

Dear Mr Jordan,

Thank you for your letters of 30 July, in which you ask for an internal review of our decision to refuse your requests for information made on the 26 May 2012, (relating to the road worker safety action plan) and the 27 May 2012, (relating to action taken regarding the independent ministerial review). Both have been refused disclosure citing exemption under section 14(1) of the Freedom of Information Act (the Act). I apologise for the delay in responding, which was due to operational constraints because of the Olympics and also summer leave commitments within the investigation team.

As a senior officer within another division of the Highways Agency (the Agency) and previously unconnected with these cases, I was appointed to review how we dealt with your requests and respond accordingly. I have reviewed the information relating to both cases and noted the wider context in which you have placed your other requests with the Agency (both in terms of the Act and in general over the past few years). I have also spoken to the relevant business areas to gauge their reasoning for enacting a section 14(1) exemption. As part of my review, I have assessed the Agency's use of the exemption against the Ministry of Justice guidance, considering all six requests lodged since April 2012, in line with the Act's 60 day rolling period (I have discounted the two parliamentary questions that were cited in our letter of 19 June, as I agree that you have no influence over a minister's decision to table questions at this level).

It is clear to me that you consider road worker safety as a priority. You mention in your response that "*a reasonable person would not regard the work involved in answering them [your requests] as disproportionate nor the requests themselves as vexatious*". I don't believe that any of our correspondence with you has suggested that we have questioned the rationale in making your requests. However, the number, frequency and volume of information contained within each piece does lead me to believe that we have identified correctly a pattern of behaviour that supports a section 14(1) exemption.

I accept that you are seeking a range of information to support your view that improvements are necessary in the safeguarding of those who work on our strategic network, potentially through the deployment of specialised machinery (such as the Conemaster traffic cone lifting and laying system) and I acknowledge that you may wish to make future requests for information. However, public bodies have a limited resource, which has to be recognised. In your case, you have submitted numerous requests for information (both through the Act and in general) that has caused Agency resources, and potentially those of our contractors to be diverted away from our core business delivery, albeit for legitimate reasons. For example, to supply you with the information for the road worker safety action plan, an estimated 100 hours would be required, and, based on previous experience for similar requests; the information required in relation to Agency action taken on the independent ministerial review would take a further 70 – 80 hours to compile.

In my view, a balance has to be struck between satisfying your requests for information, whilst allowing for our resources to be used on day to day activity to avoid significant burden on our business. As such, I conclude that there is a convincing and balanced case for the application of the exemption in this instance and have upheld the section 14(1) exemption. However, I believe that we did not meet fully the requirements of the Act in terms of whether we could have alerted you earlier to the fact that the frequency and size of the requests were becoming unreasonable and causing additional burden on resources.

If you are not content with the outcome of this 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

Yours sincerely,

Sharon McCarthy
Head of Audit and Assurance
Finance and Business Services