;

[3] - the number of crossings where payment was made within 1 week of crossing and a PCN was NOT issued (i.e. where the Dart administrators used their discretion not to issue a PCN).

[4] - text of any decisions from the independent adjudicator where the complainant had paid the crossing charge late, but before receiving a PCN.

Please provide this for the years 2019, 2018, 2017 and 2016."

5. On 11 September 2019 HE responded. It advised that it does not hold the information requested in parts 1 to 3 of the request, in the required format. HE also said that the cost of compiling the information [in the required format] would exceed the appropriate cost limit under section 12(1) of the FOIA. HE withheld the information requested in part 4 of the request and referred to the General Data Protection Regulation.
6. In correspondence on 12 September 2019 the complainant asked HE to help him reformulate his request to bring complying with it within the cost limit. He asked a number of questions and submitted the following clarification of his request:

"I believe it should be possible to amend my FOI request to provide pseudo anonymous raw data that I can then process further to obtain the statistics of interest within the cost ceiling with your assistance."
7. In its response on 23 September 2019 HE advised the complainant that it is not able to distinguish whether customer payments are intended as credit payments to be held for future crossings, or whether they have been made as late payments for specific crossings.
8. The complainant requested an internal review on 24 September 2019, and HE provided one on 22 October 2019. HE advised the complainant that it did not hold the information he has requested. HE also advised that it cannot release the pseudo anonymous information that the complainant had referred to (vehicle registration numbers) in his correspondence of 12 September 2019. This was because it considered it to be exempt information under section 40(2) of the FOIA because it

is other people's personal data. HE said that, in any case, releasing this information would not address the request as it does not hold the specific information the complainant is seeking (in the request of 14 August 2019).

9. During the Commissioner's investigation, HE confirmed that its primary reason for refusing parts 1 to 3 of the request is that the cost of complying with these parts would exceed the appropriate limit.

Scope of the case

10. The complainant contacted the Commissioner on 7 February 2020 to complain about the way his request for information had been handled. His complaint is focussed on the first three parts of the request.
11. In light of HE's confirmed position, the Commissioner's investigation has focussed on whether HE can rely on section 12(1) of the FOIA to refuse to comply with parts 1 to 3 of the request. She will also consider whether HE could have complied with the obligation under section 16(1) to provide advice and assistance.

Reasons for decision

Section 12 – cost exceeds the appropriate limit

12. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b) to have the information communicated to him or her if it is held and is not exempt information.
13. Section 12(1) of the FOIA says that a public authority is not obliged to comply with section 1(1) if the authority estimates that the cost of doing so would exceed the appropriate limit.
14. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to HE. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
 - determine whether it holds the information

- locate the information, or a document which may contain the information
 - retrieve the information, or a document which may contain the information, and
 - extract the information from a document containing it.
15. Where a public authority claims that section 12(1) of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the applicant refine the request so that it can be dealt with under the appropriate limit, in line with section 16(1) of the FOIA.
16. The information the complainant is seeking concerns the remote payment method called the Dart Charge, associated with the Dartford Crossing. Drivers can pay to cross in advance or until midnight the following day.
17. In its initial submission to the Commissioner HE first discussed its 'Dart Charge' system. It said that the system the complainant has requested information from is complex and contains massive amounts of data. The live system stores the current balance of an account and this is consistently changing almost every few seconds. In the reporting environment HE stores a snapshot of the account balance after every financial transaction. These records are stored in a table which, at 23 October 2020, held over 414 million records alone. To provide a response to the complainant's request HE said it would potentially need to first locate, retrieve and extract, as a minimum:
- 414 million financial transactions
 - over 10 million penalty charge notice (PCN) records
 - over 23 million vehicle registration marks (VRM) records (including detail of when VRMs were active on accounts); and
 - over 15.6 million customer account records (registered accounts and unregistered accounts).
18. HE explained that there would clearly be a time issue as it would have to design 'queries'. HE said that, in any case, if it was to undertake the above process and then anonymise the data then the complainant would not be able to link the various datasets. For example, payments are linked to accounts, and PCNs are linked to accounts and VRMs. If HE were to anonymise the VRM then the complainant would have no way of matching payments.
19. HE said it also has to recognise that having positive credit on an account at the point that a PCN is issued is irrelevant. This is because PCNs are issued when payment has not been made within the discretionary period (by midnight the following day). For example, someone could cross on 23 October 2020 and make a payment on 27 October 2020. This would

generate a PCN which may be issued on 29 October 2020. Making a payment and having credit on 27 October does not mean that the PCN should not be issued. The discretionary period will have been missed and HE said it cannot assume it to be a late payment as the payment on 27 October may be for the crossing which the person makes on 28 October. Without speaking to each user, HE said it could never know their intention ie which crossing they wanted to pay for.

20. In its initial submission HE discussed pseudo anonymising information. It confirmed that it does not hold the information in an anonymised way. To do this HE said it would have to devise a way to consistently pseudo anonymise the data across datasets - this would maintain a way of linking records between tables but take time. Alternatively, it would have to purchase additional software to do this on a mass scale. Free online tools which pseudo anonymise data will probably contain record limits far smaller than HE's datasets need and would involve it passing its data to third parties. HE said it does not consider that this is acceptable. Any purchased software would need thorough testing from HE's IT department and the information security department would probably need to look at it too.
21. HE said that theoretically the information can be anonymised, which would be extremely time consuming. However, it considered doing this would be a pointless task. This is because doing so would render the data useless because it would remove links between datasets which would be critical to the analysis which the complainant wants to carry out.
22. The matter of anonymising information is a matter covered by section 14(1) of the FOIA, rather than section 12. Section 14(1) concerns vexatious requests and can be engaged when the process of redacting or anonymising information would cause the public authority a disproportionate burden. That may well be the case here, but the Commissioner has considered only HE's reliance on section 12 which covers the initial process of locating, retrieving and extracting the requested information.
23. HE went on to say in its submission that even if it was able to pseudo anonymise the data it would still have the problems mentioned above. There would also probably be issues with extracting (eg returning results from datasets containing hundreds of millions of records from joined tables and datasets) and transferring the end results to the complainant. HE said it could insert results into new tables of data but ,again, this would take time as it will probably need to be done in chunks in an effort not to crash or impact on the performance of its reporting service. There is then the issue of these additional tables taking up more storage on HE's reporting server.

24. Concluding its submission, HE confirmed that it does not hold the information requested in a pseudo anonymised way. Further, in order to create this data, it would have to buy in bespoke software. HE said this would be likely to breach the section 12 cost limit, even before considering the work needed to extract the data from the system in order to run it through the anonymising software. In addition, any form of anonymisation, whether pseudo or full, would render the information useless as it would break the links between the datasets which are needed to carry out the analysis the complainant wants. HE maintained its position that it does not hold the information in the format in which the complainant has asked for it and to produce such information ie to locate, retrieve and extract it, would breach section 12 of Freedom of Information Act, as it had noted in its original response to the request. Finally, HE advised that even if the [un-anonymised] information could be produced within the cost limit, anonymising it would not allow the complainant to undertake the analysis required to answer the original questions posed.
25. The Commissioner relayed HE's submission to the complainant and advised that she accepted that HE could not comply with his request within the appropriate cost limit.
26. The complainant disputed HE's position and put forward a number of technical arguments for why HE should be able to provide him with the information he is seeking quickly, and within the cost limit. Some of these arguments can be summarised as follows:
 - Pseudo anonymising data can be done with a few lines of code and an appropriate 'hashing function'; the complainant could set this up in less than a minute if he was familiar with the system; and it would certainly take less than one day.
 - In a typical database environment this would involve just a simple SQL (Structured Query Language) query together with a secret code that HE would retain.
 - HE had said that it would be difficult to filter out information. But whenever you go to their website to make a payment or to make a query, the system retrieves information from this large database in a matter of seconds. HE says it is not possible to retrieve a representative sample of data; again, this is not realistic as it is not hard to do.
 - In a SQL database, to pull out the data the database has clauses called limit clauses and it is possible to put in a limit of 500 or a limit of 10,000 to the end of the query and that restricts the

number of records that are returned. It takes a matter of minutes to export that data.

27. The complainant sent further, related arguments and examples of how it is possible to quickly pseudo anonymise data in a SQL database, so that this work could be done within the cost limit.
28. The Commissioner sent all the complainant's counter-arguments to HE in advance of a discussion about the matter with members of its FOI and Dart Charge teams. The crux of the issue, HE considered, is that the complainant has made assumptions about what systems HE has and how those systems work.
29. HE confirmed that the primary reason for refusing the request is based on its estimate that complying with the request would exceed the appropriate time spent and cost limit. This applies both to HE being able to answer the request itself or to being able to provide the user with the vast quantities of raw data and support required for him to be able to complete the work himself. The main issue is being able to process the required data in a timely manner.
30. HE noted that the complainant had provided theoretical examples of the time taken to run some basic MySQL database queries. In practise, HE explained, these are very different to the queries required for this request.
31. Query run-times are influenced heavily by a range of different factors such as:
 - the complexity of the query
 - the number of joined tables
 - the number and size of records needing to be searched
 - the structure of databases; and
 - the IT hardware & software being used.

This is before you take into consideration building and testing time.

32. Due to the factors mentioned above HE says it is unreasonable and too simplistic to apply to the request the examples the complainant provided. The examples the complainant gave are not comparable. This is because HE, and many other reporting environments, have different setups and capabilities.
33. HE explained that it stores vast quantities of data spread across a number of reporting databases and live systems. Within the databases the data is spread across a large number of data tables and often involves intricate processing in order to create meaningful and relevant datasets. It is rare for raw data to be held in the format that people

want. In effect new datasets have to be created, drawing from different databases and many different tables of data. HE says it would have to materially alter datasets to comply with the request; they are not ready to extract in their existing form. For context, providing data for an internal audit, requiring around 40 bespoke individual data files (500mb in total), took around two weeks to complete.

34. With the volumes of data involved, HE says that even if it could process the data in reasonable timeframe it would also need to source suitable media, along with secure delivery, to transfer the data to the requester. This would take more time and increase its costs further.
35. HE also explained that it is also not possible to provide a meaningful dataset by reducing the scope of the request to make use of representative time periods (eg one weeks' worth of data). In that example it would need a minimum of many months' worth of data in order to make the dataset meaningful. This is because too much data is naturally spread over a long period of time. For example, some PCNs, in particular those issued abroad, can take months to be issued to the road user.
36. Picking a few weeks' worth of data would not be representative because too many PCNs would get missed. Also, relevant payments can be spread over a large time period so if HE reduced the time period significantly it would likely miss a good number of payments and account balances out of the dataset. There would also still be issues around processing time - even if it could reduce the time period to weeks - given the high number of crossings, PCNs, payments, appeals etc that HE records each day.
37. Finally, HE confirmed that it is unlikely that it could ever provide a meaningful dataset for the complainant. This is because it is impossible to distinguish between payments which are intended for future crossings and late payments intended for previous crossings.

Conclusion

38. As noted, the complainant's arguments are based on assumptions about HE's systems and how those systems work. Those systems are, in fact, a good deal more complex than the complainant has assumed and not comparable to systems with which he is familiar. The Commissioner is satisfied that HE has considered the complainant's arguments carefully, which has led it to confirm that it cannot provide the information he is seeking within the cost limit. HE has noted that it took two weeks to provide information from the database for the purpose of an internal audit. In addition, to comply with the request, HE says it would need to

source suitable media and secure delivery. This would increase the costs further.

39. The Commissioner has considered the volume of information covered by the request and how HE holds the relevant information. She has decided that HE is not obliged to comply with the request as to do so would exceed the time and cost limit under section 12(1) of the FOIA, of 18 hours and £450.

Section 16 – advice and assistance

40. Under section 16(1) of the FOIA, a public authority has a duty to provide an applicant with advice and assistance, so far as it would be reasonable to expect the authority to do so.
41. The Commissioner's view is that, where a public authority refuses a request under section 12 of FOIA, section 16(1) creates an obligation to provide advice and assistance on how the scope of the request could be refined or reduced to avoid exceeding the appropriate limit.
42. The Commissioner's published guidance on section 12 advises that where it is reasonable to provide advice and assistance in the particular circumstances of the case, the minimum a public authority should do in order to satisfy section 16 is:
- either indicate if it is not able to provide any information at all within the appropriate limit; or
 - provide an indication of what information could be provided within the appropriate limit; and
 - provide advice and assistance to enable the requestor to make a refined request.
43. The complainant considers that HE has a legal duty to engage with him to help him formulate his request. He says he expected some 'back-and-forth' with HE, with lists of what data it has, what it can share freely and what data is sensitive. The complainant says he could then work with HE to piece together the easiest route forward.

Conclusion

44. In the Commissioner's view, no breach of section 16(1) occurred in this case. In its response to the request of 11 September 2019 and its reference to section 12, HE advised that it was not possible to distinguish between payments made in advance of a crossing and payments which have been received late. That seems to be fundamental to the issue. HE discussed section 16 in its internal review response of 22 October 2019. HE noted that section 16 requires a public

authority to provide advice and assistance only in so far as it is reasonable to do this. HE confirmed that in this case here is no way of narrowing the scope of the request sufficiently and still provide a meaningful data set. It therefore did not offer advice and assistance and made an outright refusal instead.

45. The Commissioner considers that, through its internal review response, HE satisfied the minimum requirement of section 16 and, in the circumstances, the Commissioner finds that was adequate. HE advised that it was not possible to meaningfully narrow the scope of the request, ie to provide any information at all, and the Commissioner is satisfied that that was and is the case.

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@justice.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

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