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Peter Silverman
By email: request-684085-8a8cd560@whatdotheyknow.com

Our ref: FOI2020/20781
9 September 2020

Dear Peter Silverman,

REQUEST FOR INFORMATION: Roadside Litter

Thank you for your request for information of 12th August about roadside litter on trunk roads managed by Highways England. We have handled your request under the Environmental Information Regulations 2004 (EIRs)

The EIRs apply to requests for environmental information, which is a broad category of information defined in regulation 2 of the EIRs. Public authorities are required to handle requests for environmental information under the EIRs. They give similar access rights to the Freedom of Information Act 2000 (FOIA).

You requested that we provide you with

- 1. an electronic copy or a link to the results of the survey described by Rebecca Pow as 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".*
- 2. copies of the communications to each relevant local authority sharing the results of the survey with them.*

We enclose a copy of the raw data from a 2018 pilot survey provided by Keep Britain Tidy. This data accurately shows the grades of each surveyed transect on the dates given. We are aware that a small proportion of these transects were surveyed in error and do not lie on the SRN. It is important to note therefore that this dataset should not be seen as an accurate representation of the grading across the whole SRN, or indeed of those parts where Highways England is responsible for maintenance but the local authority is responsible for clearing litter. We are in the process of identifying these errors.

Since we received this data, our understanding of which body is responsible for clearing litter at specific transects has also changed. We are still in the process of clarifying this responsibility, and as such this part of the survey is still *material in the course of completion*. Therefore, column E ("Authority") has been redacted under the exception in regulation 12(4)(d) of the EIRs.

This work has been delayed due to a reallocation of resources to respond to covid-19, however work is now ongoing and we estimate publishing the findings of the pilot survey in 2021.

After careful consideration we have also decided that the column J “Initial” should be withheld under regulations 12(3) and 13(1) and (2A) of the EIRs as the information constitutes personal data relating to persons other than you. These regulations exempt personal information from disclosure if that information relates to someone other than the applicant, and if disclosure of that information would breach any of the data protection principles in Article 5(1) of the General Data Protection Regulation (GDPR).

We consider that disclosure of this information is likely to breach the first data protection principle, which provides that personal data must be processed lawfully, fairly, and in a transparent manner. Disclosure would not constitute 'fair' processing of the personal data because the surveyors involved would not reasonably expect their initials to be disclosed in relation to this request for information.

As a result of the ongoing work outlined above regarding clarifying responsibility for litter clearance, the results contained in the letters sent to local authorities may also need to be revised. The *“communications to each relevant local authority sharing the results of the survey with them”* you have requested are therefore being withheld as we consider these to be *material still in the course of completion* which thus fall under the exception in regulation 12(4)(d) of the EIRs.

In applying these exceptions, we have had to balance the public interest in withholding the information against the public interest in disclosure.

We recognise that there is a public interest in disclosure of information concerning local authority performance in meeting their statutory duty under EPA 1990 s.89 to keep land and highways clear of litter and refuse, in order for those bodies to be held to account for that performance.

However, on the other hand there is a stronger public interest in withholding the information. Assigning responsibility for a transect to a local authority in error may be misleading for the public and other local authorities. Disclosing material would harm the safe space and would negatively impact upon the integrity of the decision-making process. Additionally the disclosure of discussions would inhibit free and frank discussions in the future, and that loss of frankness and candour would damage the quality of future decision making.

We have also told local authorities that we will not publish the results of this survey by authority until we understand how a higher standard of cleaning can be consistently obtained by all. As we are still actively exploring this work, releasing the results at this time could negatively affect the willingness of local authorities to work with us going forward.

Therefore, we have concluded that the letters to local authorities, and columns E and J of the raw data, should be withheld.

Information disclosed in response to this EIR is releasable to the public. In keeping with the spirit and effect of the EIRs and the government’s Transparency Agenda, this letter and the information disclosed to you may be placed on [GOV.UK](https://www.gov.uk), together with any related information that will provide a key to its wider context. No information identifying you will be placed on the GOV.UK website.

We attach Annex A, explaining the copyright that applies to the information being released to you, and Annex B giving contact details should you be unhappy with the service you have received.

If you have any queries about this letter please contact me.

Yours sincerely

Guy Mawhinney
Information Rights Team
InformationRequests@defra.gov.uk

Annex A

Copyright

The information supplied to you continues to be protected by copyright. You are free to use it for your own purposes, including for private study and non-commercial research, and for any other purpose authorised by an exception in current copyright law. Documents (except photographs or logos) can be also used in the UK without requiring permission for the purposes of news reporting. Any other re-use, for example commercial publication, would require the permission of the copyright holder.

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Annex B

Complaints

If you are unhappy with the service you have received in relation to your request you may make a complaint or appeal against our decision under section 17(7) of the FOIA or under regulation 11 of the EIRs, as applicable, within 40 working days of the date of this letter. Please write to Andrew Mobsby, Head of Information Rights via email at InformationRequests@defra.gov.uk and he will arrange for an internal review of your case. Details of Defra's complaints procedure are on our website.

If you are not content with the outcome of the internal review, section 50 of the FOIA and regulation 18 of the EIRs gives you the right to apply directly to the Information Commissioner's Office (ICO) for a decision. Please note that generally the ICO cannot make a decision unless you have first exhausted Defra's own complaints procedure.

The ICO's offices are currently closed so please visit their website on how to contact them during this period, here:

<https://ico.org.uk>