

Our refs: 674306; 674516; 674709, 675181

Your Refs:

request-114779-9cdf7a10@whatdotheyknow.com;

request-115172-6b331ae4@whatdotheyknow.com;

request-115499-86957b20@whatdotheyknow.com;

request-116809-de580e33@whatdotheyknow.com;

Robert Castleman
Traffic Technology Divisional Director
Room 2C
Federated House
London Road
Dorking RH4 1SZ

Direct Line: 01306 878250

Peter Silverman

24 May 2012

Via email

Dear Mr Silverman

YOUR REQUESTS FOR INFORMATION

With reference to your requests of 25th April, 30th April, 3rd May and 16th May 2012, I am writing to inform you that these requests are all refused under Regulation 12 (4) (b) of the Environmental Information Regulations 2004.

Regulation 12 (4) (b) states that “a public authority may refuse to disclose information to the extent that the request is manifestly unreasonable”.

In reaching our decision on the application of Regulation 12 (4) (b) we have considered the guidance published by Defra and the Information Commissioner’s Office. We have also considered the recent decision of the Information Tribunal in their decision notice EA/2011/0222. Please see Annex A for reference details.

Our records show that you have sent 36 pieces of correspondence to the Highways Agency on the subject of litter, particularly on the M40. In addition we understand that you have also contacted the Department for Transport, our parent Department, 3 times on the same subject. On each occasion we have tried, wherever possible, to answer those requests.

Your recent requests continue a pattern of requests on the subject of litter. Despite providing you with the information you have requested, there is no indication that these requests will cease; and providing more information will likely lead to further correspondence and requests that are unlikely to satisfy your complaints.

Whilst we were considering the request of the 25th April you have submitted 3 further requests which are having the effect of harassing the teams handling these requests and are incurring a significant diversion of resources from core duties.

As required by the Regulations we have considered the public interest in answering these requests and conclude that the public interest is better served by maintaining the exception and refusing your requests. The results of the public interest test can be seen at Annex B.

If you are unhappy with the way we have handled your request you may ask for an internal review. Our internal review process is available at

<http://www.highways.gov.uk/foiresponses/FOIresponses/8024.aspx>.

If you require a print copy, please phone the Highways Agency Information Line on 0300 123 5000; or e-mail ha_info@highways.gsi.gov.uk . You should contact me if you wish to complain.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications.

Yours sincerely,



Robert Castleman
NDD Traffic Technology Division
Email: robert.castleman@highways.gsi.gov.uk

Annex A – guidance

Defra (2007) – EIR exceptions guidance -

<http://archive.defra.gov.uk/corporate/policy/opengov/eir/guidance/full-guidance/index.htm>

Information Commissioner's Office (2008) – Vexatious and repeated requests –

[http://www.ico.gov.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/VEXATIOUS AND REPEATED REQUESTS.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/VEXATIOUS_AND_REPEATED_REQUESTS.ashx)

Independent Police Complaints Commission v The Information Commissioner [2012] First-Tier Tribunal (General Regulatory Chamber, Information Rights) EA/2011/0222

<http://www.informationtribunal.gov.uk/DBFiles/Decision/i725/20120329%20Decision%20EA20110222.pdf>

Annex B – the Public Interest Test

Request for Information under the Environmental Information Regulations 2004 – Four combined Requests relating to Litter received on 25/04, 30/04, 03/05 & 16/5	
Regulation 12 (4) (b) – the request is manifestly unreasonable	
<i>Factors supporting disclosure</i>	<i>Factors supporting non-disclosure</i>
<p>The Highways Agency has a legal obligation to comply with the Environmental Protection Act 1990 and there is a public interest in disclosing information held that demonstrates that the Highways Agency is meeting its requirements to the Legislation.</p> <p>There is a public interest in accessing information on the performance of service providers in relation to their contractual obligations in relation to litter clearance & how Highways Agency monitors that performance.</p>	<p>The Highways Agency has not received many complaints on the subject of litter on the M40. Between January 2011 and April 2012 there were 9 items of correspondence relating to litter on the M40. 5 were from the applicant, 1 was anonymous and 3 referred to unsecured loads. In allocating finite Agency resources, there is considerable need to consider the public interest in dedicating ongoing resources to a single issue on this scale.</p> <p>The 3/4 requests received would constitute a significant diversion of resources and the estimate for this so far would lead to at least 72 hours work for the Agency. This is a considerable resource and would not be in the public interest to divert staff time on a local matter of little public interest that the Agency has not received a statistically significant number of requests of a similar nature. It is our assessment that the Service Provider on the M40 is meeting its contractual obligations and there has not been a clear breach of their duties.</p> <p>It is also our assessment that performance across all Service Providers is satisfactory and we have seen good examples of a proactive approach – particularly in taking steps to contact local authorities where litter has been observed on Agency trunk roads. Such assessments are part of the Agency's Network Delivery & Development Directorate's Performance Management Framework which is reviewed monthly. The public interest is not served by diverting further resources to address an issue that already has ongoing monitoring.</p> <p>The Highways Agency has already published information and statistics on litter and has provided information related to its service contracts. The Agency also intends to launch a dedicated litter page on its website. It is not in the public interest to divert resources for one individual when this resource can help provide information to all in an open transparent manner.</p> <p>From previous correspondence it is clear that answering all of these requests is unlikely to satisfy the applicant and would lead to further requests for</p>

	<p>information. The Agency is already dedicating resources to the collation of evidence to provide to Courts as part of an action brought by the applicant and one of the requests has also been submitted to our solicitors as part of that action. It is not in the public interest to divert further resources to answer 3 more requests at the same time as producing information for this action.</p>
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Conclusion: There are compelling arguments which support maintaining the exception. The public interest is better served by refusing these requests as manifestly unreasonable.

PIT Members: Nicholas Hackett, Mark Allen, Arun Nugent, Nick Wells, Dawn Davies.

Date of PIT: 14th May 2012

