

Response by Peter Silverman to the Commissioner's response of 14th March 2013

Comments on the response by paragraph

1. Page 21c Para 17. All four issues highlighted by Dransfield should be considered.
2. Page 21f Para 24. Mr Thorogood quotes from page 16 Para 14 of my Appeal in which I said:

“But I would make the point that a no time did the Agency get back to me with any advice or +assistance that would have enabled me to modify my requests so as to make them less burdensome”.
3. In using the phrase “my requests” I was referring to the four requests that were the subject of my complaint to the ICO. “Advice and assistance” was meant as a reference to EIR 9 (1)- *A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.*
4. Looked at in this light then I contend that this statement is undeniable. Indeed Mr Thorogood goes on in para 24 to quote from the Agency's internal review of 23 July 2012 [37-38] as follows:

“... we did not meet the requirements of regulation 9 (1) in providing the right level of advice and assistance in order for you to be able to limit the number of your requests to a reasonable level.
5. The requirements are not limited to providing advice and assistance to enable a requester to “limit the number” of his or her requests. It can also be provided to clarify what is required and, where appropriate, to reduce the burden of complying with them.
6. Page 21g Para 25. Mr Thorogood says:

“In this case, whilst the Highways Agency initially failed to provide advice and assistance, it remedied this deficiency at internal review”. This is denied.
7. The claimed remedy is presumably based on the following sentences in the Agency's internal review letter of 23 July 2012 [37-38] which follow those quoted above.

“In order for you to adopt a more measured approach it would be helpful if you could contact our central Network Development and Delivery team at: NDDCDBT@highways.gsi.gov.uk for any future requests so that we are able to better target your requests for information to meet your core requirements. By doing this we will be able to work with you to ensure you receive the information you require without resourcing pressures impeding the flow of information”.
8. The promise to provide advice and assistance on “future requests” cannot negate a past failure to do so.
9. Page 21h Para 30. A request or part of a request which could be dealt with minimal resources should be released even though it had been aggregated with other requests. The release looked

at in isolation would not have incurred any undue burden and would have been consistent with EIR 12 (2) 2) - *A public authority shall apply a presumption in favour of disclosure.*

Application of Dransfield

Burden imposed by the four requests – the time estimates – failure to provide advice

10. Please refer to previous comments in my grounds for appeal on page 15 and 16 of the bundle.
11. I now have had the opportunity of reviewing the Agency's time estimates (bundle page 51).

Audits of environmental amenity (1)

12. It would appear that these reports which are carried out to check on the performance of the contractors are held by the contractors. There is one contractor for each region. The documents are electronic. The Agency's FOI Officer would therefore simply have to e-mail each contractor asking to be sent their latest audit report. Any redactions could be done electronically by the FOI Officer. No scanning would be required. A reasonable time estimate would be 5 minutes per region not 2 hours. Please refer to my Appendix A for supporting information.

Communications with local authorities (2)

13. I had asked for "*The last 4 communications between the Highways Agency and any local authority directing the latter's attention to the littered state of, and/or the need to clean, any trunk road in your network. In both cases please include communications made on your behalf by your contractors. You do not need to include any communications which are more than 2 years old. In both cases please include communications made on your behalf by your contractors*".
14. Column one of the Agency's analysis does not refer to the fact that the information requested was in respect to litter /cleanliness of trunk roads. Surely only the Environment team at the contractor would need to consult their records.
15. They say "(e.g. Dorset)". However the Head of Operations at the Dorset Waste Partnership has stated: "*I have checked with other members of the team and no one is aware of any specific requests from the Highways Agency to carry out a cleansing operation at any time*". Please refer to Appendix B.
16. I suspect that in reality the Agency do not routinely communicate with local authorities regarding the need to clean trunk roads as indicated by the Under-secretary of State for Transport. (Page B7 of Appendix B).

Lack of advice and assistance

17. In making these requests I had made the reasonable assumption that it was likely that copies of both the Audits of Environmental Amenity and the communications with local authorities would be held centrally. I had supposed that there was a central department charged with ensuring environmental standards were met who would want to be copied when these documents were produced.
18. The fact that I was mistaken in this assumption should not be held against me. The Agency should have responded by explaining that as the information was dispersed over our several locations and suggesting ways I might modify my request to make the task more manageable.
19. As Judge Wikeley points out in Dransfiled 31 referring to wide ranging requests:

.. it may well be more appropriate for the public authority, faced with such a request, to provide advice or guidance on how to narrow the request to a more manageable scope, failing which the costs limit under section 12 might be invoked.
20. Had I been given this opportunity I could for example have modified my request to and accepted the 4 Audits from just one region and any 4 recent communications with local authorities regarding trunk road litter. This would have reduced the burden by a factor of 7.

Burden – previous dealings – associated correspondence

21. In the context of my campaign I believe that the number of previous requests and associated correspondence and their duration is proportionate to seriousness of the issues that I tackle.
22. The Agency has not given, and the ICO had not asked for, any examples of requests / correspondence which might lack serious purpose.
23. Dealing with the Highways Agency / DfT can be frustrating. A task which one might think can be accomplished with a short exchange of communications can require multiple interactions. Let me give one example.
24. On 31st March 2011 the then Under-secretary of State for Transport, Mike Penning MP, wrote to me suggesting I met with senior officials at the DfT/ Highways Agency to discuss the concerns outlined in my report “Our Littered Motorways”. In a letter to my MP of the same date he explained that he could not meet with me himself while a complaint I had made to the Court was outstanding.
25. In the letter I was given the name and phone number of an official to contact to arrange a suitable time and place. I rang – someone would get back to me (07/04). I sent a chasing e-mail (11/04). Someone would get back to me (11/04). 5 weeks after my initial call nobody had got back to me. I sent another e-mail (12/05). I was told officials could not meet with me until after Court hearing on 8th June. I wrote to Mike Penning (12/05). I was finally given a date (10/06).

26. The correspondence can be seen in Appendix C.

Motive , value and serious purpose

27. My requests to the Agency are all focussed on finding out in respect to motorway litter why “the legislation is not working” with the aim of getting them cleaned up.
28. Judge Wikeley in para 36 refers to “*For Example an investigative journalist...*”. He does not consider the example of an individual who runs an extended campaign on a serious issue largely related to the activities a one government department. In such cases it is inevitable that requests for information will be concentrated on that department.
29. It should be born in mind that I am not duplicating the work of any other organisation. There is no watchdog organisation monitoring the compliance of duty bodies, including the Secretary of State for Transport in respect to motorways, with their obligations under the Environmental Protection Act.
30. One might think that this would be the job of DEFRA. However at a meeting with them in 2011 I discovered that they had only 2 people working full time on street scene issues including litter, fly-tipping, graffiti and dog fouling. One might think Keep Britain Tidy fulfilled this role. I have recently met with them and they confirmed that, while they continued to be financed by DEFRA, they did not see their function as holding government departments to account.
31. Recently Andrew Gwynne MP, appalled at the littered state of motorways in the north west has taken up the issue of motorway litter. In 5 days between 21st and 25th March he received answers to 5 written Parliamentary questions he had put to the Secretary of State for Transport on motorway litter. I have met with him and he has kindly made a statement for the Tribunal which can be seen in Appendix D. In it he acknowledges the value of my work saying my recent communication with the Permanent Secretary at the Department of Transport was “*a well thought out analysis of the issues and one that was worthy of serious consideration*”.
32. Also in Appendix Dare statements from:
33. The Campaign to Protect Rural England – “*.. Peter Silverman has a genuine drive to do something about litter.*” “*.. he has set out to run a serious campaign ...*”, “*.. his contact with the CPRE has been professional and helpful.*”
34. George Niblock, the author of the recent the Chartered Institution of Waste Management in Scotland’s Position Statement on Street Cleansing – “*I write in full support of Peter Silverman in his campaign and greatly admire his efforts, expertise and tenacity*”.
35. In a PS to his June 2011 Newsletter Bill Bryson, the author and then President of the CPRE said:
- “Stop the Drop’s own Will Gates works very closely with Peter Silverman – a tenacious and inspirational individual – on litter abatement orders. Peter has recently gone head to head with Defra’s Secretary of State on the state of England’s highways. Peter’s website provides*

some fascinating information about what he's been up to and the significant progress he's making". (See my Appendix E).

36. The CPRE are the only independent body who employ staff to campaign on litter. They are prepared to hold duty bodies to account over their compliance with the Environmental Protection Act. In their statement they refer to their campaign of action directed at Network Rail and that I had confirmed that my focus was roadside litter. We have in effect agreed to a division of labour to prevent duplication of effort. This obviates the need for both parties to correspond with the Highways Agency and submit freedom of information enquires to them.
37. I have a similar understanding with two other anti-litter campaigners - Clean-Up Britain and Zilch. They leave the motorways to me while they focus on other areas.
38. Similarly I am beginning to work closely with Andrew Gwynne MP to ensure we adopt a co-ordinated approach to motorway litter.
39. By working with other interested parties in this way information about motorway litter can be obtained, analysed and disseminated with less overall resource than would otherwise be the case. In the long term this should reduce the burden on the Highways Agency / DfT.
40. Once analysed I try to present my findings in a constructive manner by providing relevant feed back to the Department of Transport. Appendix F is a copy of my report "*Our Littered Motorways – Why the legislation is not working*" of 17th November 2010. My subsequent reports can be accessed from my web site. The appendices to the report include relevant correspondence with the Agency.
41. I now present further evidence that motorway litter is a matter of serious and wide public concern.
42. In his statement Andrew Gwynne MP stated, referring to the obligations of the Secretary of State for Transport under the Environmental Protection Act, wrote: "*I share Mr Silverman's concerns that this obligation is not being met.*"
43. The CPRE statement refers to the "*extensive problem of litter on public land including railways and roadsides.*"
44. In Appendix G I have listed 88 messages of support I have received none of which have been individually solicited. The full text of the e-mails received in March are included at the end of the appendix. As you will see Carol Chapman wrote to me on 11th March saying:

"The filthy roadsides of England. Well done! Pleased to find your website – keep at it – we are behind you!

Having lived in France for 11 years and travelled many miles over there, not once did I ever see anything like the littered roadsides that I have just encountered on the M11 going up to Norfolk. I am absolutely appalled at the amount of litter there is over here. It's everywhere, but the roadsides leave you speechless. This country is looking filthy – what on earth has happened to it? What CAN we do to even start to rectify this situation?"

Causing harassment of or distress to, staff

45. I have never used intemperate language, made unsubstantiated allegations of improper behaviour or been even mildly disrespectful to staff in my dealing with the Agency / DfT. In fact I purposely go out of my way to be courteous and business like at all times.
46. The Agency have not provided a single example of where this might have been the case.

A means of holding public officials to account

47. Dransfield 25. *In particular, we must also not forget that one of the main purposes of FOIA is to provide citizens with a (qualified) right to access to official information and thus a means of holding public authorities to account. It may be both annoying and irritating (as well as both dissatisfying and disappointing) for politicians and public officials to have to face FOIA requests designed to expose possible or actual wrongdoing. However, that cannot mean that such requests, properly considered in the light of all the circumstances and the legislative intention, are necessarily to be regarded as vexatious.*
48. I would contend that this is such as case and would ask the Tribunal to consider my four requests in the light of all of the circumstances I have presented above and in my earlier grounds for appeal and to find that they were not vexatious
49. I would like my appeal to be decided at a hearing and not on the papers. I believe an official from the Information Commissioners Office should be available for cross examination.

Peter Silverman
2nd April 2013