

Decision Notice

Decision 107/2017: Ms Dorothy King and Mr Christopher J. Wybrew and Transport Scotland

Traffic Management Study

Reference No: 201602145

Decision Date: 11 July 2017



Scottish Information
Commissioner

Summary

Transport Scotland was asked about a traffic management study on the A75 in Dumfries and Galloway and, in particular, for a breakdown of the data from four automatic traffic counters (ATCs) giving vehicle numbers, length and speed. After reviewing its initial failure to respond, Transport Scotland provided some information.

The information was not provided in the format the applicants wanted. The Commissioner investigated and found that Transport Scotland had provided the information which it held and was not required to provide the information in the format specified by the applicants. However, the Commissioner found that Transport Scotland had failed to provide reasonable advice and assistance, and had failed to respond to the request within the statutory timescale.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 10(1) (Time for compliance); 11(1), (2)(b) and (3) (Means of providing information); 15(1) (Duty to provide advice and assistance)

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (Interpretation - definition of environmental information)

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.

All references in this decision to "the Commissioner" are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

Background

1. On 11 October 2016, Ms King and Mr Wybrew made a request for information to Transport Scotland. They requested a range of information about the timetable, nature and extent of a traffic management study of the A75 at Springholm, Dumfries and Galloway. Ms King and Mr Wybrew asked for details of the data from the four automatic traffic counters (ATCs) used in the study. They wished to receive this data "in the same format as the data we received in respect of earlier traffic speed studies" and specified some of the details they expected to receive. They asked for data from the date of commissioning of the fourth ATC to 31 October 2016, and said they would prefer the data in electronic format.
2. Transport Scotland acknowledged receipt of the request on 12 October 2016.
3. On 9 November 2016, having not received a response to their request other than the acknowledgment, Ms King and Mr Wybrew wrote to Transport Scotland requesting a review on the basis that Transport Scotland had failed to respond. On 11 November 2016, having received a letter from Transport Scotland explaining that it was taking longer than expected to deal with the request, Ms King and Mr Wybrew repeated their request for a review from Transport Scotland.

4. Transport Scotland notified Ms King and Mr Wybrew of the outcome of its review on 17 November 2016. Amongst other information, it provided data from the four ATCs for the period 26 August to 11 October 2016 (the date of the request).
5. Although not the subject of this decision, it is relevant to note that, on 22 November 2016, Mr Wybrew wrote to Transport Scotland to ask if it would provide the data in a different format. They referred to similar data provided in November 2015 and asked for the same format to be used in this case, showing the data “in 15 minute time segments for the three vehicle category sizes and the normal speed bin range”. On 7 December 2016, Transport Scotland informed Ms King and Mr Wybrew that it had dealt with this correspondence as a new Freedom of Information request, and would provide the data on a disc. Transport Scotland then provided the full survey data (although not in the format requested).
6. On 21 November 2016 (i.e. before the request of 22 November 2016), Ms King and Mr Wybrew applied to the Commissioner for a decision in terms of section 47(1) of FOISA, in relation to the way Transport Scotland had dealt with their request of 11 October 2016. Ms King and Mr Wybrew stated they were dissatisfied with the outcome of Transport Scotland’s review because they had received no initial response to their request and no explanation for the delay. They were also dissatisfied with the quality of the data provided from the four ATCs (they later explained that they had found arithmetical anomalies, and required the data in the format previously used by Transport Scotland in order to try to resolve these).

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Ms King and Mr Wybrew made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
8. Transport Scotland is an agency of the Scottish Ministers (the Ministers) and, in line with agreed procedures, the Ministers were notified on 29 November 2016 that an application had been received from Ms King and Mr Wybrew and that an investigation into the matter by the Commissioner had commenced. Subsequent references in this decision to submissions sought and received from Transport Scotland are to be read as including submissions sought and received from the Ministers on behalf of Transport Scotland.
9. 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 answer specific questions including justifying its reliance on any provisions of FOISA or the EIRs it considered applicable to the information requested.
10. Mr Wybrew and Ms King also supplied comments, correspondence and evidence to the Commissioner for the purposes of her investigation.

Commissioner’s analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all relevant submissions, or parts of submissions, made to her by both Ms King and Mr Wybrew and Transport Scotland. She is satisfied that no matter of relevance has been overlooked.

FOISA or EIRs?

12. Transport Scotland responded to the request under FOISA. During the investigation, the Commissioner asked Transport Scotland if it had considered whether the information was

environmental information, and whether the request should have been responded to under the EIRs. Environmental information is defined in regulation 2(1) of the EIRs (the definition is reproduced in Appendix 1 to this decision). Where information falls within the scope of this definition, a person has a right to access the information under the EIRs, subject to various restrictions and exceptions contained in the EIRs.

13. Transport Scotland submitted that there was no environmental aspect to the data obtained or to the reasoning behind obtaining the data, and it therefore responded to the information request under FOISA. It explained that the purpose of the data collection was to provide vehicle speeds by vehicle type to identify whether there was a speeding issue at the location. Collection of the data would enable an assessment of driver behaviour to determine if and where measures were required. Transport Scotland said that this type of data collection was widely used to gather information to make decisions where speeding may be an issue and to target accurately appropriate measures to encourage compliance and improved driver behaviour.
14. The Commissioner is aware that some traffic studies comprise environmental information covered by the EIRs. In *Decision 117/2013 Scott Walker and Fife Council*¹ the Commissioner accepted that information relating to proposals to introduce speed cushions would be measures affecting the state of the land, and would fall within the definition of environmental information. The UK Information Commissioner (who is responsible for regulating the Freedom of Information Act 2000 (FOIA)) has also issued decisions – for example, *Decision FS50510852*² - in which information from traffic studies was held to be environmental information.
15. In this case, however, the information at issue is speed data alone. It is possible that such data may inform future decisions about measures to be implemented that may affect the built environment, but this has not been confirmed by Transport Scotland. On the basis of the evidence available to her, the Commissioner does not regard the ATC data requested as falling within the definition of environmental information. It does not relate to measures or activities affecting, or be likely to affect, the elements of the environment, in particular land and landscape. The information does not fall within any of the other parts of the definition of environmental information in the EIRs.
16. Consequently, the Commissioner considers that the information requested by Mr Wybrew and Ms King does not fall within the definition of environmental information set out in regulation 2(1) of the EIRs, and Transport Scotland was correct to respond to the request in terms of FOISA rather than the EIRs.

Was all relevant information identified, located and provided by Transport Scotland?

17. 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.
18. In response to their request of 11 October 2016, Ms King and Mr Wybrew received data from the four ATCs from 26 August 2016 to 11 October 2016. (Although their request was for

¹ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2013/201300312.aspx>

² https://ico.org.uk/media/action-weve-taken/decision-notice/2014/954476/fs_50510852.pdf

data to 31 October 2016, they were only entitled, under FOISA, to be given the information held as at the date of their request was received. It would have been helpful if Transport Scotland had explained why it was only providing information up to 11 October.)

19. This information was provided as a spreadsheet showing results broken down by vehicle type and speed parameter. Information about the locations of the ATCs was provided separately. Ms King and Mr Wybrew were dissatisfied with the information provided on the spreadsheet, because it was in a different format from information about another traffic survey which had been supplied to them in October 2015, in response to an earlier request.
20. The request under consideration in this decision was one of a number of requests in which Ms King and Mr Wybrew asked for similar data. A summary of these requests may be helpful in understanding this decision notice.
21. In October 2015, data from Clearview traffic surveys was provided, in which the supporting data was in 15 minute time segments for three vehicle categories and “the normal speed bin range”. In August 2016, survey data was provided in a different format. In response to the request under consideration in this decision (11 October 2016), survey data was provided on 17 November 2016 in the same format used for the August 2016 response. On 22 November 2016, the applicants asked Transport Scotland to provide the same data but in a different format (not specified, but now understood to be the format that was used for the October 2015 response).
22. In their application to the Commissioner, Ms King and Mr Wybrew explained that the response to their earlier request had comprised a Word file for summary data and Excel spreadsheets for the full data set, with the data presented in 15 minute time slices. In response to their current request, they had received an Excel file with summary data and no individual traffic counts whereby on a particular day and location they could see the breakdown of vehicles by length and speed “bin” every 15 minutes. Mr Wybrew and Ms King preferred the former format, which enabled them to analyse the data.
23. Ms King and Mr Wybrew also raised concerns about arithmetical errors perceived in the data they had received in relation to the current request. It appeared to them that certain heavy-goods vehicle (HGV) data were missing from the results; they believed access to the information requested (in the format they preferred) would allow them to verify this.

Interpretation of the request

24. Transport Scotland submitted that it had supplied the data in the format requested, understanding this to be the same format in which data had been supplied to Ms King and Mr Wybrew on 4 August 2016. The request had asked for the data “in the same format received in respect of earlier traffic speed studies” and, as the August 2016 response was the most recent, Transport Scotland had provided the data covered by the October 2016 request in the same format, described as “a summary of the data held”.
25. The request described the traffic survey and asked for “details of the data” from the four ATCs. Ms King and Mr Wybrew asked to be given vehicle numbers and breakdown by vehicle length and speed in 5 mph speed bins including average speeds and 85 percentiles in each road channel in the same format as the data previously received in respect of earlier traffic speed studies undertaken in the same location. Ms King and Mr Wybrew asked Transport Scotland to link the data to the location where gathered and specify the commencing and ending time of each data set.

26. Transport Scotland provided a summary of the data from the four ATCs for the period in question. However, its response did not provide the full details stipulated in the request.
27. In their request for review, the applicants made it clear that they wished to receive the survey data in the format used to present similar data from a previous survey (received from Transport Scotland in November 2015). Transport Scotland has confirmed that the format in which the survey data was provided in this case was not the same as in November 2015: instead, the data was presented in the same format used to respond to a later request from the applicants in August 2016.
28. Transport Scotland noted that the request specified “the same format as the data we received in respect of earlier traffic speed studies”.
29. Looking at the wording of the request at issue, it is easy to see why Transport Scotland would assume that Ms King and Mr Wybrew would be satisfied with survey data presented in the same format used when responding to a similar request just a couple of months earlier, in August 2016. Ms King and Mr Wybrew had accepted the response to that request without seeking a review. It was reasonable to assume that they were satisfied with the response received in August 2016.
30. However, Transport Scotland should have noted that the information supplied in response to the request under consideration did not include the level of detail specified in the request. For example, the summary data provided to Mr Wybrew and Ms King did not show the data in the 5 mph speed bins that they wanted. In these circumstances, it would have been reasonable to check with Mr Wybrew and Ms King whether they required the data in the same type of summary format used in the August 2016 response.
31. The Commissioner accepts that there was a degree of ambiguity in the wording of the request from Ms King and Mr Wybrew, in that it simply referred to “the same format as the data previously received in respect of earlier traffic speed studies” in the same location without acknowledging that data had been provided in more than one format in response to previous requests. However, the request was specific about the detail required, which should have alerted Transport Scotland that the summary of the data it provided would not fully answer the request, as stated.
32. In this respect, the Commissioner finds that Transport Scotland failed to comply with section 15(1) of FOISA, which requires a Scottish public authority to provide reasonable advice and assistance to an applicant. Transport Scotland could have asked Ms King and Mr Wybrew to confirm what format they required. It would then have had the opportunity to explain (as it later explained to the Commissioner) that the method of data capture had changed, and that data is no longer presented in a “speed by class table that is broken down into 15 minutes bins”.
33. As Mr Wybrew and Ms King are now aware of the limitations of the new data capture system, the Commissioner does not require Transport Scotland to take action in relation to this failure.
34. The Commissioner accepts that Transport Scotland provided Ms King and Mr Wybrew with information covered by their request, as expressed.

Section 11 - Means of providing information

35. Transport Scotland has submitted that it provided Mr Wybrew and Ms King with the information it holds, in relation to their request: the survey data in summary format. (It also provided them with the full survey data, in response to another request.)
36. Ms King and Mr Wybrew did not use the word “summary” or “digest” in their request, and simply specified a preference for an electronic copy of the data. However, the Commissioner accepts that their request was for a summary or digest of the full survey data, presented under specified headings, rather than a request for the complete data set.
37. At review, Mr Wybrew and Ms King made it clear that they wished the data to be presented in a different format from the one in which the information had been provided. From the description they provided, it was established that their preferred format was the one in which data was provided in November 2015.
38. Under section 11 of FOISA, a Scottish public authority is required, so far as is reasonably practicable, to give effect to the preference(s) of a person requesting information, where they express a preference for receiving information by one or more of three specified means. These means are:
 - (a) a copy of the information, in permanent form or another form acceptable to the applicant;
 - (b) a digest or summary of the information or
 - (c) a reasonable opportunity to inspect a record containing the information.
39. Section 11(3) states that, in determining whether it is reasonably practicable to provide information in the specified format, the authority may have regard to all the circumstances, including cost. Where it determines that it is not reasonably practicable to give effect to the preference, it must explain why.
40. The Commissioner must decide whether Transport Scotland should have provided the survey data in the format used to supply data to Mr Wybrew and Ms King in November 2015.
41. Transport Scotland has submitted that it does not (and did not, at the time of the request) hold the information from the survey in the format required by Mr Wybrew and Ms King. It has explained that the method of data collection has been upgraded, and data is now presented in a sequential format with each entry having its own date and time stamp (i.e. not broken down in the manner in which it was supplied in 2015).
42. After investigating, the Commissioner accepts that Transport Scotland does not hold the survey data in the format used to present similar data in 2015.
43. Transport Scotland investigated whether it could provide the data in the required format.
44. The survey was carried out by Scotland Transerv (Transerv), which is Transport Scotland’s Operating Company. Transport Scotland has contracts in place with Operating Companies “to ensure Scottish trunk roads are safe, efficient and well managed”³. Work is carried out by Operating Companies working under separate contracts. Transerv is the Operating Company for the South West Unit (which covers the location at issue in this application).

³ <https://www.transport.gov.scot/transport-network/roads/the-trunk-road-network/#45651>

45. Transport Scotland submitted that it had been advised by Transerv that it would cost a significant amount (well in excess of the £600 limit after which Transport Scotland would not be required to comply with the request) to recreate the information in the format used in 2015. For this reason, it did not consider it reasonably practicable to provide the data in the preferred format.
46. The Commissioner accepts that Transport Scotland would incur significant costs if it was to provide the data in the format which Mr Wybrew and Ms King have asked for. This being so, she accepts that it is not reasonably practicable for the information to be provided in this way, and there was no obligation (in terms of section 11(2)(b)) for it to do so.

Compliance with statutory timescales

47. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information. This is subject to qualifications which are not relevant in this case.
48. Mr Wybrew and Ms King were dissatisfied that Transport Scotland failed to respond to their request within 20 working days and provided no explanation for the delay. They commented that it should have been easy for Transport Scotland to supply them with the information within the timescale: there should have been no need to check data. In their view, the delay was intentional.
49. In its response to their request for review, Transport Scotland apologised for the delay. It explained that checks had to be undertaken on the accuracy of the response before it was issued, involving a significant number of officials.
50. It is a matter of fact that Transport Scotland did not provide a response to Ms King and Mr Wybrew's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
51. Given that Transport Scotland has apologised to Ms King and Mr Wybrew for this failure, the Commissioner does not require it to take further action.

Commissioner's remit

52. Ms King and Mr Wybrew expressed concern about the accuracy of the information they received and the methods used by Transport Scotland to collect the survey data.
53. As Ms King and Mr Wybrew recognised, this is outwith the Commissioner's remit. The Commissioner cannot comment on the accuracy of any recorded information an authority holds. Similarly, the Commissioner gives no consideration here, and comes to no conclusion, as to whether Transport Scotland's actions in respect of the traffic management study complied with any rules, guidance or good practice. Such questions are beyond the remit of the Commissioner.

Decision

The Commissioner finds that, in respect of the matters specified in the application, Transport Scotland partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Ms King and Mr Wybrew.

Transport Scotland provided information covered by their request, in compliance with section 1(1) of FOISA.

Transport Scotland was not required to provide the information in the format specified by Ms King and Mr Wybrew, because it was not reasonably practicable for it to do so (section 11(1) and (2) of FOISA).

Transport Scotland failed to comply with section 15(1) of FOISA, for the reasons specified in this decision notice.

Transport Scotland failed to comply with section 10(1) of FOISA, by failing to respond to the request within the statutory timescale of 20 working days.

Appeal

Should either Ms King and Mr Wybrew 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
Acting Scottish Information Commissioner
11 July 2017

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.
...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
 - (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
 - (b) in a case where section 1(3) applies, the receipt by it of the further information.
...

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-
...
 - (b) such provision to the applicant of a digest or summary of the information; and
...
- (3) In determining, for the purposes of subsection (1), what is reasonably practicable, the authority may have regard to all the circumstances, including cost; and where it determines that it is not reasonably practicable to give effect to the preference it must notify the applicant of the reasons for that determination.
...

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.

...

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

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- (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;
- (d) reports on the implementation of environmental legislation;
- (e) costs benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c); and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c);

...

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