

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 May 2022

Public Authority: National Highways (formerly Highways England)

Address: National Traffic Operations Centre
3 Ridgeway
Quinton Business Park
Birmingham
B32 1AF

Decision (including any steps ordered)

1. The complainant submitted a three-part request for information from the National Highways ("the NH") relating to the decision on moving from one vehicle with a double crew to two vehicles with a single crew to attend incidents during the Covid-19 pandemic, and additional costs involved. The NH provided a response to the request, disclosing information for parts one and two of the request, and cited section 1(1) (information not held) of FOIA to the third part of the request.
2. The Commissioner's decision is as follows:
 - On the balance of probabilities, National Highways does not hold the information the complainant has requested, and its response complied with section 1(1)(a) of the FOIA.
3. However, the Commissioner finds that NH has breached section 10(1) of FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
4. The Commissioner does not require the NH to take any steps.

Request and response

5. On 27 July 2021, the complainant wrote to the NH and requested information in the following terms:

“Can you please provide me with the following information:

Q1: The rationale behind moving to a 2 vehicle single crewing of Traffic Officer Vehicles to incidents including any risk assessments, policy/standard operating procedures.

Q2: If not covered in the response to Q1, why it was decided to adopt the model of having 2 single crew vehicles attend incidents rather than introduce the wearing of Personal Protective Equipment such as face masks and testing which other services adopted (e.g. police/ambulance etc)

Q3: The additional costs associated with the model to include extra fuel costs, extra maintenance and mileage costs.”

6. The NH responded on 25 August 2021 providing an answer to parts one and two of the complainant’s request, and cited section 1(1)(a) of FOIA for part three of the request.
7. On 29 October 2021 at Internal Review, the NH disclosed further information in relation to parts one and two of the request but upheld its position to part three of the request.

Scope of the case

8. The complainant contacted the Commissioner on 3 November 2021 to complain about how the NH’s handled their request.
9. The Commissioner’s investigation has focussed on whether, on the balance of probabilities, the NH holds information within scope of part three of the complainant’s request and has it complied with its obligations in relation to the time for compliance at section 10(1) of FOIA.

Reasons for decision

Section 1 – General right of access to information

10. Section 1(1) of FOIA states that:

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to them.”

11. Section 1(1) requires that any person making a request for information to a public authority must be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.

12. In scenarios where there is some dispute between the amount of information a public authority says is held and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.

13. In other words, in order to determine such complaints, the ICO must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).

The complainant's position

14. The complainant disputes that the NH cannot provide them with the information it should hold in relation to any increased costings involved due to its decision to change the number of crew from two to one in each vehicle, and therefore additional vehicle requirements to attend an incident, due to their Covid-19 pandemic response.

The NH's position

15. The NH argues that it does not hold the figures in relation to part three of the complainant's specific request.

16. It goes on to say that the decision was made to deal with the change under 'Business as usual' terms and therefore any additional costs would

be included directly within the business budget and not held as separate costs.

17. They went on to argue that part three of the request was about how the move to single manning of Traffic Officer vehicles increased costs and not simply how much costs have increased. Therefore, NH would only hold information, in the scope of part three of this request, if it could be directly attributed to single manning of Traffic Officer vehicles.
18. that the NH continued that it would not be possible to determine whether or how much the fuel cost change was down to changes in miles travelled or fluctuations in fuel prices, which is only one of the variables.
19. They also said that any milage, and therefore increased maintenance costs, can vary depending on the number of incidents, and where those incidents take place in relation to vehicle proximity. These cannot be solely attributed to single manning and it has been confirmed that no estimation of this was undertaken. The NH stated that the policy was introduced in the face of the highly dynamic situation posed by Covid-19

The Commissioner's conclusion

20. The Commissioner has considered the NH's position, in conjunction with the request. The Commissioner notes that the wording of part three of the request is important.
21. The complainant's request was for "The additional costs associated with the model to include extra fuel costs, extra maintenance and mileage costs." The NH's interpreted the request to be of the specific costs attributed to the change in policy. The Commissioner agrees with this interpretation of the request.
22. The NH response was that the additional costs associated with this change were absorbed into "business as usual" costs and that no estimate of the costs were produced due to the highly dynamic situation posed by Covid. The NH concludes the information is not recorded in a way that would provide the breakdown required, and therefore the information was not held in relation to the request.
23. The Commissioner considers the explanation provided by NH reasonable as to why it does not hold further information within the scope of part three of the request. Any costs provided in response to part three of the request would not only include any potential costs related to the change in policy, but other variable costs at that time, for example, changes in fuel prices.

24. The complainant suggests the NH should hold the information in such a way that they can work out the costs as part of the policy change, given there would be a marked increase in associated costs.
25. The Commissioner accepts NH position that as information was not recorded in the way specified by the request, NH could not separate the costs to provide this breakdown. The Commissioner is therefore satisfied that information falling within the scope of the request is not held by the NH.
26. There is no contradictory evidence available to the Commissioner that indicates the NH's position is wrong.
27. On this basis the Commissioner has concluded that, on the balance of probabilities, no information falling within the scope of part three of the request is held.

Section 10

28. Section 10(1) of FOIA states that a public authority must respond to a request promptly and "not later than the twentieth working day following the date of receipt".
29. From the evidence provided to the Commissioner in this case, the NH did not deal with the request for information in accordance with FOIA. The Commissioner finds that the NH has breached section 10(1) by failing to respond to the request within 20 working days.

Access Regime

30. The Commissioner considered the request may have been dealt with under the Environmental Information Regulations 2004 (EIR) due to the potential direct impact on the environment. However, the outcome of the Commissioners decision would not be disturbed had the request been considered under the EIR.

Right of appeal

31. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

32. 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.
33. 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

**Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**