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| Our ref: 718,377  Your ref:  Mr Peter Silverman  Via Email | Chris Barnes  Freedom of Information Officer  4 SOUTH  Lateral  8 City Walk  Leeds LS11 9AT  14 April 2015 |

Dear Mr Silverman

I am writing regarding your request for an internal review of the decision to withhold information relating to litter complaint stats and communications with local authorities regarding all-purpose trunk roads.

As the Freedom of Information Officer for Highways England I have carried out the independent internal review. My findings are set out below.

Your requests of the 17th and 18th February 2015 asked:

*“1. Please provide me with 5 recent communications sent to local authorities by the Highways Agency asking for action to be taken when it felt that the standards set by the Environmental Protection Act were not being met.*

*2. Please provide me with 5 recent communications sent to local authorities by Highways Agency contractors asking for action to be taken when it felt that the standards set by the Environmental Protection Act were not being met.*

*3.Please send me 5 recent reports recording the monitoring of the cleanliness of the Highways Agency's network by the employee of the Highways Agency as opposed to by employees of their contractors.*

*4.Please send me 5 recent reports recording the monitoring of the cleanliness of the those All Purpose Trunk Roads on the network where the local authority has responsibility for cleansing.”*

And

*“Could you please provide me with copies of all feedback received in January 2015 about litter on the Highways Agency's network.”*

This information was withheld in reliance on the exception in Regulation 12(4)(b) of the Environmental Information Regulations.

My colleagues considered that the public interest did not warrant a diversion of resources to comply with what were considered to be repeat issues. Many of the public interest considerations would necessarily have been taken into account when deciding to refuse your request.

The refusal letter sent by my colleague was written in a deliberately positive manner to show what the commitments of Highways England are moving forward and an attempt to engage with you and your organisation. Obviously the fivefold increase in capital budget afforded to Highways England brings a huge amount of potential to improve the way Highways England will work and expand roles and responsibilities not possible for the Highways Agency.

Declaring correspondence as vexatious is inherently negative. Since the letter was aimed at fostering engagement I can appreciate the tone of the response however, for the sake of due process, my full considerations as to the public interest are as follows:

ICO guidance states that there is little material difference between the considerations in Regulation 12(4)(b) of the EIRs and Section 14(1) of the Freedom of Information Act. I have therefore given consideration to the guidance for each provision in this review.

I have been able to find evidence of 51 separate incidences of correspondence since May 2010, there may have been be more. This does not take any element of back and forth into account. Indeed we have received five further communications from you since the submission of the EIR requests mentioned above.

Your correspondence can be broken down as follows: 2010 – five incidences, 2011- ten, 2012 – nine, 2013 – four, 2014 – thirteen, 2015 – ten (so far).

Your three EIRs submitted in February (the two mentioned above and a third dated 10th February regarding litter blown from commercial vehicles – our *response* sent 16th February) all raise repeat issues. You have previously raised the topics contained in your requests as below:

Litter blown from commercial vehicles: Mentioned in correspondence to Robert Goodwill (MP) 21/03/2014, Bob Castleman 23/09/2014 and three of your five reports to Graham Dalton.

Cleansing of all purpose trunk roads: Mentioned in correspondence to Robert Goodwill 21/03/2014, Philip Rutnam (Permanent Secretary at DfT) 14/11/2014 and three of your five reports to Graham Dalton.

Litter complaint statistics: Similar FOI requests submitted July 2011 and June 2014.

Similarly, the briefing note sent to the Chairman, Colin Matthews, in November 2014 raised a number of points previously covered in correspondence with the Agency.

I also notice a scattergun approach to gathering the same information from many different sources, from Ministers, DfT and Highways England (either FOI requests or by writing directly to named members of staff such as the Chief Executive, the Chairman or Bob Castleman).

In your letter to Bob Castleman of the 8th April you mention the findings of the Information Tribunal case of 2012. I do not believe that we have ever claimed that litter is not a problem for the network. I do note that there appears to be a fundamental ideological difference to our approaches. Highways England is committed to trying to stop litter at the source rather than solely relying on litter picking.

In this regard I believe that you will always hold a contrary point of view to Highways England colleagues regarding our performance under EPA etc.

I could, for example, refute the statements in your latest series of reports by providing evidence of recent collaborations between Highways England and Local Authorities to pick litter under cover of planned road closures in the North East and on the A64 but it is unlikely that this will satisfy you.

In that regard I am also taking the future burden of correspondence for Highways England into consideration. It is clear when considering the above evidence that you are unlikely to cease your campaign. I note, as a further example, that you describe the first of your reports to Graham Dalton as the first in a regular series of reports.

In consideration of the evidence it is my opinion that your requests should be considered vexatious and that my colleagues were correct to rely upon the exception in regulation 12(4)(b) of the EIRs.

I note that you have agreed to a meeting to discuss a way that you, and your significant number of correspondents, could assist the agency with the litter problem. I would support the view that closer collaboration afforded by these meetings is more beneficial to the public interest than the adversarial approach necessitated by submitting access to information requests. Indeed I would further argue that this approach is more likely to yield positive results.

I do believe a different approach for our relationship is required. The fact that most of the recommendations in your reports are initiatives already in train shows that we are both moving in the same direction. The public interest would be best served in making sure that these initiatives come to fruition rather than trying to hold the Company to account.

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 reference number 718,377 in any future communications.

Yours sincerely

Chris Barnes

Freedom of Information Officer

**Annex:**

**Exceptions to the duty to disclose environmental information**

This sectionnoteType=Explanatory Memorandum has no associated

12.—(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if—

(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—

(b) the request for information is manifestly unreasonable;