

**Freedom of Information Act 2000 (FOIA)  
Environmental Information Regulations 2004 (EIR)**

**Decision notice**

**Date:** 27 July 2021

**Public Authority:** Highways England  
**Address:** Piccadilly Gate  
Store Street  
Manchester  
M1 2WD

**Decision (including any steps ordered)**

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1. The complainant has requested information broadly on the subject of alleged image tampering by a third party evidencing damage to Highways England. Highways England categorised the request as vexatious under section 14(1) of the FOIA and refused to comply with it.
2. The Commissioner's decision is that the request is a vexatious request under section 14(1) of the FOIA and Highways England is not obliged to comply with it.

**Request and response**

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3. On 17 February 2020 the complainant made a request to Highways England (HE) in the following terms:

*"In March 2019, I raised a concern about suspected image tampering with your Green claims team. I sought an explanation for this conduct and the 'completed' images for an incident (one of over 20) at the same location. Despite repeated requests to your handler, I am without an explanation. It appears someone has altered an image of a repair. This conduct gives rise to suspicion, it should not occur.*

*Your lawyers have written with regard to my allegation images in this claim have been tampered with that I have provided no evidence in*

*support of this and that you reserve all rights against you in relation to these unfounded and defamatory comments.*

*08/02/2020, I sought an update with regard to the investigation of this behaviour and to be provided with all information associated with the relevant dates.*

*I have heard no further. I am now seeking the information formally, in accordance with FoIA."*

4. HE responded on 19 February asking for clarification, specifically on what the information requested on 8 February 2020 was. HE pointed out if an update was sought on 8 February then, in line with its service standards, it would respond within 15 working days and this had not yet expired. HE suggested the complainant had duplicated correspondence when this had not been necessary.
5. The complainant responded on the same date and referred to an earlier freedom of information request (FOI 100642) in which similar information (exchanges between HE's Green Claims Department and its contractor Kier) had been requested and refused.
6. The complainant wrote with further clarification, again on 19 February 2020, citing a previous request as follows:

*"I am seeking the following:*

*1. All activity from 26/03/2019 to the present, clearly this should have involved a 'business as usual' response or an explanation for the failure to respond within 15 working days*

*2. The escalation of the tampering issue to a manager. I asked for this to occur.*

*I anticipate receiving all records relating to the investigation of the conduct associated with the images and ascertaining whether more than one repair occurred at the subject location. Your handler assured me they would return to the contractor (these exchanges are the subject of a sperate [sic] request) but did not.*

*The original request reflects that made 26/02/2019 in which:*

*3. I asked for:*

*'Of the 17 images provided, 7 are 'compressed' or not original.*

*Please provide all images uncompressed for:*

- a. *The incidents in respect of which images have been supplied (compressed)*
- b. *The subject incident 02/06/2018 (it is absurd these images have been withheld)*
- c. *Those occurring on the following date in respect of which no images have been supplied:*
  - i. *30/07/2017*
  - ii. *21/07/2018*
  - iii. *10/10/2018*
  - iv. *02/12/2018*
  - v. *04/02/2019*
- d. *All 'completed' works correspondence i.e. repairs undertaken for the above and details of the parties billed, the insurer'*

*I explained, it is not known why images for 30/07/2017 have not been supplied whereas images for incidents either side have been. Similarly, it not known why images have not been provided for*

*02/06/2018 – TR43853 subject incident  
21/07/2018  
10/10/2018  
02/12/2018  
04/02/2019*

*This request extends to all claim/incident information which I also ask to be provided for incidents:*

- a. *22/11/2016 (25677)*
- b. *09/03/2017 (29199)*
- c. *20/03/2017 (29640)*
- d. *29/03/2018*

*4. A copy of all information on file provided to Knights"*

7. HE responded on 15 May 2020 refusing the request as vexatious under section 14(1) of the FOIA. HE explained the request alleged wrongdoing and fraud on the part of HE and Kier Highways. HE also stated that any further requests on the subject of Kier and the third-party claims process for the areas they operate the ASC contract for HE in, would be considered vexatious under section 14(1).
8. As the request was refused under section 14(1) HE did not conduct an internal review and the Commissioner accepted the complaint for investigation.

## **Scope of the case**

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9. The complainant contacted the Commissioner following the lack of internal review to complain about the way his request for information had been handled.
10. The Commissioner considers the scope of her investigation to be to determine if HE has correctly refused to provide the requested information on the basis of section 14(1) of the FOIA.

## **Reasons for decision**

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### **Section 14 – vexatious requests**

11. Section 1(1) of the FOIA provides a general right of access to recorded information that is held by public authorities. However, section 14(1) of the FOIA says that section 1 does not oblige a public authority to comply with a request for information if the request is vexatious
12. The term 'vexatious' is not defined in the FOIA but the Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in her published guidance and, in short, they include:
  - Abusive or aggressive language;
  - Burden on the authority;
  - Personal grudges;
  - Unreasonable persistence;
  - Unfounded accusations;
  - Intransigence;
  - Frequent or overlapping requests; and
  - Deliberate intention to cause annoyance.
13. 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.
14. The Commissioner's guidance goes on to suggest 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 on it and balance this against the purpose and value of the request.
15. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.

16. In its submission to the Commissioner, HE has explained that this request is one of many it has received from the complainant on the same topic. That is the matter of the third-party claims process for damage to the strategic road network and the alleged fraudulent actions of contractors HE employs to maintain and repair the network. For the purposes of this request that is Kier.
17. HE has explained that most of these requests have been about the rates charged by Kier either to third parties or to HE and they have always appeared to have an underlying theme of accusation of fraud or wrongdoing by either or both parties.
18. That being said, HE has dealt with these requests in various responses explaining what is held but is commercially sensitive or what is not held. HE has noted that the Commissioner has made decisions in other complaints the complainant has brought to her about similar matters, and that the First-tier Tribunal (Information Rights) ('the FTT') promulgated related decisions in EA/2018/0104 and EA/2019/0119
19. With regard to this request; HE points out this is again on the topic of Kier Highways and third party claims although this time there are accusations that Kier has altered photographs sent in to evidence the damage and repair. The request is therefore accusing Kier and, by association, HE of fraud. HE argues the complainant has provided no evidence of this.
20. As such HE considers that these unfounded accusations alone classify the request as vexatious, particularly when considered in the context of previous requests to HE on the same topic.
21. HE also argues the request is vexatious due to the frequent and overlapping correspondence with HE on the subject. HE states the requester has been in contact with various departments about this issue and the request in this case was made only seven working days after the requester had sent an e-mail that in itself was following up on a previous email. HE has provided the Commissioner with copies of the relevant correspondence.
22. HE acknowledges that the complainant is within their rights to make an information request but considers this demonstrates the tendency of the requester to overlap emails and requests and correspond with different areas of HE, asking questions of one area and rather than waiting for a response asking the same questions to a different team.
23. The Commissioner deals with a high volume of complaints from the complainant. She has previously instructed him to send correspondence about specific cases to the relevant case only. As such she was prepared

to consider this case solely on any submission the complainant sent to this specific case, and on HE's submission.

24. Other than stating the request had been refused on spurious grounds and facts misrepresented the complainant did not send any specific arguments to this case to support a position that this request is not a vexatious request or that the information being sought has a wider value. The Commissioner has however taken into account any arguments provided in the correspondence on the WhatDoTheyKnow thread that this request relates to.
25. The Commissioner must also take account of the public interest of the information being requested. On that matter, she notes the Upper Tribunal (UT) decision in GIA/2782/2017. The UT noted that a compelling public interest in information's disclosure does not automatically 'trump' any consideration of the resource burden involved in complying with that request, such that the request cannot under any circumstances be regarded as vexatious. All the circumstances of each request need to be considered.
26. The Commissioner has first looked at the volume and frequency of the requests and correspondence on this particular subject. The complainant has been making enquiries and requests regarding alleged image tampering since March 2019. The complainant himself, in his correspondence with HE about this request, details what he describes as a 'brief continuity' of his exchanges which amounts to seven emails about tampered images.
27. The complainant's correspondence with HE also refers to an information request made on [12 December 2019](#) and the response from HE of 4 February 2020. This request appears to relate to correspondence between HE and Kier and has been quoted as an example of HE attempting to deal with requests as 'normal course of business'.
28. The Commissioner considers this demonstrates the overlapping nature of the complainant's correspondence and requests to HE about third party claims and Kier Highways alleged failures. The Commissioner also notes that HE has provided evidence of the overlapping correspondence regarding the alleged image tampering resulting in this request being made before HE had the opportunity to respond to the previous email within its stated service standard of 15 working days.
29. The Commissioner considers this request demonstrates the frequent and overlapping nature of the requests made on this specific subject of image tampering but also the slightly wider topic of third party claims and alleged misconduct.

30. It is not for the Commissioner to comment on whether the allegations made by the complainant have any merit; however it is clear that this request and the correspondence around this make allegations about Kier and HE and suggest there has been deliberate tampering of images. HE considers that the complainant has provided no evidence of this and in fact it instructed lawyers to write to the requester to reiterate that no evidence had been provided to support the allegations and that they were 'unfounded and defamatory'.
31. The complainant has submitted no evidence to the Commissioner that would indicate there might be a basis for these allegations and again she stresses she would not be in a position to comment on this in any event. What is clear is that HE has made it clear to the complainant that it considers the accusations to be defamatory and spurious and from HE's perspective these are unfounded allegations. As such the Commissioner considers this assists in characterising the request as vexatious.
32. The complainant has not made a case for the value of the specific information they have requested. The Commissioner has not been persuaded that the requested information is of sufficient wider public interest to balance out the impact on the public authority that will likely result from responding to this request. The Commissioner's view is that this will lead to continued, frequent, overlapping correspondence and requests, further allegations of wrongdoing and a diversion of resources from core functions that cannot be justified by any wider value in the information.
33. Any public interest in HE demonstrating that it is open and transparent has been met, in the Commissioner's view, through information that HE has released in response to previous requests from the complainant on broadly related matters.
34. Having considered all the circumstances, the Commissioner finds that HE is entitled to rely on section 14(1) of the FOIA to refuse to comply with the request in this case

## Right of appeal

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35. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

36. 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.
37. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**