

# Decision Notice



Decision 029/2012 Alexander Hughes and Transport Scotland

Temporary speed restriction signage on the A80 Trunk Road

Reference No: 201101436

Decision Date: 13 February 2012

[www.itspublicknowledge.info](http://www.itspublicknowledge.info)

**Kevin Dunion**

Scottish Information Commissioner

Kinburn Castle

Doubledykes Road



## Summary

Mr Alexander Hughes requested from Transport Scotland information pertaining to temporary speed restriction signage on the A80 Trunk Road. Transport Scotland responded by withholding the information from Mr Hughes. Following a review, Transport Scotland considered Mr Hughes' request in terms of the Environmental Information (Scotland) Regulations (EIRs). It concluded that the request was manifestly unreasonable, and that the information was therefore excepted from disclosure under regulation 10(4)(b). Mr Hughes remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Transport Scotland had dealt with Mr Hughes' request for information in accordance with the EIRs. He found that Mr Hughes' request was manifestly unreasonable and Transport Scotland was entitled to withhold the information under regulation 10(4)(b). He did not require Transport Scotland to take any action.

## Relevant statutory provisions

---

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 39(2) (Health, safety and the environment)

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (Interpretation – definitions (a) to (c) of environmental information); 5(1) and (2)(b) (Duty to make available environmental information on request); 9(1) and (3) (Duty to provide advice and assistance) and 10(1), (2) and (4)(b) (Exceptions from duty to make environmental information available)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.



## Background

---

1. On 7 June 2011, Mr Hughes emailed Transport Scotland requesting the following information:
  - (i) Details of all defects in the signage for the speed limit covered by the A80 Trunk Road (Stepps to Haggs) (Temporary 40mph Speed Restriction) Order 2009<sup>1</sup>, including who reported them, when they were found, when they were fixed, and what was the defect.
  - (ii) The same details for the signage of the speed limit covered by the A80 Trunk Road (Haggs to Bankhead) (Temporary 40mph Speed Restriction) Order 2009<sup>2</sup>.
  - (iii) Where the A80 Trunk Road (Haggs to Bankhead) (Temporary 40mph Speed Restriction) Order 2009 terminal signs were located heading towards Haggs/Glasgow and what signs were present at the termination of the area covered by the order.
  - (iv) For the speed limit covered by the A80 Trunk Road (Stepps to Haggs) (Temporary 40mph Speed Restriction) Order 2009, details of all entrances and exits including which signs (e.g. 670/671 roadworks ends) were present and the location of those signs.
2. Transport Scotland sought clarification from Mr Hughes on 9 June 2011, asking him to identify the particular date or dates he was referring to and what he meant by “defects”.
3. Mr Hughes responded to Transport Scotland the same day stating that he was interested in the period from 1 April 2009 until 1 October 2009. He advised that by “defect” he meant any non compliance with the statutory provisions of the Traffic Signs Regulations and General Directions 2002<sup>3</sup> (and updates)<sup>4</sup> including signs that were knocked down and thus were not visible to motorists, and any non conformity that was noted in the checks done during the regular site checks and also the initial site inspections.
4. On 24 June 2011, Transport Scotland provided a response to Mr Hughes, stating that in order to research the information requested it needed an exact date, or a range of dates of approximately one week either side. Transport Scotland stated that, given the site is 18km in length, it needed to know the exact location he was interested in and, in the circumstances, it was unable to proceed further with his request.

---

<sup>1</sup> [http://www.legislation.gov.uk/ssi/2009/77/pdfs/ssi\\_20090077\\_en.pdf](http://www.legislation.gov.uk/ssi/2009/77/pdfs/ssi_20090077_en.pdf)

<sup>2</sup> [http://www.legislation.gov.uk/ssi/2009/289/pdfs/ssi\\_20090289\\_en.pdf](http://www.legislation.gov.uk/ssi/2009/289/pdfs/ssi_20090289_en.pdf)

<sup>3</sup> <http://www.legislation.gov.uk/uksi/2002/3113/contents/made>

<sup>4</sup> <http://www.legislation.gov.uk/uksi/2011/1040/made>



5. Mr Hughes emailed Transport Scotland on 26 June 2011 requesting a review of its decision not to proceed with his request. In particular, Mr Hughes drew Transport Scotland's attention to the fact that he had given the locations in question as being those areas covered by the Temporary Traffic Regulation Orders mentioned in his request.
6. Transport Scotland notified Mr Hughes of the outcome of its review on 25 July 2011. Having judged the requested information to be environmental information, it applied the exemption in section 39(2) of FOISA to that information, and went on to consider the request under the EIRs.
7. Transport Scotland explained that it considered Mr Hughes' information request was manifestly unreasonable, and so the information was excepted from disclosure under regulation 10(4)(b) of the EIRs. It stated that the cost of providing the information requested, taking account of the length of the road in question and the time period covered, would be excessively high. Transport Scotland asked Mr Hughes to consider reducing the scope of his request to make it more manageable and stated, if he did so, it may be able to provide the information requested.
8. On 3 August 2011, Mr Hughes wrote to the Commissioner, stating that he was dissatisfied with the outcome of Transport Scotland's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to certain specified modifications. Mr Hughes stated that he was specifically looking for any recorded or reported defects in the road signage and was unhappy that Transport Scotland had not provided him with this information.
9. The application was validated by establishing that Mr Hughes had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

## Investigation

---

10. Transport Scotland is an executive agency of the Scottish Ministers (the Ministers) and, in line with agreed procedures, the Ministers were notified in writing on 25 August 2011 that an application had been received from Mr Hughes. They were invited to comment on the application (as required by section 49(3)(a) of FOISA) and asked to respond to specific questions. In particular, they were asked to justify their reliance on any provisions of the EIRs they considered applicable to the information requested.
11. Subsequent references to submissions requested and received from Transport Scotland in this decision are references to those sought and received from the Ministers' Freedom of Information Unit on behalf of Transport Scotland.



12. Transport Scotland responded to the investigating officer on 16 September 2011. They confirmed that they considered the information requested by Mr Hughes to be environmental information, and so exempt from disclosure under section 39(2) of FOISA. They maintained that the request was manifestly unreasonable and that regulation 10(4)(b) of the EIRs therefore applied, providing submissions in support of this approach.
13. However, Transport Scotland's submissions on regulation 10(4)(b) included a statement that it does not hold the information requested by Mr Hughes, but that the information it is held by the contractor which undertook the work on the A80. Transport Scotland went on to explain the nature and extent of the work that would need to be undertaken by the contractor to retrieve the requested information, and the costs that would be charged to Transport Scotland for it undertaking this work.
14. During the investigation, the investigating officer requested clarification from Transport Scotland as to whether it actually held the information requested by Mr Hughes for the purposes of the EIRs. This point was important because, when responding to a request made under the EIRs, a public authority is only obliged to consider and provide information that it holds for the purposes of the EIRs. Information is held for the purposes of the EIRs if it is either physically held by the authority, or if it is held on the authority's behalf by another person.
15. Transport Scotland was asked to confirm whether, when indicating that it did not hold the information requested by Mr Hughes, it was saying that it held the information by virtue of the contractor holding it on Transport Scotland's behalf, or whether it wished to submit that it simply did not hold the information for the purposes of the EIRs.
16. Transport Scotland initially declined to address this question, indicating again that the information was not held by it, but stating also that it did not contend that the information could not be retrieved, merely that the request was so wide ranging and consequently so expensive to deal with as to be considered manifestly unreasonable.
17. Since this response did not provide the clarification requested, the investigating officer reiterated her request, noting that if Transport Scotland did not hold the requested information for the purposes of the EIRs, the burden of responding to that request would not be so significant as was claimed. The investigating officer noted that the question of whether the information was held was relevant to the Commissioner's consideration of Transport Scotland's submissions on regulation 10(4)(b).
18. Following a series of communications, Transport Scotland provided the requested clarification on 8 December 2011. It confirmed that it considered the information to belong to the contractor but to be held on behalf of Transport Scotland, and so it was held by Transport Scotland for the purposes of the EIRs.



## Commissioner's analysis and findings

---

19. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to him by both Mr Hughes and Transport Scotland and is satisfied that no matter of relevance has been overlooked.

### Handling under EIRs

20. In this case, Transport Scotland has considered Mr Hughes' request as one seeking environmental information in terms of the EIRs. Environmental information is defined in regulation 2(1) of the EIRs (the relevant parts of the definition are reproduced in the Appendix to this decision). Where information falls within the scope of this definition, a person has a right to access it under the EIRs, subject to various restrictions and exceptions contained in the EIRs.
21. Paragraph (c) of the definition of environmental information states that information on measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements, is environmental information.
22. The information requested by Mr Hughes pertains to signage indicating temporary speed limits imposed on sections of the A80 trunk road where road works were being carried out. Road works projects constitute measures, involving activities, legislation, plans and programs affecting the state of the elements of the environment, principally, land, air and landscape, and factors affecting those elements such as substance, noise and emissions.
23. Speed limits and associated signage were one of the measures within the wider road works project on the A80. The Commissioner is satisfied that reduced speed of travel at the site of the works would also affect the elements of the environment by affecting the level of emissions from vehicles, and the impact of vehicles on the road surface.
24. The Commissioner is therefore satisfied that the information requested by Mr Hughes constitutes environmental information as defined in part (c) of the definition in regulation 2(1) of the EIRs.
25. The exemption in section 39(2) of FOISA provides in effect that environmental information as defined by regulation 2(1) of the EIRs is exempt from disclosure under FOISA, with a view to any such information being considered primarily in terms of the EIRs. In this case the Commissioner accepts that Transport Scotland was correct to apply the exemption in section 39(2) of FOISA to the information requested by Mr Hughes, given his conclusion that it is environmental information as defined by regulation 2(1).



26. This exemption is subject to the public interest test in section 2(1)(b) of FOISA. As there is a separate statutory right of access to environmental information available to the applicant in this case, the Commissioner accepts that the public interest in maintaining this exemption and dealing with the request in line with the requirements of the EIRs outweighs any public interest in disclosure of the information under FOISA. The Commissioner has consequently proceeded to consider this case in what follows solely in terms of the EIRs.

### **Regulation 10(4)(b) – manifestly unreasonable**

27. In its initial submissions to the Commissioner, Transport Scotland maintained that the time and cost involved in providing the information to Mr Hughes would be inordinately excessive. It explained that the information was held by contractors responsible for carrying out the works on the A80. It had been provided with an estimate that it would be charged £15,000 to provide the information requested by Mr Hughes.
28. Transport Scotland explained that road signage checks were carried out by its contractors every two hours, twenty four hours a day for the six month period of the works along 18km of road. It maintained that a considerable amount of information would need to be checked to identify and collate the requested information. It indicated that this task would involve two members of the contractor's staff working full time for two weeks on the exercise. They noted that this would require a significant resource to be reallocated from the current staff complement on site at a key stage in the project.
29. Transport Scotland commented that it could not accept that the public interest would be well served by the incurrance of the excessive cost of Mr Hughes' request and its likely interference with the ability of contractors to focus on completing a key phase of the work.
30. When asked for further information by the investigating officer, the Ministers commented further that since checks were undertaken every two hours over a six month period, 2,184 reports would need to be located and retrieved (12 per day over a period of 182 days). They noted that many were held in hard copy, though some may have been scanned for other purposes. The reports would contain hand written notes, and each would need to be read individually.
31. They noted that even if it was assumed that each report could be located and retrieved, and relevant information identified within five minutes, the contractor's estimate of 160 hours (two weeks work for two people) was conservative. They noted that five minutes x 2,184 reports was 182 hours.



32. The Ministers also noted that the estimate of £15,000 provided in their initial submissions related to the cost that would be charged by the contractor for the provision of the information. It noted that if the costs were calculated in terms of a £15 hourly rate for two weeks' work (based on 40 hour weeks), the cost would be £2,400. At the same rate, 182 hours work would cost £2,780.

### ***Commissioner's findings***

33. Before considering the Ministers' submissions concerning the burden associated with Mr Hughes' request, the Commissioner gave consideration as to whether the information he had requested was actually held by Transport Scotland. This was prompted by initial comments suggesting that Transport Scotland did not hold the information. After some delays and discussions between the investigating officer and Transport Scotland, the Commissioner was given the required confirmation that the information was in fact held by Transport Scotland for the purposes of the EIRs.
34. The Commissioner accepts that the information requested is held by Transport Scotland for the purposes of the EIRs and so went on to consider its wider submissions regarding regulation 10(4)(b).
35. The Commissioner has noted the explanations given by Transport Scotland of the task that would be involved in locating the information requested by Mr Hughes. He accepts that this is a reasonable process given that the request sought information about both the full length of the road to which the temporary speed limit applied, over the entire period for which the speed limit was in place. He therefore accepts that the task of responding to Mr Hughes' request would involve checking each of the records of inspections of the road, and a significant amount of time.
36. Transport Scotland has provided estimates of costs of compliance based on both the contractor's charges to them, and based on hourly rates of £15. On either measure, the cost of compliance would be significant, and well above the cost beyond which a request considered under FOISA could be refused.
37. The Commissioner has noted that certain parts of Transport Scotland's cost estimates might be challenged, by asking whether a lower rate of pay might be used as the basis of calculations, or if the assumed timescale of five minutes to review each sheet could be lowered. However, he recognises that even if a lower rate of pay or shorter time to check each sheet, the costs involved would still be significant. Calculations based on three minutes to locate, retrieve and check each report (approximately 109 hours), and an hourly rate of £10 per hour, produce a cost estimate of £1,092.





38. There is no definition of "manifestly unreasonable" in the EIRs, or in Directive 2003/4/EC<sup>5</sup> from which they are derived. The Commissioner's view is that "manifestly" implies that a request should be obviously or clearly unreasonable and he notes the opinion of the Information Tribunal in *Dr Kaye Little v Information Commissioner and Welsh Assembly Government (EA/2010/0072)*<sup>6</sup>, which considers the equivalent regulation to 10(4)(b) of the Environmental Information Regulations 2004, and states:

*From the ordinary meaning of the words "manifestly unreasonable", it is clear that the expression means something more than just "unreasonable". The word "manifestly" imports a quality of obviousness. What is in issue, therefore, is a request that is plainly or clearly unreasonable. It is a more stringent test than simply "unreasonable".*

39. Whether a request is manifestly unreasonable will depend on the facts of each case. It may apply where it can be demonstrated that a request is vexatious, or where compliance would incur unreasonable costs for the public authority or an unreasonable diversion of public resources. In *Decision 024/2010 Mr N and the Scottish Ministers*<sup>7</sup>, the Commissioner stated that he is likely to take into account the same kinds of considerations in deciding whether a request is manifestly unreasonable under the EIRs as he would in reaching a decision as to whether a request is vexatious in terms of section 14(1) of FOISA.

40. The Commissioner's general approach is that a request is vexatious where it would impose a significant burden on the public authority and:

- it does not have a serious purpose or value; and/or
- it is designed to cause disruption or annoyance to the public authority; and/or
- it has the effect of harassing the public authority; and/or
- it would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.

41. However, it does not follow that a request is only manifestly unreasonable under the EIRs if it is vexatious under FOISA as the concept is wider. In particular, there may be circumstances where the burden of responding alone justifies deeming a request to be manifestly unreasonable. Although there is no cost ceiling as to what is deemed to be an excessive cost for compliance under the EIRs as there is in FOISA (under FOISA, public authorities do not have to comply with a request if the cost of compliance exceeds £600), the Commissioner recognises that there may be cases where the time and expense involved in complying with a request for environmental information mean that any reasonable person would regard them as excessive. The Ministers have argued that such a case can be made in relation to Mr Hughes' request.

<sup>5</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0004:EN:HTML>

<sup>6</sup> [http://www.informationtribunal.gov.uk/DBFiles/Decision/i475/%5b2010%5dUKFTT\\_EA20100072\\_\(GRC\)\\_20101230.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i475/%5b2010%5dUKFTT_EA20100072_(GRC)_20101230.pdf)

<sup>7</sup> <http://www.itspubliacknowledge.info/applicationsanddecisions/Decisions/2010/200900461.asp>



42. Having considered the nature of Mr Hughes' request and Transport Scotland's submissions, the Commissioner accepts that the cost of complying with Mr Hughes' request is such that it can be considered manifestly unreasonable. Whether the task of locating and retrieving the information would be undertaken by Transport Scotland or its contractor, it would involve significant staff resources being diverted for a substantial period of time. The Commissioner has not considered in detail the basis upon which the contractor could charge Transport Scotland for this work to be undertaken as he is satisfied that even staff time was charged at a reasonable hourly cost (for example, in line with the fees regulations associated with FOISA), the costs to Transport Scotland would exceed £1,000.
43. In all the circumstances, and particularly having noted that Mr Hughes requested information regarding both a lengthy time period and a lengthy stretch of road, the Commissioner accepts that his request was manifestly unreasonable. As such, he finds that Transport Scotland correctly applied the exception in regulation 10(4)(b) in this case.
44. In reaching this conclusion, the Commissioner had regard to two recent decisions by the (UK) Information Commissioner, *FER0377283 Rochford District Council*<sup>8</sup> and *FS50364144 Yorkshire Forward*<sup>9</sup>. Both cases considered requests judged to be manifestly unreasonable on the grounds that they would place unreasonable burden on the public authorities concerned. In case FER0377283, it was estimated that compliance with the request would take 230 hours work, and in case FER50364144, the time required for compliance was estimated as 77 hours. In both cases, the Information Commissioner found the requests to be manifestly unreasonable.
45. The Commissioner notes that each case must be decided on its own particular circumstances, but he recognises that the burden following from Mr Hughes' request appears to be of an order comparable with the requests considered by the Information Commissioner.
46. The Commissioner has also borne in mind the fact that Transport Scotland has provided advice and assistance to Mr Hughes, in line with its duties under regulation 9(1) and (3) of the EIRs by advising him consider reducing the scope of his request to make it more manageable, stating that under such circumstances it would be willing to provide some of the information.

### Consideration of the public interest test

47. In common with all the other exceptions in the EIRs, regulation 10(4)(b) is qualified in that it is subject to the public interest test set out in regulation 10(1)(b). Consequently, information can be withheld under the exception only where, in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception.

---

<sup>8</sup> [http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fer\\_0377283.ashx](http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fer_0377283.ashx)

<sup>9</sup> [http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs\\_50364144.ashx](http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs_50364144.ashx)



48. Mr Hughes submitted that there have been many people wrongly convicted of traffic offences due to faulty road signage, some of whom he stated had lost their jobs. He noted a particular case where a member of the public had a speeding conviction overturned. Mr Hughes asserted that it was in the public interest for information on faulty road signage to be in the public domain for such reasons.
49. The Commissioner has taken onboard Mr Hughes' submissions while also accepting that there is a strong public interest in the disclosure of environmental information in general as it promotes transparency and accountability for decisions taken by public authorities.
50. He is also mindful of Transport Scotland's assertion that the public interest in disclosure in this case is outweighed by ensuring the efficient and effective use of public resources by not incurring excessive costs when complying with information requests.
51. After weighing up the submissions from both parties, the Commissioner must conclude in this case that while there is undoubted public interest in the disclosure of the information requested by Mr Hughes, it is outweighed by the public interest in maintaining the exception in regulation 10(4)(b).
52. In reaching this conclusion, the Commissioner has borne in mind that compliance would incur more than 100 hours of staff time, along with a cost to the tax-payer of in excess of £1,000. He has also noted that transport Scotland has expressed willingness to disclose the requested information in response to a more focussed request for information.
53. The Commissioner therefore finds that Transport Scotland was correct to withhold the information requested by Mr Hughes under the exception in regulation 10(4)(b) of the EIRs.

## DECISION

The Commissioner finds that Transport Scotland complied with Part 1 of the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 (the EIRs) in withholding the information requested by Mr Alexander Hughes under regulation 10(4)(b) of the EIRs.

## Appeal

---

Should either Mr Alexander Hughes or Transport Scotland wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision notice.

Decision 029/2012  
Mr Alexander Hughes  
and Transport Scotland



**Margaret Keyse**  
**Head of Enforcement**  
**13 February 2012**



## Appendix

---

### Relevant statutory provisions

#### Freedom of Information (Scotland) Act 2002

##### 1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

##### 2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

...

- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

...

##### 39 Health, safety and the environment

...

- (2) Information is exempt information if a Scottish public authority-
- (a) is obliged by regulations under section 62 to make it available to the public in accordance with the regulations; or
- (b) would be so obliged but for any exemption contained in the regulations.

...

#### The Environmental Information (Scotland) Regulations 2004

##### 2 Interpretation

- (1) In these Regulations –



...

"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on -

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in paragraph (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements;

...

## **5 Duty to make available environmental information on request**

(1) Subject to paragraph (2), a Scottish public authority that holds environmental information shall make it available when requested to do so by any applicant.

(2) The duty under paragraph (1)-

...

(b) is subject to regulations 6 to 12.

## **9 Duty to provide advice and assistance**

(1) A Scottish public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.

...

(3) To the extent that a Scottish public authority conforms to a code of practice under regulation 18 in relation to the provision of advice and assistance in a particular case, it shall be taken to have complied with the duty imposed by paragraph (1) in relation to that case.



**10 Exceptions from duty to make environmental information available—**

- (1) A Scottish public authority may refuse a request to make environmental information available if-
  - (a) there is an exception to disclosure under paragraphs (4) or (5); and
  - (b) in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception.
- (2) In considering the application of the exceptions referred to in paragraphs (4) and (5), a Scottish public authority shall-
  - (a) interpret those paragraphs in a restrictive way; and
  - (b) apply a presumption in favour of disclosure.

...

- (4) A Scottish public authority may refuse to make environmental information available to the extent that

...

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

...