

22nd December 2020

Complaint to the Information Commissioner

Survey of roadside litter on HE trunk roads – communications to LAs

Complainant: Peter Silverman, 20 Kingsend, Ruislip, Middlesex HA4 7DA 01895 625770

I confirm that to the best of my knowledge I have given you accurate information relating to this complaint. I understand that during any necessary investigations, you may need to disclose the details I have provided to the subject of my complaint to allow them to make a proper response. I also understand that your policy is to destroy documents relating to complaints after six months. I have clearly indicated those documents that you should not destroy and should return to me.

Organisation being Complained about

Department for the Environment Food & Rural Affairs,
Nobel House Area 5B
17 Smith Square London
SW1P 3JR

Complaint

Please refer to: https://www.whatdotheyknow.com/request/survey_of_roadside_litter_on_he

I have not been provided with copies of “the communications to each relevant local authority sharing the results of the survey with them”

This was a reference DEFRA to Minister Rebecca Pow’s statement in Parliament as follows:

“In 2018, Defra commissioned an independent survey of roadside litter on those parts of the [Strategic Road Network \(SRN\)](#) where Highways England is responsible for maintenance but the local authority is responsible for clearing litter. The results have been shared with relevant local authorities and will be used in policy development”.

In [their internal review of 6th November 2020](#), DEFRA claimed that the information should be withheld under EIR12(5)(d) citing confidentiality of proceedings provided by the Common Law.

Is the common law duty of confidence applicable?

The April 2017 [Litter Strategy for England](#), co-authored by DEFRA, says on p58: “*The Government will commission and publish an independent assessment of road cleanliness and publish cleanliness reviews by authority. We will **then** set a deadline for underperforming authorities to improve their performance within this Parliament*”. [My underlining].

This implies the cleanliness scores would be put straight into the public domain and only then would there be a dialogue with recalcitrant local authorities about improving performance.

LAs would not therefore have had any initial expectation that the survey results would be confidential.

In their review communication of 6th November 2020 DEFRA state:d
“Our letters to local authorities explained that in the Litter Strategy we set out our aim to publish the results of this survey, **and** to set a deadline for authorities falling below the standard set out in the Code of Practice to improve their performance”. Before doing so, we told them that we would like to

understand better the issues and challenges that they faced in achieving the required standard, and which may be preventing a higher standard being consistently obtained”.

“Publish and **then** set a deadline” had become “publish **and** set a deadline”.

DEFRA argues “releasing the results at this time could negatively affect the willingness of local authorities to work with us going forward”.

However, telling the LAs that the incriminating results would not be published until their views had been considered might simply encourage them to delay their response as long as possible.

They say: “As this has created an expectation of confidentiality, combined with the necessary quality of confidence of the information, it means that Defra has a duty of confidence in relation to these proceedings”. In other words, the confidentiality of what they claim to be proceedings arose from the confidentiality of the results i.e. of information.

Regulation 12(5)(d) protects the confidentiality of ‘proceedings’ not of ‘information’. You cannot introduce information you were already expected to have published into proceedings and argue that its inclusion makes the proceedings, and hence the information, confidential.

Public Interest

The focus of the survey was those All-Purpose Trunk Roads (APTRs) managed in every respect by Highways England (HE) apart from litter clearance which has to be dealt with by the relevant Local Authority (LA). The HE contractor has to cut the verge before the LA contractor can pick up the litter.

In reference to these roads p 58 of the 2017 Litter Strategy went on to say: “We also propose to reallocate responsibility for managing relevant cleaning activities from any local authority that is not fulfilling its statutory duties on the road network”.

There is widespread concern about the persistently littered state of these roads which include stretches of the A46, A14, A27 and A34 as illustrated below:

<https://youtu.be/Q7HMfT7aQ-8>

<https://youtu.be/2CQvtltAOSA>

[Residents, councils ad MPS demand A27 cleansing be transferred to Highways England](#)

[DfT prevaricate over transfer of cleansing of APTRs from councils to HE](#)

If you open <https://www.cleanhighways.co.uk/comments> and use your browser’s FIND facility to search for the following roads you will see the number of comments that have been made about each one are as shown. In each case I have quoted from the most recent one.

A46 - 22 “The two litter bins in the lay-by on the A46 between Teddington Hands roundabout and Aston Cross crossroads are full to overflowing and litter is all over the grass verge...”
Gordon Tylet.

A14 - 93 “Then there is the eyesore of the A14 around Newmarket .. into Suffolk , does anyone at HE really care?” – *Andrew.*

A27 - 77 “ ... A27 and A23 are disgusting so much rubbish along parts of these roads that I can’t believe nothing has been done” - *Amanda Flude.*

A34 - 43 “ ... about getting the A34 litter picking duties transferred to Highways England, I would like make a further point that I will not be writing to Defra about it, they are useless ... - *Helen Flynn.*

Yet three and a half years after we were promised “road cleanliness reviews by local authority” in the Litter Strategy they have still to be published.

Between April 2017 and July 2020, we have gone from “*commission, publish and reallocate responsibilities*” to “*commissioned, shared and to be used in policy development*”.

Nowhere was it suggested that there would be protracted discussions with LAs before publication.

There is therefore a strong public interest in providing copies of the correspondence as they contain the long-anticipated and overdue results. They would also provide a useful insight into to how DEFRA has approached matters with the LAs.

Action requested

Please issue a Decision Notice requiring DEFRA to provide the information requested i.e. ‘copies of the communications to each relevant local authority sharing the results of the survey with them’.

I do not want the ICO to act as a conciliator.

Kind regards

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