

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 April 2021

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

Decision (including any steps ordered)

1. The complainant has submitted six requests to Highways England (HE) about emails, email addresses and pension contributions. HE has categorised the requests as vexatious requests under section 14(1) of the FOIA and has refused to comply with them.
2. The Commissioner's decision is as follows:
 - The complainant's six requests can be categorised as vexatious requests under section 14(1) of the FOIA and HE is not obliged to comply with them.
3. The Commissioner does not require HE to take any remedial steps.

Request and response

4. On 15 June 2020 the complainant wrote to HE and submitted the following six, separate requests:

Request 1:

"For each of the 2011/12, 2012/13 and 2013/14 tax years, please would you provide an answer of either "zero" or "more than zero" for

the number of emails sent to or from any Highways Agency email address and the email address [email address].

So for example:

2011/12: More than zero

2012/13: More than zero

2013/14: More than zero"

Request 2:

"For each of the 2017/18, 2018/19 and 2019/20 tax years, please would you provide an answer of either "zero" or "more than zero" for the number of emails sent to or from any Highways England email address and the email address [email address].

So for example:

2017/18: More than zero

2018/19: More than zero

2019/20: Zero"

Request 3:

"1. Please would you provide the most recent NRTS1 job title associated with email address [email address]

2. If applicable, please would you provide any previous NRTS1 job titles associated with email address [email address]"

Request 4:

"1. Please would you provide the current NRTS2 job title associated with email address [email address]

2. If applicable, please would you provide any previous NRTS2 job titles associated with email address [email address]"

Request 5:

"For NRTS1 employees that were employed through Flour, please would you confirm:

(a) the maximum available percentage of salary employer pension contribution per year (as a percentage of salary); and

(b) the maximum permitted employee pension contribution per year (as a percentage of salary)”

Request 6:

“For NRTS2 employees employed through Telent, please would you confirm:

(a) the maximum available percentage of salary employer pension contribution per year (as a percentage of salary); and

(b) the maximum permitted employee pension contribution per year (as a percentage of salary)”

5. HE responded on 26 June 2020. It refused the requests under section 14(1) of the FOIA as it considered them to be vexatious requests.
6. HE provided an internal review on 24 July 2020. It upheld its position that the above six requests are vexatious.

Scope of the case

7. The complainant contacted the Commissioner on 25 July 2020 to complain about the way their requests for information had been handled.
8. The Commissioner has considered whether HE can rely on section 14(1) of the FOIA to refuse to comply with the complainant’s six requests.

Reasons for decision

Section 14– vexatious and repeat requests

9. Under section 14(1) of the FOIA a public authority is not comply with a request for information if the request is vexatious.
10. 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 – the guidance allows for public authorities to claim redaction as part of the burden
 - Personal grudges

- Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance
11. 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.
 12. 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.
 13. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
 14. In their complaint to the Commissioner the complainant has disputed that their requests are vexatious, arguing that none of the requests are taxing or would involve significant time or cost to answer.
 15. In its submission to the Commissioner HE has explained why it is relying on section 14(1). The Commissioner will broadly summarise that explanation below; she does not intend to include the detail in this notice.
 16. Although they complained to the Commissioner about six of them, HE has first noted that the complainant submitted seven requests on 15 June 2020. HE says that these were the latest of a number of requests about the National Road Telecommunications Service (NRTS) 1 and 2 that it had recently received from the complainant and an individual it believes to have been the complainant using a pseudonym. HE says it is not looking back at the requests it believes were submitted pseudonymously but has referred to them because they are relevant to the case.
 17. HE has listed four requests that the complainant and the second individual submitted prior to the current requests; one in February 2020 and three on 17 May 2020. HE's submission is not quite clear but appears to suggest it also received additional requests. Those requests and the four listed requests concerned NRTS 2, off-payroll workers and HE's tax evasion policies, and the email correspondence of a named individual. HE says that in retrospect it should have categorised some of

those requests as vexatious as they targeted one individual but at that point it had not made the particular link that it has now made.

18. HE has explained why it originally judged the requests to be vexatious on the basis first, that they were frequent and overlapping as seven had been submitted on the same day. HE says it believes seven requests were made because it had refused one of the complainant's previous requests (of 19 February 2020) under section 12(1) of the FOIA on the basis of cost. HE considers that the complainant potentially thought that, by splitting up the requests, complying with them would not exceed the cost limit. HE acknowledged that it could have aggregated the seven requests and still relied on section 12(1) but, in the circumstances – seven requests on broadly the same subject being submitted on the same day – HE considered that section 14(1) was the more appropriate approach to these requests. HE says it had also considered that the requests demonstrated a scattergun approach because, although all the requests pertain to NRTS, they appear to have been made with no real idea of what would be revealed.
19. However, based on the previous requests received and evidence it has put forward to the Commissioner, HE says it now believes it understands the motive behind the requests. HE considers that the complainant submitted their requests in the hope of revealing perceived wrong-doing by one individual as the result of what appears to be a pre-existing grudge against that individual. In essence, HE says, there is only a personal motive behind the requests and no wider public interest.
20. HE has described the wider circumstances it considers are behind the complainant's requests, which it became aware of following its internal review. The Commissioner has considered these circumstances and the supporting evidence and material that HE has provided. Based on this information, she considers that HE's reasoning is credible. Rather than being a genuine attempt to access recorded information from HE, the Commissioner is persuaded that the complainant submitted the requests in order to pursue a personal grudge against one individual. Clearly, that is not why the FOIA was introduced and the information requested has little wider public interest. As such, the Commissioner has decided that the complainant's six requests of 15 June 2020 can be categorised as vexatious requests under section 14(1) of the FOIA.

Right of appeal

21. 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

22. 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.
23. 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