



Department for Transport

Dr Paul Thornton
Via email

Information Rights & Records Unit
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East Sussex
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REF F0009460

Web Site: www.gov.uk/dft

4 January 2013

Dear Dr Thornton

INTERNAL REVIEW OF YOUR COMPLAINT UNDER THE FREEDOM OF INFORMATION (FOI) ACT 2000 – Ref: F0009460

Thank you for your email dated 10 December 2012 in which you requested a review of the response sent to you that day about your original request of 12 November. As a senior member of the Information Rights & Records Unit team, and having had no involvement in the original case, I have conducted an independent review of the decision. For ease of reference your request was for:

“Q1: Please send me the policy document setting out the criteria that determines which responses are selected for publication on your website.

Q2: Please also provide a copy of all the information released by the DfT during August, September and October 2012, that was requested under the terms of the FOIA or the EIRs and that has not been published in the DfT website database at this URL:

<http://www.dft.gov.uk/foi/>.

My review has therefore looked afresh at your request and considered whether I should agree with the decisions taken. Although you did not question the response to the first part of your request I can confirm that the information provided continues to be the extant guidance to department officials in respect of publishing information disclosed under the FOI regime. That guidance is being reviewed to reflect the recent move of the department's website to the unified GOV.UK website and in light of the fact that visits made to our FOI disclosure log account for only 0.02% of the visits to the whole DfT website. One option we are exploring is publishing a *list* of all FOI disclosures on the website and giving people the opportunity to email the Department should they wish to see the information that was released in response to a particular request. Where released information relates to a specific transport mode and is considered to be of wide public interest, an option could be to publish the information on the section of the website which concerns that particular mode. That may help interested parties to better locate all the relevant, contemporary information on any particular subject rather than needing to also scan the FOI disclosure log in addition to the relevant subject areas of the website.

As regards Q2, I have looked carefully at the wording of your request and have concluded that the department was correct to rule this to be an invalid request for information within the meaning of section 8(1)(c) of the Freedom of Information Act 2000. To constitute a

valid request the requestor needs to identify the information sought and your request merely refers to "all the information released by the DfT..." but does not describe the specific information you are interested in. Rather your request refers to an unrelated set of information identified only by what has not happened to that information rather than in any way identifying the contents of this information.

In referring you to the guidance published by the Information Commissioner at the links below:

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/its_public_information_foi%20charter_final.pdf

http://www.ico.gov.uk/for_the_public/official_information/how_access.aspx

the intention was not in any way to imply that we viewed the second part of your request as either irresponsible or vexatious and I apologise if we inadvertently gave that impression. It was our intention to help you to appreciate the ICO guidelines for requestors in framing their requests.

I have considered your comments about your intention to seek clarity about the department's compliance with our responsibilities under the FOI Act and the EIR, particularly in respect of how we reach decisions on the public interest in publishing our disclosures. Nonetheless I find that the department was correct to determine that the second part of the request is not a valid request within the meaning of the legislation.

I have also reviewed your request in the context of the Environmental Information Regulations. Our original response noted that the requirements of the EIR differ from those of the FOI Act and that Regulation 12(4)(c) permits a public authority not to comply with a request for environmental information where the request is formulated in too general a manner. For the reasons set out above I have concluded that we were correct to do so in respect of Q2 of your request.

If I may be of assistance in respect of providing you with information concerning our compliance with both the letter and spirit of the legislation, I can assure you that the department has from the outset sought to publish newly disclosed information where there is a public interest justification. Indeed, one of the consequences of the department doing so is that similar requests in subsequent years have resulted in the department determining that there is far less justification for incurring the costs of publishing what is often almost the same information as that which already appears in the Disclosure Log. Moreover, as stated above, visits made to our FOI disclosure log account for only 0.02% of the visits to the whole DfT website (based on figures for the three months covered by your request). So whilst the department has been commended for the volume of information it has published since the FOI Act was fully implemented, it is increasingly apparent that we feel justified in now publishing less new information in this way. The ICO report of their review in 2009 of how central departments had complied with the revised FOI Publication Scheme is a good example of this and in respect of the department's FOI disclosure log that review noted that:

Department for Transport operate a well organised disclosure log which is fully retrospective with links to requests, responses and supporting documents.

The full ICO report can be found at:

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/research_and_reports/central_government_sector_monitoring_report.pdf

As part of my review I have also examined the actual work that would be required to meet the Q2 in your request in the event that it was to be considered to be a valid request. To do this my team has interrogated the database of FOI/EIR cases we maintain for the central department and identified that there are 143 requests that were responded to by the central department during the three month period between August and October 2012 which were relevant, i.e. some information was disclosed in our responses to these cases. This took about 30 minutes to compile the report and a similar amount of time to check with the website that responses had not been published.

Because the central department has fully devolved FOI/EIR case handling to the relevant division, it would be necessary to identify and contact the responsible case officer for these cases and for them to then locate and retrieve the information disclosed with (or as part of) the response sent to each applicant. As the cases are quite recent we have estimated that this would be relatively straightforward and therefore should take approximately 15 minutes which means a total of a further 32 hours of activity. Under section 12 of the FOI Act public authorities are not required to respond to requests where the cost of doing so is likely to be in excess of the cost limit of £600 (24 hours at £25 per hour for central government departments). I have attached a copy of this part of the Act for your information. In so far as any of these requests would come under the EIR, the relevant regulation is regulation 12(4)(b), the request for information is manifestly unreasonable, and I have also attached a copy of Regulation 12.

I should add that if the request was intended to cover all requests to the Department for Transport, i.e. the central department and the seven executive agencies, it is obvious that the resource costs to undertake the work involved would be far greater. Broadly speaking the central department handles only 30% of all the requests submitted to the department each year.

If you are unhappy with the way the Department has handled your complaint you may complain within three calendar months of the date of this letter by writing to the Information Commissioner's Office. The ICO address is:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Yours sincerely

MIKE CARTY
Departmental Information Rights & Records Officer

FOI Act Section 12

Exemption where cost of compliance exceeds appropriate limit

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

(3) In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.

(4) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority—

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.

(5) The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated.

Environmental Information Regulations: Regulation 12(4)

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

(a) an exception to disclosure applies under paragraphs (4) or (5); and

(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

(2) A public authority shall apply a presumption in favour of disclosure.

(3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.

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

(a) it does not hold that information when an applicant's request is received;

(b) **the request for information is manifestly unreasonable;**

(c) **the request for information is formulated in too general a manner and the public authority has complied with regulation 9;**

(d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data; or

(e) the request involves the disclosure of internal communications.