

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 November 2018

Public Authority: Highways England
Address: Bridge House
1 Walnut Tree Close
Guildford
GU1 4LZ

Decision (including any steps ordered)

1. The complainant requested information about a particular incident that occurred in Area 9 on the M40, which Highways England's contractor, Kier Highways, attended.
2. The Commissioner's decision is that Highways England has correctly applied section 14(1) of the FOIA. However, Highways England breached section 10(1) by providing its refusal notice outside of the time for compliance.
3. The Commissioner does not require Highways England to take any steps.

Request and response

4. On 1 August 2017, the complainant wrote to Highways England and requested information in the following terms:

"On 08/09/2016 at about 15:40hrs an incident occurred in Area 9 M40 S/B 163/8. The incident was attended by Kier Highways Ltd, your contractor."

I am informed that in respect of every incident, Kier Highways Ltd submit electronic records, a log, to Highways England.

I ask to be provided:

Confirmation such a log is provided in respect of every incident

All information you possess about this incident; to include the electronic log

The times associated

The charges; defined costs and TP Claims Overhead breakdown”.

5. As he had not received any response, the complainant sent a further copy of his request to Highways England on 7 September 2017. Highways England replied on 11 September 2017, it apologised and confirmed that the request had not been allocated to the appropriate team to action.
6. On 26 September 2017 Highways England contacted the complainant to ask for clarification of the request. Specifically, it asked for the reference number for the incident. The complainant replied on the same day to confirm that he was not in possession of this reference number.
7. Highways England responded on 30 October 2017. It stated that it considered the request to be vexatious under section 14 of the FOIA and it would not be providing the requested information.
8. Following an internal review, Highways England wrote to the complainant on 27 March 2018 confirming that it maintained its position. It explained that this decision was based on the fact that he was working in concert with a number of individuals, including the Managing Director of the business he works for.

Scope of the case

9. The complainant contacted the Commissioner on 12 December 2017 to complain about the way his request for information had been handled. He disputed Highways England’s decision to refuse his request as vexatious.
10. The Commissioner considers the scope of this decision to be the determination of whether Highways England has correctly refused to comply with the request under section 14(1) of the FOIA.

Reasons for decision

Section 14(1) – Vexatious requests

11. Section 14(1) of the FOIA states that section 1(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. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*¹. The Tribunal commented that vexatious could be defined as the “*manifestly unjustified, inappropriate or improper use of a formal procedure.*” The Tribunal’s definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
13. In the *Dransfield* case, the Upper Tribunal also found it instructive to assess the question of whether a request is vexatious by considering 4 broad issues: (1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff.
14. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather it stressed the “*importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests.*”
15. In the Commissioner’s view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
16. The Commissioner has identified a number of indicators which may be useful in identifying vexatious requests, these are set out in her published guidance². The fact that a request contains one or more of

¹ <https://www.judiciary.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/>

² <https://ico.org.uk/media/1198/dealing-with-vexatious-requests.pdf>

these indicators will not necessarily mean that it must be vexatious. All the circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious.

The complainant's position

17. In this case, the complainant considers that he has made a simple request and it should, therefore, be straightforward for Highways England to provide a response.
18. The complainant argues that disclosure of the requested information is in the public interest as it relates directly to public money. He works for a claims adjuster who challenge claims brought by Highways England, or its contractors, against members of the public for repairs to the highway or other infrastructure caused when an accident has taken place. He believes that members of the public are being overcharged.
19. He is concerned about a lack of transparency regarding the level of fees and argues that the only collusion is between Highways England and their contractor, an argument which he feels is supported by their decision to refuse his request.

Highways England's position

20. Highways England has provided the Commissioner with its reasons as to why it has applied section 14(1) of the FOIA. In doing so, it has considered the history and context leading to this request being made.
21. It explained that the complainant had made 6 requests for information and 4 requests for internal review between 27 October 2015 and 26 October 2017, all on a similar subject matter. The requests relate to Green Claims, contractors and the rates they charge.
22. Highways England explained that during the course of handling the complainant's requests it became clear that he was linked to another requester who had already submitted 34 requests for information and 9 requests for internal review. These requests were for similar information relating to Highways England's contractors charges and defined costs.
23. It believes that the complainant is therefore working in concert with, or at the instigation of, this other requester who is the Managing Director of the company the complainant works for. It confirmed that this is evidenced by their job titles and work email addresses.

24. Highways England has also identified 8 other requesters they believe are linked to the complainant, which it refers to as the "*associated requesters*". It confirmed that it had established the links through posts and comments made on the What Do They Know website³, the dates on which the requests were submitted and the subject matter of the requests. It stated that, in total, these 8 associated requesters had submitted 124 requests for information and 52 requests for internal review to the date of the complainant's request for information.
25. Highways England said that the combined volume of these requests was placing a significant burden on the authority and causing a disproportionate level of disruption.

The Commissioner's decision

26. The Commissioner's guidance on vexatious requests, referenced previously, explains that if a public authority has reason to believe that several different requesters are acting in concert as part of a campaign to disrupt the organisation by virtue of the sheer weight of FOIA requests being submitted, then it may take this into account when determining whether any of those requests are vexatious.
27. If the available information suggests that the requests are genuinely directed at gathering information about an underlying issue, rather than a campaign of destruction, then the authority will only be able to apply section 14(1) where it can show that the aggregated impact of dealing with the requests would cause a disproportionate and unjustified level of disruption, irritation or distress.
28. In this case, by submitting requests for information using his work email address, the Commissioner considers that the complainant is effectively making the request on behalf of his employer. She is satisfied that the complainant is working in collaboration with the company's Managing Director.
29. Additionally, in case FS50716692, which investigated the handling of a request submitted to Highways England by the Managing Director, the Commissioner previously found these 2 requesters were acting in concert.
30. While Highways England also believes that 8 other requesters are linked to the complainant it has not provided sufficient evidence to support

³ <https://www.whatdotheyknow.com/>

this. It confirmed that it has "*not identified any direct link between [the complainant] and the other requestors*". Indeed, Highways England advised that the annotations made on the requests on the What Do They Know website were made by the Managing Director and not the complainant himself. She does not find that the complainant is directly working in concert with these 8 requesters.

31. Nonetheless, it is apparent to the Commissioner that Highways England has dealt with a very large number of requests submitted by the 2 requesters she finds are working in concert.
32. Although section 14(1) is not subject to a traditional public interest test, the Upper Tribunal in the *Dransfield* case confirmed that it may be appropriate to ask the question "*Does the request have a value or serious purpose in terms of the objective public interest in the information sought?*"
33. The Commissioner is aware that the complainant's request of 1 August 2018 can be said to have some serious purpose or value as the requested information is of interest to the motoring public.
34. However, the purpose and value of the request must be weighed against the detrimental effect on the authority.
35. The burden and disruption to Highways England was considered in the Decision Notice issued in case FS50716692⁴. The Commissioner found that "*regardless of the complainant's motives, this has resulted in a large number of requests being made by him and a colleague which has placed a burden on Highways England and which the Commissioner is satisfied some staff now find distressing.*"
36. In this case, taking into account the history and context of the request as shown by the evidence provided by Highways England, the Commissioner considers that the burden on the authority in complying with the request would be disproportionate.
37. She has therefore determined that the complainant's information request was vexatious and so Highways England was correct to refuse to comply with the request under section 14(1) of the FOIA. The Commissioner does not require Highways England to take any steps.

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2259246/fs50716692.pdf>

38. The Commissioner also finds that Highways England has breached section 10(1) of the FOIA by failing to provide the refusal notice within 20 working days.

Other matters

Internal reviews

39. While there is no statutory time frame in which a public authority must complete an internal review, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review, and in no case should the total time taken exceed 40 working days. In this case, Highways England took almost 5 months to complete its internal review.

Right of appeal

40. 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@hmcts.gsi.gov.uk

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

41. 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.
42. 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

Ben Tomes
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