

Decision Notice

Decision 102/2019: The applicants and Transport Scotland

Reverse speed discrimination traffic signals

Reference No: 201900102

Decision Date: 4 July 2019



Scottish Information
Commissioner

Summary

Transport Scotland was asked for information about the traffic signals at a village on the A75 and, in particular, for speed data. Transport Scotland stated that it did not hold the information.

The Commissioner investigated and found that Transport Scotland complied with FOISA in responding to the request. He accepted that Transport Scotland did not hold the information requested.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 11(1) and (2) (Means of providing information); 15 (Duty to provide advice and assistance); 17(1) (Notice that information not held)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 13 September 2018, the applicants made a request for information to Transport Scotland. They requested information about reverse speed discrimination traffic signals at Springholm village on the A75, including information on the amber/red light trigger speeds and data gathered by automated traffic count/classifiers (ATCs).
2. Transport Scotland responded on 11 October 2018. Transport Scotland provided some information and explanations; withheld information on the basis that exemptions from disclosure applied and notified the applicants that it did not hold some of the information requested.
3. On 12 October 2018, in response to correspondence from the applicants of the same date, Transport Scotland explained that the speed data that was provided to them was in kilometres per hour as this was the format it was held in and that to convert the data to miles per hour would exceed £1,000.
4. On 8 November 2018, the applicants wrote to Transport Scotland requesting a review of its decision on the basis that Transport Scotland had:
 - failed to provide data gathered by an ATC at a particular location between specified dates (point 1);
 - failed to provide all speed data in miles per hour with arithmetically average speeds broken down by recognised vehicle types or lengths (point 2); and
 - failed to provide the trigger speeds thresholds of the traffic control signals (point 3).
5. Transport Scotland notified the applicants of the outcome of its review on 3 December 2018. It explained:

- in relation to point 1, that there had been damage to an embedded loop and consequently no reliable data were held. Transport Scotland apologised that this had not been made clear.
 - in relation to point 2, Transport Scotland confirmed that it did not hold the data in metric form. It explained that the cost to convert data to imperial, would exceed £1,000 and was therefore excessive. Transport Scotland confirmed that it did not hold information on individual vehicle length, but had supplied the information type.
 - in relation to point 3, Transport Scotland upheld its initial view that it held no data recording the threshold at which the reverse speed discrimination traffic signals are activated.
6. On 14 January 2019, the applicants wrote to the Commissioner. The applicants applied to the Commissioner for a decision in terms of section 47(1) of FOISA. They stated that they were dissatisfied with the outcome of Transport Scotland's review in relation to two points: failure to supply data in imperial rather than metric and failure to supply the trigger speeds at two locations. The applicants did not believe that the speed data were only available in metric or that the information relating to the trigger speed threshold was not held by of Transport Scotland.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that the applicants made requests to a Scottish public authority and asked the authority to review its response to those requests before applying to him for a decision.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. Transport Scotland was invited to comment on this application and to answer specific questions.
9. During the investigation, Transport Scotland offered to provide the applicants with the speed data information in Excel format. Transport Scotland believed this would allow the applicants to convert (using Excel) the data from kilometres per hour to miles per hour, as they wished.
10. The applicants did not accept this offer; they argued that Transport Scotland should provide the information in the format requested.
11. Transport Scotland was invited by the investigating officer to comment on this, and other, points and to explain its position. Transport Scotland did so on 18 March and 4 April 2019.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner considered all the relevant submissions, or parts of submissions, made to him by both the applicants and Transport Scotland. He is satisfied that no matter of relevance has been overlooked.
13. The Commissioner's investigation considers:
- whether information relating to the trigger speeds is held, and

- whether speed data information are held that can be provided in the imperial format.

FOISA or the EIRs?

14. Transport Scotland responded to the applicants' request under FOISA. Transport Scotland explained that it had responded under FOISA, rather than under the Environmental Information (Scotland) Regulations 2004 (the EIRs), in line with previous decisions issued by the Commissioner.
15. The Commissioner accepts that Transport Scotland correctly identified FOISA as the appropriate legislation, rather than the EIRs.

Section 17 – Information not held

16. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received, subject to certain qualifications which are not applicable in this case. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give an applicant notice in writing to that effect.

Trigger speed thresholds

17. The applicants requested the trigger speeds thresholds of the traffic control signals. Transport Scotland said it did not hold this information. The applicants were dissatisfied, as they believed knowledge of the trigger speed was a fundamental parameter of the system. They also noted that Transport Scotland had supplied (and therefore held) precise details of each signal's time delay: the implication being that other similar information on the signal was also held by Transport Scotland.
18. Transport Scotland was asked to explain the extent of any search, and why these would have been likely to locate any information held that was covered by the request for trigger speeds thresholds.
19. Transport Scotland replied that the applicants had previously (on 5 September 2017) submitted a request for information concerning the same A75 traffic control measures, in which they had also asked for the trigger speed. That request led to a decision by the Commissioner, in which he accepted that Transport Scotland did not hold the information requested at the time of that request.
20. Transport Scotland submitted that, when the current request was received, it contacted the Trunk Road Casualty Reduction Team within Transport Scotland - as it was the business area responsible - to confirm whether Transport Scotland held information on the trigger speed at the time of this new request (13 September 2018).
21. It was confirmed that the trigger speed had been discussed verbally, but no recorded information about the trigger speed was held. Transport Scotland supplied an email to the Commissioner which confirmed that the trigger speed was confirmed visually on site while calibrating the system.
22. Transport Scotland submitted that it did not consider further searches necessary on the basis that the small team of policy officials, which it had contacted in relation to this request, had a good knowledge of the information held in relation to this subject.

23. The applicants suggested that the trigger speed threshold had changed from specific speeds and that recorded information should be held in relation to those changes. Transport Scotland was asked to verify that it did not hold any recorded information - as at the date of the request (13 September 2018) - that related to changes in speed, such that that recorded information would show what the speed was changed to. In response, Transport Scotland stated that the trigger speed for the traffic signals had not been changed since their installation in December 2017.
24. The applicants also referred to “innumerable visits” to adjust the control equipment. Transport Scotland was asked if it held any recorded information about visits/adjustments, such that the recorded information on these visits showed what the speed was changed to. Transport Scotland replied that it was aware of the visits, but did not hold information about these.
25. In its submissions, Transport Scotland highlighted that the applicants had previously been advised that, although it did not hold information on the trigger speeds, Police Scotland might. As the applicants had previously been provided with this advice, it did not consider it necessary to provide this advice again.
26. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining whether a Scottish public authority holds information, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. He will also consider, where appropriate, any reason offered by the public authority to explain why the information is not held.
27. Having considered all the relevant submissions, the Commissioner accepts that Transport Scotland did not hold the information at the time of the request. The requested information is specific, limited and precise and would be readily identifiable if held by Transport Scotland. In this context, it is clear to the Commissioner that, in assessing whether it held the information, Transport Scotland consulted the most appropriate staff and those with experience of the subject, reducing the likelihood of relevant information being overlooked. Transport Scotland evidenced this to the Commissioner. The Commissioner has no reason to doubt Transport Scotland’s explanation of what information it held (or did not hold) at the time of this request. The Commissioner therefore finds that Transport Scotland complied with Part 1 of FOISA in responding to this part of the applicants' request.

The speed data

28. At review, the applicants requested the speed data in imperial format (as miles per hour). They commented that all the ATC software is of UK manufacture – the assumption being that it would allow data in imperial measure. The applicants also referred to information they had previously been provided by Transport Scotland in imperial measure.
29. Transport Scotland submitted that it did not hold the information in imperial measure. It explained that the data are collected by inductive loops in the carriageway and stored within a database on a cloud-based system. The inductive loops collect data in kilometres per hour as the equipment is calibrated to a European construction standard. Consequently, all data are held by Transport Scotland in kilometres per hour as it has no current business need to hold all the data in miles per hour. Transport Scotland commented that the speed management system was a pilot of its type and therefore Transport Scotland intended to monitor it. Transport Scotland had converted average speed data to miles per hour at intermediate intervals through the trial period to have an intermediate understanding of the

operation and effectiveness of the system. It had also converted specific and limited data to miles per hour on occasion to respond to correspondence and for internal use. The sample sheet previously provided to the applicants was one of the conversions undertaken as part of the intermittent monitoring. Transport Scotland acknowledged that it should have explained this to the applicants.

30. Having considered the explanations provided by Transport Scotland, the Commissioner accepts that it did not hold the data requested (the data in units of miles per hour). The Commissioner finds that Transport Scotland was correct to give the applicants notice, in terms of section 17(1) of FOISA, that it did not hold the information they requested.
31. Mindful of its duties under section 15 of FOISA (to provide advice and assistance to the applicants), Transport Scotland offered to provide all of the information in Excel format, rather than PDF. Excel format would allow the applicants to work with the data more readily, including converting it to miles per hour. The applicants did not accept this offer.
32. Transport Scotland recognised that where an applicant expresses a preference for receiving information by one of the means specified in section 11(2) of FOISA, it has an obligation to give effect to that preference, where reasonably practicable. However, as Transport Scotland did not hold all the data requested in miles per hour, the applicants were, in effect, requesting that Transport Scotland create the information. Transport Scotland did not regard this as a request to provide the information by any of the means specified in section 11(2): in particular, converting from metric to the applicants' preferred imperial measurements could not be described as providing a digest or summary of information that is held. Conversion would require a process of calculation to produce what was, in Transport Scotland's view, new information.
33. The Court of Session stated in *Glasgow City Council v The Scottish Information Commissioner* [2009] CSIH 73¹ (at paragraph 57):

When section 11(2)(a) refers to the "form" in which a copy of the information may be provided, it appears to us to have in mind such possible forms as electronic files, paper documents, audio or video tapes, or verbal communication. That is consistent with the sense in which the word "form" is used elsewhere in the Act (e.g. in sections 8(1)(a) and 47(2)(a)).
34. The Commissioner accepts Transport Scotland's argument that providing the data as miles per hour is not an instance where the applicants have expressed a preference for receiving information by any one or more of the means mentioned in section 11(2) of FOISA. The information is requested in the same form (in the sense that the word "form" is used in section 11(2)(a)).
35. The Commissioner notes that, in line with its duty to provide advice and assistance, Transport Scotland offered to disclose data in Excel format and this would go some way to assisting the applicants, should they wish to convert it to miles per hour. It remains open to the applicants to obtain the information requested in Excel from Transport Scotland and, should they wish, to convert the data to miles per hour.

¹ <https://www.scotcourts.gov.uk/search-judgments/judgment?id=cc8f86a6-8980-69d2-b500-ff0000d74aa7>

Decision

The Commissioner finds that Transport Scotland complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the applicants. The Commissioner finds that, in respect of the matters specified in the application, Transport Scotland complied with FOISA by correctly stating that it did not hold the information requested.

Appeal

Should either the applicants or Transport Scotland wish to appeal against this decision, they have the right to 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.

Margaret Keyse
Head of Enforcement

4 July 2019

Appendix 1: 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.
- ...
- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.
- ...

11 Means of providing information

- (1) Where, in requesting information from a Scottish public authority, the applicant expresses a preference for receiving it by any one or more of the means mentioned in subsection (2), the authority must, so far as is reasonably practicable, give effect to that preference.
- (2) The means are-
 - (a) the provision to the applicant, in permanent form or in another form acceptable to the applicant, of a copy of the information;
 - (b) such provision to the applicant of a digest or summary of the information; and
 - (c) the provision to the applicant of a reasonable opportunity to inspect a record containing the information.
- ...

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

17 Notice that information is not held

- (1) Where-
 - (a) a Scottish public authority receives a request which would require it either-
 - (i) to comply with section 1(1); or

(ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

(b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

...

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