

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 September 2020

Public Authority: Highways England Company Ltd

Address: Piccadilly Gate
Store Street
Manchester
M1 2WD

Decision (including any steps ordered)

1. The complainant made a multipart request for information relating to the cost of repairing damage to the road network, typically caused by road traffic accidents. The complainant pursued complaints in respects of request 1, 2 and 5. In respect of request 1 Highways England Company Ltd (HE) provided the complainant with links to where the requested information could be found. However during the course of the investigation HE identified further relevant information. It explained that the complainant had previously been provided with that information and that therefore it would be exempt under section 21, which the Commissioner accepts. In respect of request 2, HE originally refused the request under section 43 on the basis that it was commercially sensitive. However this was based on a misinterpretation of the request. Once the scope of the request had been clarified during the Commissioner's investigation, it was established that the requested information was not held. In respect of request 5, HE originally advised the complainant that the information was not held. Although this too was based on a misinterpretation of the request, once its scope was clarified, it was established that the information was not held.
2. The Commissioner's decision is that in respect of request 1, by failing to inform the complainant of its application of section 21 – information accessible to the applicant by other means, HE failed to comply with its obligation under section 17 to issue a valid refusal notice. In respect of request 2, the Commissioner finds that HE breached section 1 by failing to inform the complainant that the information was not held. The Commissioner finds that technically HE complied with its

obligations in respect of request 5. The Commissioner has also found that by failing to provide its overall response to the requests within twenty working days HE breached section 10.

3. Given that this decision notice informs the complainant of the developments in this case, the Commissioner does not require the public authority to take any further action in this matter.

Request and response

4. On 10 May 2019 the complainant emailed HE. His email contained a number of questions, requests and lines of argument. HE identified nine elements of that email as being requests made under the FOIA. During the course of the Commissioner's investigation the complainant confirmed that he only wished to pursue a complaint in respect of elements 1, 2 and 5. Those requests were made in the following terms:

1. "Please explain the calculation that is undertaken which results in the defined cost, or DCP Rates, charged to Highways England and Third parties; set it out for me so I can understand how the figure is arrived at, how 'providers' establish on any given date / time the rate to apply."
2. "It is also claimed 'this work is thereby far less efficient than planned repair work in the contract and hence more costly'. Again, I am not taking issue with this, what I wish to know is 'how much more costly?'; give me the figures."
3. ...
4.
5. I have written in respect of specific incident, in an Area on a specific date / time. I am seeking the charges presented to you on the dates. I believed my reference to 'above threshold' rates conveyed this.

Please supply these. For your ease of reference they are, as per my original request: 20/11/2016 21/12/2016"

5. On 11 June 2019 having not received a response the complainant wrote to HE again about its handling of his request. HE took this to be a request to conduct an internal review in respect of the timeliness of its response.

6. On 20 September 2019 HE responded to the request. In respect to part 1 of the request, it said the information had been provided in response to a previous request, i.e. request 769,306. It also provided the complainant with a link where HE's model 'Conditions of Contract for Highways England Asset Support Contracts' was publicly available.
7. In respect of part 2 of the request HE stated that the information was exempt under section 43 – prejudice to commercial interests, and referred the complainant to a decision by the First Tier Tribunal Ref. EA/2018/0104.
8. In respect of part 5, HE stated the information was not held. It went on to explain that the rates charged are identified in the Cost Breakdown Document (CBD) for the specific incident.
9. At the same time, i.e. 20 September 2019, HE provided the complainant with the outcome of its review regarding the concerns over the length of time it had taken to deal with the request. HE acknowledged that its response to the request was outside the statutory time limit and so breached section 10 of the FOIA.
10. On 30 September 2019, the complainant then asked HE to carry out a review of your substantive response to the request.
11. On 2 December 2019 HE provided the complainant with the outcome of that review. HE maintained its original position, i.e. that in respect of the different elements of the request the information was either not held or that it was exempt under section 43.

Scope of the case

12. The complainant contacted the Commissioner on 18 December 2019 to complain about the way his request for information had been handled.
13. The Commissioner considers the matters to be decided is whether HE handled the three requests which the complainant subsequently identified as being the ones he wished to pursue, i.e. requests 1, 2 and 5, in accordance with the FOIA. The investigation therefore involves consideration of whether the requested information is held and the extent to which any of it is exempt under section 43. However as will become apparent, once the complainant provided greater clarity in respect of his intended interpretation of the request HE's amended its position.

14. The Commissioner will also consider whether HE complied with its obligations to respond to the request with twenty working days of its receipt.
15. The Commissioner will look at each request in turn.

Reasons for decision

Request 1:

16. This was as follows:

"Please explain the calculation that is undertaken which results in the defined cost, or DCP Rates, charged to Highways England and Third parties; set it out for me so I can understand how the figure is arrived at, how 'providers' establish on any given date / time the rate to apply."

17. By way of background, the strategic road network in England (A roads and motorways) is split into a number of geographical regions and HE award contracts for the renewal and maintenance of the these regions to different contractors. The contracts are known as Asset Support Contracts and there is a model contract on which such contracts are based. The cost of the works carried out under the contracts is determined by the Defined Cost. The Defined Cost is the cost calculated in accordance with a definition contained in the contract which sets out what elements of its costs the contractor can recover from HE, such as people costs, equipment, materials etc.
18. Under the contract contractors are also responsible for repairing damage to the roads caused by road traffic accidents. Such damage is known as Damage to Crown Property (DCP). Again, the cost of such repairs is determined by reference to the Defined Cost.
19. Where a contractor estimates that the cost of carrying out a repair following an accident would be less than an agreed threshold of £10,000, it carries out the repairs and seeks to recover the cost directly from the at fault driver or their insurer. Where it's estimated the cost would be above £10,000, the contractor carries out the repair and then invoices HE for the work. HE then has to recover the cost from the driver or their insurer.
20. The Commissioner understands that HE considered that it had already provided the complainant with an explanation of how the 'Defined Cost' is arrived at in response to a previous request by providing him with links to where its model contract was publicly accessible on The National Archives website. That model contract sets out how the

Defined Cost is defined. Nevertheless, for completeness, HE did provide that link again when responding to the complainant's latest request. HE has assured the Commissioner that although some elements of the model contract are tailored towards the needs of a specific area when drawing up a final Asset Support Contract, those parts relating to the Defined Cost remain constant. HE has also confirmed to the Commissioner that the model contract was used as the basis of the contract for area (Area 9) which the complainant is particularly interested in.

21. However recognising that the complainant remained dissatisfied with HE's response the Commissioner contacted him to clarify what information he was trying to obtain from the public authority. During a lengthy phone call the complainant explained his position. He understood from previous requests and other correspondence with HE, as well as from viewing the model contract, that the Defined Cost was the cost calculated in accordance with the definition in the model contract. He knew for example that contractors could charge for the cost of its staff and labour and the cost of equipment and plant used to undertake work on the road network. However he was seeking a more detailed response from HE. For example if the Defined Cost allowed a contractor to charge for the cost of using a vehicle when carrying out a repair, he wished to know what elements of the cost of that vehicle the contractor was allowed to recover; was the contractor allowed to charge for fuel used, insurance, maintenance costs of the vehicle, an allowance for depreciation etc.
22. The complainant also clarified that his request related to the costs charged in Area 9. He considered this would be apparent from the context of the ongoing dialogue he was having with HE. It is noted that HE did interpret the request as relating to Area 9.
23. Although the complainant's intended interpretation of the request may not be the most natural one, the Commissioner considers that, if such information was held by HE, the request could, objectively, be interpreted as capturing the level of detail sought by the complainant.
24. The Commissioner first viewed the model contract and the definition of the Defined Cost, which has to be read in conjunction with Schedule 1 of the contract. Schedule 1 includes some detail in respect of people costs for example it lists a whole of range of costs that are incurred in order to employ an officer and send them out on duty, such as their wages, national insurance, safety training, subsistence and lodgings, vehicle etc. The contract allows these costs to be charged for.
25. In respect of other costs, which appear under the headings, Equipment and Temporary Accommodation, Materials, Charges (a

host of different charges from water and electricity to royalties etc) and finally Insurance, Schedule 1 lists what items and services can be charged for. For example under Materials it specified that a contractor can include the purchase price of materials and the cost of their delivery. The Commissioner understands that the contract, in effect specifies, that the cost which is to be charged for these items/services is the open market rate for procuring those items/supplying those services. There is no further breakdown of what may be included when charging for the cost of, say a, vehicle and certainly nothing that explains whether when charging for a vehicle, a contractor can take account of fuel, insurance, maintenance, depreciation etc.

26. The Commissioner directly asked HE whether it holds any additional information which explains what elements are included in such costs. HE's response was very clear in that it did not hold any more detailed information on the constituent parts that contributed to the overall cost of any particular item or service. Taking the example of the cost of a vehicle, it was absolutely clear that it had no information which stipulated, for example, whether the cost charged for the use of a vehicle could take account of the cost of its maintenance etc. This was simply not information HE holds.
27. As the Commissioner understands it, this is because the costs of such items is simply defined as the open market cost. If the open market cost of supplying a vehicle takes account of maintenance costs, then the cost of maintenance is in effect factored into the Defined Cost charged under the contract. But if for some reason the open market cost did not reflect the cost of maintenance, then neither would the Defined Cost under the contract. It is the open market price which determines what elements are reflected in the costs charged, rather than being an explicit part of the definition of the Defined Cost.
28. The Commissioner is satisfied that in accordance with the model contract the Defined Cost is, in part, composed of the open market cost for the items and services provided by the contractor. HE has no cause to analyse how that open market sets those costs or what cost elements are reflected in the open market price.
29. Therefore in respect of the only information which HE held in respect of a breakdown of the Defined Cost, HE was correct to direct the him to the model contract. The Commissioner is satisfied that HE does not hold any additional information on the constituent parts of the costs listed in the contract of the type envisaged by the complainant, i.e. a detailed breakdown of what costs could be included in respect of any particular item or service that a contractor charged for.
30. Although HE does not hold any more detailed breakdown of costs of the type sought by the complainant than is contained in the model

contract, HE did inform the Commissioner that it did hold other information relating to the costs charged in Area 9. There were two distinct sets of information. The first related to people costs and the second to the open market cost used for items under the other headings. The Commissioner will consider the relevance of the additional information on people costs first.

31. HE advised the Commissioner that it had come to light that, unique to Area 9, a formal agreement of, what it describes as, 'temporary people rates for all cost reimbursable work under the Asset Support Contract' or 'notional rates' had been entered into with the contractor. This established notional rates for the cost of people on an annual basis going back to 2015. HE has explained that,

"A document was produced and formally signed off following retrospective audits of actual people cost. A set of notional people rates (12 staff and 4 labour) were then used for invoicing on a temporary basis until the next audit where they were adjusted to reflect any under or over recovery in respect to the terms of the contract. These are regarded as provisional people rates only becoming true and final Defined Costs at agreement of Final Account at the end of the ASC. While rates are agreed as a guide, the contractor may alter them at any time, without agreement with Highways England, to reflect changes to people costs such as sickness, promotions, bonus, working rule agreement and unexpected items such as Covid-19. Any adjustment is corrected at the next agreement and most importantly at Final Account."

32. From HE's explanation the Commissioner understands that these notional people costs were established in order to simplify the administration of the charging process, when the contractor recovered costs from HE under the Asset Support Contract (ASC). However at the end of the ASC a final audit is carried out to check how well those notional rates reflect the actual cost incurred and adjustments are then made as necessary. These notional rates are for all reimbursable people costs recovered from HE. This includes invoices for repairs following Damage to Crown Property where the cost of the repair is estimated as being above the £10,000 threshold.
33. It is understood they are not used by the contractor when recovering costs directly from an at fault driver where the cost of the Damage to Crown Property is below the £10,000.
34. Importantly these notional people rates are subject to a final audit process which checks they are representative of the actual costs incurred, the Commissioner's understanding is that their use during the life of the contract does not detract from the fact that, ultimately,

the actual costs charged represent the actual costs incurred, in line with the Defined Cost. The use of notional rates is simply an administrative convenience. Therefore the Commissioner does not consider these notional rates are captured by the request.

35. Even if it was argued that the notional rates are captured by the request, the Commissioner understands that the complainant had very recently been provided with a copy of the notional rates due to his involvement in a separate First Tier Tribunal case and that as a consequence HE considers they are in the public domain.
36. The Commissioner will now consider the additional information which HE alerted her to in respect of the open market costs charged in respect of the items and services listed under the other headings of the Model contract which forms the basis of the Asset Support Contract for Area 9.
37. In order to simplify the process through which the contractor recovered these costs from HE, a particular means of estimating the open market cost was negotiated. The Commissioner understands that this agreement was negotiated specifically for Area 9. It does not apply to other areas. Again the Commissioner understands that the process is used for the recovery of all costs reimbursable by HE. It certainly applies where the contractor is recovering its costs for repairs following Damage to Crown Property where it is estimated the total cost would be above the £10,000 threshold. HE has explained that under the agreement the open market cost charged can be based on rates produced by the Civil Engineering Contractors Association (CECA). HE explained that CECA is a respected industry body and the tables of costs it produces are accepted as an industry standard when pricing work. Under the agreement the contractor can use the relevant CECA rate, less 30% as the open market cost.
38. Although the contractor uses the CECA rate less 30% when charging HE for repairs following Damage to Crown Property, it is not required to use these same rates when billing at fault drivers directly, i.e. where the estimated cost of the repair is less than £10,000. In such cases the contractor seeks to recover the reasonable cost of the repair. This is the actual cost of the repair as determined by market forces i.e. the open market cost of carrying out the repair.
39. The Commissioner recognises that the information relating to the use of the CECA tables is not the information which the complainant was seeking in his request as it does not set out how an individual item or service is priced, i.e. the rates simply set out what CECA considers the open market price for an item is; it does not analyse how that price has been built up. However the Commissioner considers that the information would be captured by a broader, objective, interpretation

of the request as the information does form part of the explanation of how the costs which HE is charged for repairs following Damage to Crown Property are calculated in accordance with the Defined Cost. On balance, the Commissioner considers that the information should be treated as falling within the scope of the request.

40. The Commissioner has briefly considered whether HE can be said to hold the CECA rates. She understands that the information can be accessed by any one on payment of a membership fee to CECA. Whether HE holds some form of corporate membership or individual officers are members, the point is that HE can access the CECA tables as and when necessary. On the basis that HE has subscribed to CECA and selected the CECA rates, the Commissioner considers that it effectively holds those rates. HE does not contest this point. In any event, and perhaps more to the point, it clearly holds a record of the fact that it has agreed with the contractor to accept the costs established by the current CECA rates, less 30% as being the open market cost.
41. HE has advised the Commissioner that as a result of the complainant's involvement in appeals to the First Tier Tribunal in respect of earlier information requests, he is already privy to the fact that the contractor for Area 9 may use the CECA rate less 30% as the open market rate. As a consequence HE now considers the information to be in the public domain. HE has also advised the Commissioner that it is confident that it has provided the complainant with a link to the CECA rates in the past.

Section 17 – refusal notice

42. When originally responding to the request HE provided the complainant with a link to the model contract. To a large extent the Commissioner is satisfied that the information contained in that model contract is the information held by HE which addresses the request. However that response is not complete as it does not take account of the information on the use of the CECA rates less 30%.
43. HE now argues that as the complainant has already been advised of the use of CECA rates had it recognised that the request captured this information, it would have been entitled to rely on section 21 of the FOIA to refuse that element of it.
44. Section 21 provides that information which is reasonably accessible to an applicant, even if it is only accessible on payment of a fee, is exempt.
45. After considering HE's explanation as to the availability of the CECA rates the Commissioner finds that, in the context of this case, HE would have grounds for relying on section 21. However the

Commissioner considers that HE should have issued a refusal notice under section 17 of the FOIA to address this point.

46. Section 17 requires a public authority to inform an applicant of the exemptions it is relying on to refuse a request and, if it's not obvious, to explain why the exemption applies. HE should therefore have informed the complainant that it was refusing one particular element of the requested under section 21. It should have identified that information as being that relating to how the open market cost in the Defined Cost was calculated using the CECA rates, less 30%. HE should have explained that it previously made the complainant aware of this process and had previously provided a link to where he could access the CECA rates. By failing to inform him of this through a refusal notice, HE breached section 17(1) of the FOIA. However as the complainant is now informed of HE's position through this decision notice, the Commissioner does not require HE to take any further action.

Request 2

47. Request 2 was as follows:

"It is also claimed 'this work is thereby far less efficient than planned repair work in the contract and hence more costly'. Again, I am not taking issue with this, what I wish to know is 'how much more costly?'; give me the figures."

48. HE refused this request under section 43 of the FOIA on the basis that disclosing the information would, or would be likely to prejudice the commercial interests of either itself or the contractor. However this was because HE initially interpreted the request as seeking what it refers to as the ASC Schedule of Rates. The ASC Schedule of Rates are the rates tendered by a contractor when bidding to secure an Asset Support Contract. In very broad terms, these set out the contractor's target price for the pre-planned routine maintenance and renewal work elements of such a contract. The ASC Schedule of Rates had been the subject of a previous First Tier Tribunal case (EA/2018/0104) in which they had been found to be exempt from disclosure under section 43.
49. As previously explained, at the outset of her investigation the Commissioner contacted the complainant to clarify what information he was seeking in his request. As a result of that, it became clear that he was not interested in the ASC Schedule of Rates and when HE were made aware of this, it changed its position. Before going into any further details of HE's revised position it will be useful to set out the complainant's intended interpretation of the request.

50. The request is based on a statement made by a member of HE's staff. The complainant has not identified the actual source of the quote, but from discussions with HE, the Commissioner understands that it was made by their Head of Commercial Delivery for Operations for the South East of England and was made during the evidence they gave in the First Tier Tribunal case (EA/2018/0104) relating to the ASC Schedule of Rates. The Commissioner has read the Tribunal's decision in EA/2018/0104 and a witness statement provided by the Head of Commercial Delivery for Operations in respect of those proceedings. The actual quote is not contained in either. The Commissioner therefore sought to clarify with HE what types of work were actually being compared in the quote.
51. In the quote the Head of Commercial Delivery for Operations is clearly comparing one type of work with, another type of work which is referred to as, "planned repair work". He concludes that the first type of work is less efficient than planned repair work. The Commissioner understands that there are two potential interpretations of the different types of work being compared. As explained at paragraph 17, the Asset Support Contracts cover the renewal and maintenance works required on the road network. For example it is known that any given road will need resurfacing after so many years. This work is anticipated and pre-planned. Such work forms the larger part of the asset Support Contract. HE has explained that this could be the work which is being referred to as the "planned repair work". The other work which is being referred to could be any work the contractor is responsible for carrying out repairs following road traffic accidents which result in Damage to Crown Property. These works are responsive and cannot be anticipated.
52. However HE went on to explain that some elements of the repair work following Damage to Crown Property could also be considered to be planned. That is, in the immediate aftermath of an accident certain urgent works will be required such as clearing debris from the carriageway. It may also be possible to carry out some more minor repairs immediately. Often though it is only possible to carry out temporary repairs when initially responding to an accident which means a more permanent repair has to be programmed in at a later date. The later, permanent, repair could also be described as "planned repair work".
53. Therefore one interpretation is that the quote states that the work repairing Damage to Crown Property following an accident is less efficient than the pre-planned maintenance and renewal work which comprises the majority of the work under the contract. The alternative interpretation is that it states the work carried out as part of the immediate response to an accident involving Damage to Crown

Property is less efficient than the work that is carried out at a later date to effect a permanent repair.

54. The complainant is not in a position to say which the correct interpretation is, but, from her discussions with him, the Commissioner is aware that the focus of his interest is on what he perceives to be the lower rates charged for repairs following Damage to Crown Property where the cost is above the £10,000 threshold, compared to the cost for repairs below the threshold.
55. Repairs above the threshold are obviously more substantial ones and, according to HE, it follows that they are likely to involve a larger element 'planned repairs', compared with the less significant, below threshold, accidents, which can be with more fully dealt with during the initial response. The Commissioner understands HE's position to be therefore that although the overall cost of above threshold repairs is greater they are more efficient to carry out than the below threshold accidents, for various reasons.
56. Regardless of which two types of work are being compared in the quote the complainant has advised the Commissioner that he wants information that would justify HE's claim that one is more efficient than the other. The complainant does not know what form that justification would take, but it is noted that he concludes his request by saying "... give me the figures." The most natural interpretation of this is that he is seeking some analysis of the costs incurred for both types of work which would support the statement.
57. During the Commissioner's investigation the Head of Commercial Delivery for Operations was asked to clarify what works he was referring to. In response the Commissioner was advised that he believed that the comparison being made was between any repair work carried out following Damage to Crown Property and the planned routine maintenance and renewal work that forms the bulk of the work carried out under the contract. That is he was saying repairing Damage to Crown Property was less efficient to the planned routine maintenance and renewal work. On the basis that the statement was made during the course of an appeal relating to a request for the ASC Schedule of Rates (which set the target price for the planned routine maintenance and renewal work), the Commissioner accepts that this is the most plausible explanation of the quote.
58. HE has also advised the Commissioner that the Head of Commercial Delivery for Operations expressed his opinion that the Damage to Crown Property work was less efficient, based on his experience of how the industry operated and how such works would be managed. HE has been absolutely clear that it does not carry out any detailed comparison between the costs or efficiencies between the two types of

work and so there is no empirical evidence of the sort envisaged by the complainant which supports the statement. HE's position therefore is that it does not hold the information that has been requested.

59. The Commissioner considers it is entirely plausible that a senior officer such as the Head of Commercial Delivery for Operations would consider themselves to have the knowledge and experience to be in a position to make such a statement. The Commissioner notes that both in the Tribunal's decision and in his witness statement the Head of Commercial Delivery for Operations provides a detailed explanation of why he considers one type of work is less efficient than the other. Those explanations appear credible. One would expect that if there was some form of statistical analysis to support the Head of Commercial Delivery for Operations' proposition, then it would have been referred to during those proceedings. The fact that no such evidence was produced supports the contention that the statement was based on the working knowledge of the industry which it would be reasonable to assume the Head of Commercial Delivery for Operations to have.
60. It is noted that the complainant has already had access to the Tribunal decision and most probably the witness statement.
61. The Commissioner is satisfied that HE does not hold the sort of empirical evidence or detailed analysis that he is seeking. HE does not hold the requested information.
62. For completeness HE has also advised the Commissioner that nor does it hold any analysis of the costs or efficiencies of repairing Damage to Crown Property work where the overall cost is below the threshold compared with where the cost of the work is above the threshold.

Section 1

63. Under section 1(1)(a) of FOIA a public authority is required to inform an applicant whether it holds information of the type described in the request.
64. The Commissioner recognises that HE's initial response to the request, and that at internal review, was based on a misinterpretation of what was being sought. Nevertheless by failing to inform the complainant that the requested information was not held HE failed to comply with section 1(1)(a). However as this notice now provides that confirmation, the Commissioner does not require HE to take any steps to remedy its failure to comply with section 1(1)(a).

Request 5

65. Request 5 was as follows:

"I have written in respect of specific incident, in an Area on a specific date / time. I am seeking the charges presented to you on the dates. I believed my reference to 'above threshold' rates conveyed this.

Please supply these. For your ease of reference they are, as per my original request: 20/11/2016 21/12/2016"

66. HE informed the complainant that it does not hold the requested information. This was based on a misinterpretation of the request since HE understood it to be seeking what have in the past been, confusingly, referred to as 'DCP rates'. This is reference to a set of rates that the complainant believed were held, which establish a set rate of charges for carrying out repairs following Damage to Crown Property. For example, if they existed, the DCP rate would establish a set, hourly, rate for a labourer carrying out those repairs. HE interpreted the request as seeking 'DCP rates' for repairs which are both below the £10,000 threshold and for those above the threshold. The complainant's contention is that different rates apply to below threshold repairs than apply to above threshold repairs. This interpretation was in part based on the request which preceded request 5 which was set out in the following terms:

"I have asked for the

The rates you are charged for above threshold DCP works, the schedule of rates used for above and below works"

67. On the basis of this interpretation HE stated that it did not hold the requested information. This response was in line with a previous First Tier Tribunal case (EA/2019/0119) which had found that 'DCP rates' did not exist.

68. The Commissioner has sought to clarify with the complainant what the intended interpretation of his request was. The complainant maintains that in the context of the full email and the ongoing dialogue that he was having with HE, there was a different interpretation to the request. The complainant explained that he had been discussions with HE over an insurance claim relating to Damage to Crown Property where the estimated cost of repairs was below the £10,000 threshold. The contractor had therefore sought to recover the cost of the repairs from the at fault driver. To do so the contractor had provided them with, what is known as, a Cost Breakdown Document, setting out the cost of the repair broken down into its constituent parts. For example the cost of labour to clear the carriageway, the cost of a vehicle attending the incident when it first occurred on 20 November 2016 and the cost of the materials and labour to complete the repair on 21

December 2016. The complainant had a copy of that Cost Breakdown Document. It detailed a total of around 40 individual item/services that had been charged for.

69. The complainant therefore knows what costs were charged for specific tasks on two specific dates where the Damage to Crown Property was below the £10,000 threshold. What he is seeking is the costs charged to HE by the same contractor, for the same types of work, on those same two dates, where repairs were above the £10,000 threshold. For example, if the Cost Breakdown Document he'd obtained showed an hourly rate for a van attending the incident on 20 November 2016, he wanted to know what HE had been charged for the use of the same sort of van, on that same date, when attending an above threshold incident. The complainant could then compare the two and satisfy himself that both charges were the same and that drivers and their insurers were not being overcharged for under threshold repairs.
70. It has been a feature of this case that there has been difficulties in interpreting the complainant's requests. This is in part due to the way in which the requests are made, forming part of an ongoing dialogue in which information requests are interspersed with lines of argument. Even when identified as a request, the actual meaning of the request can be ambiguous. The subject to which the requests relate, the Asset Support Contract is a complex one. If requests are not easily interpreted as the complainant had intended this can result in mismatched responses and confusion. Although public authorities have a responsibility to try and interpret requests objectively and can seek further clarification if they are not clear as to what is being asked for, the complainant may find he can more efficiently access the information he wants by being more careful as to how he phrases his requests and how he presents them within the body of a longer piece of correspondence.
71. Nevertheless when the Commissioner does consider that it is possible to interpret the request as the complainant intended and when this interpretation was explained to HE it did not contest the issue.
72. HE therefore undertook a search of its records for any above threshold repairs for those two dates. It searched 'Share', which HE described as its on line document depository. In particular it searched the Green Claims team's Claim's Workbook, which is in effect an excel spreadsheet containing details of all above threshold repairs that had been carried out. The full details of any repairs listed in that workbook can then be accessed through individual files.
73. Having searched the Green Team's Claims Workbook HE confirmed to the Commissioner that there were no entries against either of those two dates. Therefore it had concluded that there had been no

accidents resulting in repairs above the £10,000 threshold carried out on the dates specified in the request.

74. HE explained that it was confident that had there been information relating to repairs on those dates, the search it has undertaken would have located it. This is because records of all such repairs are held centrally in the Green Team's Claims Workbook which is easy to access and is organised in a way that allows it to be efficiently searched. HE does not consider there is a risk that relevant information could have been overlooked during this search process.
75. HE explained that since the dates in question were from 2016, any such repairs would have been long since completed; the repairs were not part of a live work stream. Therefore it did not consider there was any prospect of information about any repairs on those dates being held on the personal drives or work emails accounts of staff. It had therefore not searched such locations. The Commissioner accepts that such searches are not necessary in the circumstances of this case.
76. HE did not advise the Commissioner of its retention policy in respect of the Green Team's Claims Workbook. However at one point during the Commissioner's investigation HE did undertake searches to see whether it held information on a similar type of repair to that which the complainant was seeking information on. This was done in part to explore whether HE held any information that may be of interest to the complainant and, if so, what would be involved in extracting and collating the costs of the individual elements of that repair in order to produce a list of items and services which matched those in the Cost Breakdown Document held by the complainant. As a result it had located a folder relating to a repair following an accident in February 2016. The Commissioner assumes from this that the information held in Green Team's Claims Workbook goes back at least that far.
77. The Commissioner is satisfied with the searches which HE has undertaken and she concludes that it does not hold any information relevant to dates specified in the request. It is conceivable that information is held on similar types of work that were carried out around that time. However, this has not been established and it is not for the Commissioner, or HE to speculate as to what time frame the complainant might consider meaningful for the purpose of the comparison he wishes to make.
78. When originally responding to request 5 HE interpreted the request as seeking what have been referred to as the 'DCP rates'. It therefore informed the complainant that the information was not held. Although that response was based on a misinterpretation of the request, HE's response was technically correct and in accordance with its obligations under section 1(1)(a) of the FOIA based on the facts established by

the Commissioner's investigation. There has therefore been no breach of the FOIA in respect of request 5. The Commissioner does not require HE to take any further action.

Section 10 - Time for compliance

79. When he first contacted the Commissioner the complainant raised concerns over the length of time that HE had taken to initially respond to his request. Under section 10 of the FOIA a public authority is required to respond to a request within twenty working days of it being received. The request was made on 10 May 2019 and not responded to until over four months later on 20 September 2019. As HE acknowledged in its internal review of this matter, this is a breach of section 10.

Right of appeal

80. 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

81. 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.
82. 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

Rob Mehan
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Information Commissioner's Office
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SK9 5AF