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For the Attention of:

Robert Castleman
Highways Agency
4th July 2012

Dear Mr Castleman,

Your Ref: 674306; 674516; 674709, 675181

I am writing to request an internal review of the Agency's decision to refuse my information requests of 25th April, 30th April, 3rd May and 16th May under EIR 12 (4) (b) as being manifestly unreasonable .

Please refer to the following links:

1. [My four requests copied and pasted from the What Do They Know web site.](#)
2. [My e-mail to the Treasury Solicitor's Department of 16th May](#)
3. [Agency's letter of 24th May refusing the four requests](#)
4. [The letter of 30th May from the Treasury Solicitor's Department which includes a full response to my information request of 16th May](#)

Your refusal letter ties my 4 requests in with the previous correspondence I have had with the Agency and its parent organisation. They are, it says, having the effect of harassing the teams handling them and diverting resources. In Annex B reference is made to the M40 Service Provider not being in breach of their contractual duties (as regards cleaning) and to the performance across all Service Providers as being satisfactory.

The impression is given that my communications are vexatious and relate to a non-existent litter problem.

To correct this I would like to put my dealings with the Agency in the context of the campaigning work I have been doing under the Clean Highways banner for the last two and a half years. This has led to some positive outcomes both for the Agency's network and for those of other duty bodies. I will also show that there is real and widespread concern about the litter on our motorways.

Clean Highways Campaign (www.cleanhighways.co.uk)

The launch of my campaign stemmed from the appallingly badly littered state of the southern half of the M40 in the winter of 2009/2010. I sent a warning notice under S91 of the Environmental Protection Act to the Secretary of State for Transport on 19th February saying I was aggrieved by the littered state of a long section of this motorway. Later the Agency's contractors, UK Highways M40 Ltd, kindly complied with my EIR request for the relevant cleaning statistics. These showed that shortly after receipt the warning notice the level of cleaning increased by a factor of 6 times. By June the main carriageway verges had been brought up to an acceptable level. (Please note that at

that time I was only concerned about the main carriageways and not the slip roads). For more information please go to [the M40 case study on the Clean Highways web site](#).

I had also put in an EIR request to the Agency asking for information on complaints about litter on the M40 in the 6 months to 31/03/2010. Extracts from the 19 complaints including

"I have been struck by the phenomenal level of litter on this motorway" and

"Caller also reports that the situation is very bad on the entire length of the M40"

can be seen [here](#). The current very much lower rate of complaints referred to in your Annex B to your letter would seem to indicate that this improvement is on-going.

Here are some further examples of positive outcomes achieved by my campaign:

[M40 J8A](#) – A long standing accumulation of urine bottles were removed from one of the verges.

[M6 Preston](#) – Clean-up of littered embankment.

[Beaconsfield](#) – Clean-up of neglected roundabout over M40.

[Beaconsfield A355](#) – Clean-up of neglected central reservation.

[Wycombe A404](#) – Big improvement in cleaning of busy Highways Agency trunk road.

[Ruislip Manor](#) – Embankment in busy shopping street cleaned up.

[London Bridge Station](#) – Long term litter cleared from platform track.

[Elm Park Ruislip Manor](#) – Neglected hedgerows cleaned up.

[Metrolink Manchester](#) – Neglected rail embankments cleaned- up

To date I have received [70 messages of support](#). Here are a few extracts with references to the motorways underlined:

*Rubbish on motorways. Saddened by the state of our "green and not so pleasant land" - **Sue Hose***

*Why are the H.A. & Network Rail not being forced to clean up their acts & what are Lord Taylor, Mike Penning et al doing about it? – **John Woolmer***

*Thanks for what you are doing Peter, England has become a disgrace and action needs to be taken now! - **David Kendrick***

*During January I witnessed the M42 in Warwickshire as being badly littered, and informed the HA as such, requesting a clear-up. Six weeks later there was no improvement. – **Ian Dare***

*Hello Peter, a man after my own heart! Well done on the campaign. This is a national disgrace. Noticed that the M6 around Stafford (central reservation) was very bad again on a trip up North this weekend - **John Ford***

*Well Done! I caught the end of your interview on LBC this morning. Firstly may I say "Thank you" for standing up and speaking out about this issue - **Stuart Cook**.*

*Keep up the good work. The section of the M62 closest to Liverpool, Jns 4 – 6 is one of the filthiest I have seen in a long time. - **David Hinder***

*Great initiative. I travelled from Colchester to Leicester and back last week – almost all on trunk roads (A120, M11, A14, A6) and the WHOLE journey was blighted by rubbish and debris on the verges and central reservations. Like others I'm appalled both by how filthy we are as a nation and how infrequently the mess is cleared up. - **Peter Martin**.*

*Peter, I am despairing that the litter situation is just getting worse. It's literally out of control on the roads I have travelled along recently, A120, A 505, M11, A14, A10. It's perhaps the worst I can remember – **Andrew Gates***

*Well done I think the M40 along which I often drive is looking better- **Amanda Benton***

*Well done – on many occasions I have been appalled by all the litter on the M40 verges. I thought, maybe one day the Highways Authority will eventually clean up the mess. Congratulations for all your hard work in resolving this matter - **Ray Krystofiak***

Bill Bryson, the President of the Campaign to Protect Rural England has described me as “*a tenacious and inspirational individual*”.

My work has been covered by the Guardian in [June 2010](#) and in April 2011, by the [Independent](#), [The Week](#) magazine and by the [Ruislip Gazette](#). I have been quoted in the [Mail on Sunday](#), profiled by the [Readers Digest](#), and interviewed for [ITV's Tonight programme](#) and by LBC Radio. I have spoken at the Chartered Institute of Waste Management. [TfL reference my web site](#).

There have been 16,796 visits to my web site with an average duration of 2.33 minutes.

In March 2010 Mike Penning MP, now the Under-secretary of State for Transport with responsibility for your Agency, spoke at a parliamentary debate on “[Litter on motorways and trunk roads](#)”. In it he said:

“I asked for this debate out of the anger and real frustration that I, my constituents and indeed everyone in the country has experienced at the fact that our great country and our excellent road network are being blighted by the rubbish..” and “I am very aware that there is legislation in place to deal with this problem. Frankly, however, having driven around the highways and byways of Britain, particularly our motorways, I know that it is not working”.

In November 2010 I prepared a report for Mr Penning entitled “[Our Littered Motorways – Why the legislation is not working](#)”. The report benefited from the information obtained both from my EIR requests and other correspondence with the Agency.

Damian Carrington, the chief environmental correspondent for the Guardian wrote in reference to the report : “*A consultant would have charged a lot for this , but Silverman did it for free – very Big Society*”. He went on to quote Mr Penning as saying “*I share Mr Silverman's concern about litter on the motorway and trunk road network and I have been working with the Highways Agency and*

colleagues across government on how the situation can be improved." [See Guardian article by Damian Carrington.](#)

Mr Penning later arranged for me to meet with Highways Agency executives along with representatives from the [Campaign to Protect Rural England](#) with whom I work closely, as I do with [Clean Up Britain](#).

I have submitted two further [reports to government](#) and recently I have written to Mike Penning with a [critique of the Agency's new Asset Support Contract](#).

My request of 16th May – Inspections of M40 J1

This was refused in your letter of 24th May but supplied via the Treasury Solicitor's Department on 30th May. First let me thank the Agency for providing this information.

The response raises a number of points which are pertinent to this internal review request.

The information request related to an area the responsibility for which is spilt between two of your regional managers. It would therefore have taken two phone calls / e-mails asking them to check their records before confirming that no inspections had been made by their staff in the 12 month period specified. I would suggest this would have taken no more than 20 man minutes.

More importantly the admission that no inspections were carried out by the Agency on this part of the M40 in the 12 months to 16th May belies one of Agency's "*factors supporting non-disclosure*" namely that "*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*". How could the Agency make such an assessment if they had not inspected this busy interchange for such a long period?

The assessment was also wrong as can be seen from these photographs showing the condition of the [J1 of the M40 on 20th March 2012](#) and of [one of the embankments from January to May](#)

I hope I have demonstrated that the request was not a gratuitous one made simply to vex Agency staff. It provides corroborative evidence to indicate that the Agency is not adequately holding its contractors to account in the performance of their cleaning operations.

My request of 25th April – Communications with service providers reminding them of their contractual responsibilities with regard to litter

In March 2011 Mike Penning wrote that "Highways Agency has been in discussion with many of its managing agents with a view to improving the appearance of motorway verges and slip roads to ensure that the requirements of the Environmental Protection Act 1990 are met across the network". I put in an EIR request for supporting documentation as I was interested to see what approach the Agency was taking with its contractors. I found that there were no records of these discussions and [informed Mr Penning](#) that he may not have been given accurate advice.

In April 2012 I received a letter from DEFRA Minister Lord Taylor in which he said, in reference to litter, that the Highways Agency “have also recently reminded their service providers of their contractual responsibilities on this issue”. Again I wanted to see what approach the Agency was taking and, after what happened the previous year, to see if he had been correctly advised about the communications.

I cannot see that a search for the information would take any significant resource. The person at the Agency who advised Lord Taylor would need to be identified and asked for his or her source material.

My request of 30th April – cost calculations - monthly environmental amenity audits - last audit including M40 J1

It would surely only take a few minutes to locate the calculations behind the cost estimates provided to the House of Lords by Lord Wallace.

To obtain copies of the last 4 monthly audits of the environmental amenity as at 30th April someone would need to e-mail each regional office and ask for the dates of their most recent audits and then subsequently ask for copies of the last four.

Lord Marlesford had asked Lord Wallace *“what arrangements are in place to monitor the effective use of these funds and to enforce the obligations of the contractors to keep the roads free of litter”*. In response Lord Wallace had stated inter alia *“Agency route managers perform monthly audits of the environmental amenity of stretches of randomly selected agency routes”*

He made no mention of other inspection by the Agency. The audits would therefore appear to be the only monitoring that is taking place. In which case examining a sample of them would enable me to understand more fully how the process works and how frequently a given stretch of motorway is checked.

As J1 of the M40 is a long term black spot it would be particularly helpful to know when it was last subject to an environmental amenity survey. I assume that each region keeps a log of its surveys and that it would not be difficult to locate the last one covering this junction.

My request of 3rd May - Communications with Local Authorities about the need to clean Agency trunk roads

I mentioned that my campaign was sparked by the state of the M40 in the winter of 2009/10. My regular route took me off at J4 and along the A404 to Marlow. This is part of the Agency’s strategic network but where responsibility for cleaning lies with the local authority. The condition of the verges was as dire as those on the M40. Please refer to my [Wycombe A404](#) case study.

The littered state of trunk roads, not all of which are part of the Agency’s network, are a major topic in the my postbag. Please refer to my [comments page](#).

I was therefore most interested to see Christopher Chope MP's recent parliamentary question and the reply from Mike Penning. They can be seen [here](#).

The information requested will enable me to see if the Agency took up Mr Chope's concerns about the A31 and to see how it words its communications with local authorities when they fail to meet the standards set by the Environmental Protection Act. Again one will also be able to get a fix on how frequently these communications are made.

72 Hours work for the Agency

All of the information / documents I have asked for should be readily available and the person holding them easily identifiable. Assuming the Agency operates a modern electronic office I cannot see how complying with all 4 request would take more than 1 man hour.

Could you please include a copy of your calculation of 72 man hours .

Information Tribunal EA/2011/0222

There are fundamental differences between my case and that involving Mr Andrews and the IPCC.

My requests have not been indiscriminate. They all relate to the Agency's obligations under EPA S 89 i.e. litter and cleaning.

One of Mr Andrews requests covering multiple documents from 438 cases.

My requests cannot be considered as being grossly oppressive in terms of resources and time demanded by compliance.

My requests are not motivated by a desire to cause a nuisance. I have explained why the 4 requests have been made and highlighted some positive outcomes from previous requests.

In my case there is therefore no long history of similar requests showing no obvious serious purpose.

I would be most grateful if you reverse your decision to refuse my four information requests.

I look forward to hearing from you. Please reply by e-mail.

Peter Silverman