

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 February 2023

Public Authority: National Highways
Address: Bridge House,
1 Walnut Tree Close,
Guildford,
Surrey GU1 4LZ

Decision (including any steps ordered)

1. The complainant has requested information about how many people responded on feedback forms about a road scheme, saying they objected to the proposals in general, or objected to the scheme as a whole, expressed as a percentage of the total responses.
2. The Commissioner's decision is as follows:
 - National Highways does not hold information relevant to the complainant's request and has complied with section 1(1) of FOIA.
3. The Commissioner therefore does not require the Council to take any steps.

Request and response

4. On 10 December 2022, the complainant wrote to NH and requested information in the following terms:

"In the Feedback Form for the Jan-March 2022 Statutory Consultation on the Arundel bypass, you stated 'We would like to know what you think about our proposals' (p.2) and 'In this Feedback Form, you are invited to comment on any Section of the proposed route, the

proposals for downgrading the existing A27 through Arundel, or the scheme as a whole' (p. 4). There is no specific question in the Form about the 'proposals' in general or 'the scheme as a whole', but comments on both subjects were invited in the Form.

Please let me know how many people responded saying they objected to the proposals in general, or objected to the scheme as a whole, and express this as a percentage of the total responses."

5. NH responded on 6 January 2023. It stated that:

"I can confirm that under [1]section 1(1)(a) of the Freedom of Information Act 2000, National highways does not hold the Information that you requested. As question 8 in our statutory consultation feedback form is a 'free text' open question, we have not extracted sentiment feedback (support/objection) as a percentage of total responses.

We are, however, in the process of developing our Consultation Report and whilst we will not be providing individual responses to all comments received during the consultation, the Consultation Report will explain how the comments and feedback received have shaped the further development of the Scheme being applied for. This will be published in line with the DCO submission."

6. Following an internal review NH wrote to the complainant on 6 February 2023. It stated that:

"Question 8 on the statutory consultation feedback form was an open question and this feedback has not been extracted because this was not the purpose of the consultation and it would have taken too long to do the analysis of the responses.

Further to your email dated 17 January 2023, you confirmed that you consider that an 'overview' should have included this information and that you will continue to obtain the information by other methods.

In conclusion, I am satisfied that we do not hold the number of objections to the proposal and no further action is required." Scope of the case

7. The complainant contacted the Commissioner on 7 February 2023 to complain about the way his request for information had been handled. The complainant stated:

"I believe it [NH] holds more information than it has sent."

8. The Commissioner has considered whether NH has the "building blocks" necessary to produce the requested information, and whether it has complied with section 1(1) of FOIA.

Reasons for decision

9. Under section 1(1) of 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 them if it is held and is not exempt information.
10. There is no requirement for NH to create information in order to answer a requester's question, its obligation is to supply information it held at the time of the request. However, in the Commissioner's [guidance on determining whether information is held](#) it states:

"If you have the "building blocks" necessary to produce a particular type of information, it is likely that you would hold that information unless it requires particular skills or expertise to put the building blocks together."
11. The more a public authority needs to manipulate the building blocks and the more subjective the terms of the request, the more likely it is that a public authority will not hold the information. NH holds the "building blocks" in that it holds the raw qualitative data. However, the manipulation of the building blocks into quantitative data would require particular skills and expertise.
12. The complainant requested information about how many people said they objected, expressed as a percentage of the total responses. NH received 4429 responses to the questionnaire. It has not counted the number of responses that contained answers to question 8, which was an open question inviting comments. To count the number of responses may be possible but to then analyse those responses for objections would require the application of a linguistic framework to determine the definition(s) of 'object to' and a methodology and statistical analysis that allows for qualitative data to be converted into quantitative data. Therefore, taking into account the expertise that would be required to put those building blocks together the Commissioner is satisfied that NH

does not hold the information. As such, the Commissioner has decided that the Council has complied with section 1(1) of FOIA.

Other matters

13. There is potentially the question as to whether NH should have treated the request under the Environmental Information Regulations ("EIR") instead of under FOIA.

14. Regulation 2(1) of the EIR states:

"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on—

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a)

or, through those elements, by any of the matters referred to in (b) and (c);”

15. The Commissioner finds that the requested information was for a percentage relating to opinions about an environmental issue. These opinions did not constitute part of an economic analysis as described in regulation 2(1)(e), rather a public consultation. The Commissioner is therefore satisfied that NH treated the request under FOIA.

Right of appeal

16. 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-regulatorychamber

17. 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.
18. 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
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Wycliffe House
Water Lane
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SK9 5AF