

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 March 2024

Public Authority: National Highways
Address: Bridge House
1 Walnut Tree Close
Guildford
GU1 4LZ

Decision (including any steps ordered)

1. The complainant made a request for information relating to a variable speed limit in a certain area of the M25 motorway. National Highways has confirmed that it does not hold the information requested under section 1(1)(a) of FOIA.
2. The Commissioner considers that National Highways was correct to confirm that it does not hold the requested information. However, the Commissioner also considers that National Highways breached sections 1(1)(a) and 10(1) of FOIA as it did not inform the complainant within 20 working days of the request that it did not hold the requested information.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 22 October 2023 the complainant made the following request for information under FOIA in relation to an ongoing prosecution for speeding:

"Can you please send me confirmation that at the date/time stated above, "Gantry#3" (1.0m before Exit 18) did not show any speed limit."

5. National Highways responded on 3 November 2023 citing section 31(1)(a)(b) and (c) of FOIA as a basis for refusing to disclose the requested information.
6. The complainant requested an internal review of that response on 3 November 2023. National Highways provided its internal review response on 17 November 2023. It provided some additional information in relation to the request and upheld its original application of section 31.
7. Following correspondence from the Commissioner on 4 March 2024, National Highways responded on 12 March 2024. It provided some background information regarding its approach of applying section 31 of FOIA to requests of this nature. However, its response stated that it did not actually hold the specific information sought by the complainant, i.e. the speed limit showing on the specified gantry at the specified time or any information indicating that the signal showed no speed limit.

Reasons for decision

8. Section 1(1) FOIA provides that:

“Any person making a request for information to a public authority is entitled –

 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.”

The Commissioner’s decision

9. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, the Commissioner is required to make a finding on the balance of probabilities.
10. When dealing with a complaint to him under FOIA, it is not the Commissioner’s role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the decisions it makes to hold some, but not other, information. Rather, in a case

such as this, the Commissioner's role is simply to decide whether or not, on the balance of probabilities, the public authority holds the requested information.

11. National Highways has provided the Commissioner with a list of gantries (traffic sign holders above a motorway) and settings it holds for the date and time in question. This was part of a log held by National Highways which was requested by an operator for roadworks taking place on that specific night. The Commissioner has examined the log and can see that it contains no specific data for the gantry indicated in the complainant's request, so technically the setting data for that particular gantry at that time is not held by National Highways.
12. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of FOIA. FOIA is concerned with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.
13. National Highways has provided some context as to why the signal may have been blank and has stated that a blank signal does not negate or cancel a lower speed limit. Only a national speed limit symbol or the word 'END' on a sign can do this. Therefore a blank signal showing after a lower speed limit signal means drivers should still drive at the lower speed limit.
14. National Highways does not hold the information as requested by the complainant, i.e. information that would confirm that the gantry was not showing any speed limit at the date and time in question. On the balance of probabilities the Commissioner is satisfied that the requested information is not held by National Highways.
15. However, National Highways has not complied with its obligations under sections 1(1)(a) and 10(1) of FOIA in this case as it applied section 31 of FOIA to the complainant's request without stating that it did not hold the requested information.

Other matters

16. In addition to the refusal of the complainant's request, National Highways did point them towards a link on its website which provided further information about the settings, compliance and enforcement of variable speed limit signals. This also provides an explanation as to why

National Highways applies section 31 of FOIA to requests of this nature and directs requestors to contact the relevant enforcement authority – usually the police force which issued the NIP (Notice of Intended Prosecution) for up-to-date and accurate information regarding the Variable Speed Limit signal settings.

17. The Commissioner considers that this provides comprehensive and helpful assistance to those requesting information about Variable Speed Limit signals and settings from National Highways.

Right of appeal

18. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from: First-tier Tribunal (Information Rights)

GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: grc@Justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

19. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
20. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed.....

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF