

Our ref: FOI 743,173/FOI 738,807
Your ref:

OT Directorate Services Team Manager
9th Floor
The Cube
199 Wharfside Street
Birmingham B1 1RN

26 October 2016

Dear

Thank you for your two emails of 28 September 2016 to Highways England concerning various issues relating to damage to crown property. I am writing to confirm that we have now completed our search for the information.

In your email of 29 September 2016, in relation to my FOI 738,807 response of 6 July 2016, you asked for the following additional information:

Damage to Crown Property by third parties:

is claimed upon either CECA rates or the principle of Defined Costs using Notional Rates. The latter, in essence, are the average costs of a person, plant or equipment captured over a time period to provide an average hourly cost. Given the rolling nature, the costs will vary over time though and this should not be confused with price fluctuation flowing from discount or inflation. As stated, the principles and rationale behind Defined Cost plus Fee is freely available on the internet.

- *Where on the internet?*
- *Are you saying that for third party claims which I was asking about the costs you use are an average?*
- *If so, what period of time did you specify for the average to be calculated?*
- *is the average cost process you describe just for highways England claims or do your providers use another average if they bill the third party*

To answer your bullet points in order:

- With regard to an explanation of the principles under Defined Cost under the NEC, a search engine, such as Google, will provide links to sites providing information, we would recommend information provided by the NEC user groups and forums.
- The costs, as previously stated, within a claim will use the principles of Defined Costs as defined and calculated under the NEC Contract.
- Where appropriate the Defined Costs will be calculated using the Schedule of Cost Components, these will be typically recalculated on 6 monthly rests.

- This has been previously addressed, the principle for presentation of costs is Defined Cost plus fee for over threshold claims, for under threshold schemes the Service Providers the presentation varies slightly for Operating Contract to Operating Contract but will provide a justified breakdown of costs, in probability using Defined Cost though the fee percentage will vary.

You additionally asked for the following information under the Freedom of Information Act :

There is a ASC area 9 contract at whatdotheyknow.com and this says:

Section 87.4 - the Provider submits a statement to the Service Manager showing

- *The total amount recovered in that year from third parties in respect of claims made against them under clause 87.2 and*
- *The amount, if any, by which that amount exceeds the total of*
- *The final Third Party Claims Defined Cost for the repair or replacement work relating to those claims and*
- *The resulting Third Party Claims Overhead.*

Information request under Freedom of Information:

1. *Explanation of the above terms used. Third Party Claims Defined Cost and Third Party Claims Overhead*
2. *For the past 2 years the returns and figures and breakdown showing the information in the section from the contract*
3. *Are the costs in the section those charged to the third parties the same as the charges to highway England*

Our Area 9 service provider, Kier, has reported that as a claim lifecycle can span from anywhere from 6 months to 3 years, your request to provide a true and accurate breakdown of costs, reconciled against claims, would take your request beyond the scope of FOI and would not give an accurate result.

Kier reconciles overall claim-related costs against recoveries as part of its annual contract auditing and, consistently, the costs far exceed the recovery across its business. There are, however, a number of factors that result in the following:

- **Claims can run beyond 12 months:** so the overall reconciliation, in terms of timing, will not match completely. Kier does not cost every incident due to all the relevant factors that have to be considered and the associated excessive administration involved;
- **Kier is responsible for proving negligence:** so many insurers take advantage of this.
- **Kier is unable to trace all damage:** culprits often, unless a vehicle is immobilised, the culprits will drive away.

Kier annually reconciles its costs against incidents to formulate an average cost model, to bring its recoveries nearer to its costs. However, this will never be completely covered due to the amount of untraced claims. Kier believes it is much fairer and transparent to apply its defined costs to claims in a claim-specific manner, taking into the account all the unique circumstances of a claim including, but not exclusive to:

- Incident time and day - for out of hours working, overtime is only charged against the specific incident;
- Repair time and day (as above);
- Repair duration;
- Travel to site / return to base;
- Back office staff relevant to the claim.

The model used by Kier is similar for above and below threshold claims.

The principle differences are the application of the stated Third Party Claims Overhead, which has been calculated and stipulated in an area-specific manner as part of the ASC 9 Contract and as specified in Contract Data.

With regard to the calculation of the Third Party Claims Overhead, which is applicable in area 4,9,12, this is set out under Appendix A of Annex 23 of the ASC Contract.

We would stress that Kier has a close relationship with insurers and the displays used flow from workshops and consultation with the insurance industry.

If you are unhappy with the way we have handled your request you may ask for an internal review. Our internal review process is available at:

<https://www.gov.uk/government/organisations/highways-england/about/complaints-procedure>

If you require a print copy, please phone the Information Line on 0300 123 5000; or e-mail info@highwaysengland.co.uk. You should contact me if you wish to complain.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

If you have any queries about this letter, please contact me. Please remember to quote reference number FOI 743,173 in any future communications.

Yours sincerely

Email: Ops_dst@highwaysengland.co.uk