

Our ref: FOI 740,000
Your ref:

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

11 August 2016

Dear

Thank you for your request for information about abortive charges, dated 05 July 2016. I have dealt with your request under the terms of the Freedom of Information Act 2000.

In your email of 05 July you asked the following questions:

I am asking for information for each England road area:

- *The amounts your contractors charged Highways England for ABORTIVE CHARGES in 2013, 2014 and 2015;*
- *The description of abortive charges agreed with the contractors;*
- *When abortive charges are applied and payable by Highways England and when they are not;*
- *How they are calculated*

On 11 July we asked you to clarify your request. We received your clarification on 14 July:

When a contractor repairs damage after a crash I understand that they are permitted to make an extra charge. This charge is due to them for having to take staff from work that had been planned and was due to be done but had to be stopped because their people were diverted to the damage site.

Taking each of your questions in turn:

- *The amounts your contractors charged Highways England for ABORTIVE CHARGES in 2013, 2014 and 2015;*

Where appropriate, the information you requested above is being withheld in reliance on the exemption(s) in section(s) 43

<http://www.legislation.gov.uk/ukpga/2000/36/section/43> of the Freedom of Information Act 2000 because information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

In applying this exemption we have had to balance the public interest in withholding the information against the public interest in disclosure. The key public interest factors for and against disclosure are in the table below.

- *The description of abortive charges agreed with the contractors*

This is dependent on the nature of the incident. In some instances, for example an incident which results in a fuel spill, will, in probability, require an immediate response and necessitate the replacement of a section of carriageway. To undertake such works our service providers would, in all probability, have to divert resources from planned works to the emergency works. Should abortive costs flow from this, they would be justified and claimed with the individual claim. These costs, if incurred, would turn on the specific facts of the specific claim.

- *When abortive charges are applied and payable by Highways England and when they are not*

Should abortive charges be justified and captured, they would be included in the claim to be pursued against the Third Parties insurance company, in all instances the cost data is captured by the service providers. Generally should the claim fall below £10,000.00 the service providers would pursue these directly with the Third Parties insurers. Should the claim be in excess of £10,000.00 Highways England would pursue the Third Parties insurance company directly. As stated, the abortive charges, if any, would be set out in sufficient clarity and justified on the individual claim.

- *How they are calculated*

Generally abortive costs will be on actual costs or forecast costs specific to plant, labour, equipment and materials associated with the incident. It may be that historically or locally, individual areas may have agreed an alternative approach with individual insurance companies to provide a business efficacy to some or part of these costs; such as an averaging of elements of costs. However at its core is the key requirement for justification of the costs. Should they not be justified in sufficient detail then it is expected that a specific check or challenge would be raised.

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 CRS 740,000 in any future communications.

Yours sincerely

Mrs D Davies

Email: Ops_dst@highwaysengland.co.uk

Request for Abortive Cost data	
<p><i>Ref FOI 740,000:</i> <i>I am asking for information for each England road area:</i></p> <ul style="list-style-type: none"> <i>The amounts your contractors charged Highways England for ABORTIVE CHARGES in 2013, 2014 and 2015;</i> 	
FOIA Exemption S.43 (1) & (2) – Commercial Interests	
Factors supporting disclosure	Factors supporting non-disclosure
<ul style="list-style-type: none"> • There is a clear public interest in the work of government being closely examined to encourage the discharging of public functions in the most efficient and effective way; • There is an important public interest in the work of public bodies being transparent and open to scrutiny to increase diligence and to protect the public purse; • There is a public interest in disclosing information about public procurements to ensure there is transparency in the spending of public money and that public bodies are getting value for money when entering into contracts; • There is a strong public interest in releasing information which shows the criteria used when assessing options to illustrate that the processes used were fair and appropriate. 	<ul style="list-style-type: none"> • The procurement process must be seen to be fair and that commercial interests of the suppliers of services are not unduly prejudiced by the release of commercially sensitive information. It is important to maintain the confidence of our suppliers in order to achieve best value for the tax payer; • The methodology outlined in the bid may be construed as a “trade secret” in that it is a strategy owned and developed by the consultant. If the methodology was made available to competitors in the market place it would undermine the commercial interests of the consultant when bidding for other contracts by reducing their competitive edge; • To reveal the details of the bid would seriously undermine our ability to negotiate the best value for money for the public purse on future contracts as the rates and methodology are still current; • The consultants object to the release of their bid information on the grounds that it contains commercially sensitive information in terms of a “trade secret” and rates; and such a release would be actionable
<p>Conclusion: there are compelling arguments which support withholding the information which outweigh those supporting release.</p>	

