



Our ref: 728381
Your ref:

Tim Reardon
General Counsel
Highways England
Bridge House
1 Walnut Tree Close
Guildford
GU1 4LZ

3 November 2015

Dear [REDACTED]

YOUR FREEDOM OF INFORMATION REQUEST

Thank you for your email of 28 September in which you made the following request under the Freedom of Information Act 2000 (FOIA)

I write with regard to the Highways Agency Report & Accounts 2014/15.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/438016/S150097_HA_Annual_Report_and_Accounts_2014-15_-_web.pdf

I ask, as far as is possible, without engaging any exemptions to the FOIA, all information about:

- The 81 recorded whistleblowing allegations received*
- Please also detail, as far as is possible, all other fraud identified i.e. those frauds (numbers and detail) in addition to whistle-blowing?*

I am assuming that Highways England 'counter fraud' operation is pro-active as opposed to reacting to whistle-blowing only.

I ask to be provided a copy of:

- The organisational culture (across the extended enterprise incorporating the supply chain)*
- the divisional gifts and hospitality registers for the past 3 years.*

I can confirm that we do hold the information you requested. However, as explained below, only some of that information falls to be disclosed.

Gifts and Hospitality Register

A copy of the collated Divisional Gifts & Hospitality Registers for Highways England and the predecessor organisation, the Highways Agency, for the last 3 years is enclosed. This lists all offers of gifts and hospitality from 1 April 2012 to date. All staff names have been redacted in reliance on the exemption in section 40(2) of FOIA for personal

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information. Some names are shown as removed by the use of the word 'redacted' and some have the insertion of xxx in place of the name.

I have, however, provided the level of seniority of all staff offered the gift or hospitality which is shown in 3 categories: Senior Manager (Pay Band 8 and above), Middle Manager (Pay Bands 6 and 7 plus Traffic Manager 3) and Other Staff for all other grades. The Register excludes Board members as the extracts of their hospitality registers are available on the GOV.UK website for Highways Agency and Highways England

We have also redacted a small piece of information from line 1030 of the Divisional Gifts & Hospitality Registers, in reliance on the exemption in section 43 of FOIA. This is because to disclose it would or would be likely to prejudice Highways England's commercial interests. The redacted material provides details of the relationship between ourselves and one of our key suppliers and has implications for commercial activities conducted in a competitive environment with other members of our supply chain.

Section 43 is a qualified exemption meaning that in order to reply upon it Highways England must demonstrate that in all the circumstances of the case, the public interest in withholding the information (and maintaining the exemption) outweighs the public interest in disclosing the information. Highways England appreciates the public interest in transparency, and this is why the Divisional Gifts and Hospitality Registers are being made available to you. However, there is also a countervailing public interest in our commercial relationships with our suppliers remaining confidential. Disclosure of the redacted material would prejudice the commercial relationship with that supplier, and might prejudice our commercial relationships with other suppliers. For those reasons, we have concluded that the prejudice that would be caused outweighs the public interest in disclosure and that therefore the section 43 exemption is applicable.

Whistle blowing allegations

Details of the 81 recorded whistleblowing allegations received and referred to in the annual report along with details of the other fraud identified are being withheld under the exemptions in sections 31 and 41 of FOIA.

Section 31 deals with law enforcement and the relevant sub-sections exempt information from disclosure if this would or would be likely to, prejudice

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice, or ...
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2).



(2) The purposes referred to in subsection (1)(g) are

(a) the purpose of ascertaining whether any person has failed to comply with the law,

(b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,

(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,

(d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,

(e) the purpose of ascertaining the cause of an accident, ...

(i) the purpose of securing the health, safety and welfare of persons at work, and

(j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with actions of persons at work.

Section 31 is a qualified exemption meaning that in order to rely upon it Highways England must demonstrate that in all the circumstances of the case, the public interest in withholding the information outweighs the public interest in disclosing the information. In withholding the information Highways England has recognised that, whilst it is in the public interest for it to be transparent, it is not in the public interest to disclose details about individual whistleblowing and fraud cases. In releasing details of matters which Highways England has investigated this might encourage potential harmful or dangerous activity to be repeated and prejudice our ability to investigate such behaviour through revealing our internal investigative processes. It would also deter future whistle blowers from coming forward for fear that those they have implicated will seek to intimidate them.

This information is also being withheld in reliance upon the exemption in section 41 of FOIA. This allows information obtained from another person to be withheld where to disclose it to the public would constitute a breach of confidence actionable by that or any other person.

Again this is a qualified exemption. Investigations can be aided by individuals providing information on a confidential whistle blowing basis. Where information is volunteered by someone who has provided information on the understanding that they will not be identified, the information and identity of its source will be protected by section 41. To disclose the information would be to leave Highways England open to a claim for breach of confidence. Whilst there is a public interest in transparency we consider the need to encourage whistle blowers to come forward safe in the knowledge that their identity and sources will be protected is greater. Were we to give details of the 81 incidents it is possible that that information would allow the identity of the complainant to be identified.



The exemptions in sections 31 and 41 of FOIA would apply equally to other fraud investigations where it is in the public interest to maintain confidentiality about the type of activity being attempted, the way it is investigated and prevented and the identity of those drawing it to the attention of the investigators.

Organisational Culture

You also requested details of our organisational culture (across the extended enterprise incorporating the supply chain).

As pages 41 to 43 of the Highways Agency annual report 2014/15 describes <https://www.gov.uk/government/publications/highways-agency-annual-report-and-accounts-2014-to-2015>, we can confirm that our approach to fraud and corruption is pro-active and that the use of whistleblowing is only one tool in managing that risk. The organisational culture is not a single document but the outcome of a combination of factors such as: raising awareness that economic crime, corruption and malpractice in all its forms is unacceptable and will not be tolerated; routine management, accountability and management control; ongoing risk assessments and further improvements to controls. We will report in our 2015/16 annual report, as in previous years, on our risk management and internal control arrangements including those aimed at managing fraud and malpractice.

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 request an internal review.

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 728381 in any future communications.





Yours sincerely



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Email: tim.reardon@highwaysengland.co.uk



