



Department for Transport

Mr Roger Geffen
by email
roger.geffen@cyclingsuk.org

Traffic and Technology Division
Zone 3/27
Department for Transport
Great Minster House
Horseferry Road
London SW1P 4DR

Web Site: www.gov.uk/dft

Our Ref: F0017196

29 March 2019

Dear Mr Geffen,

Freedom of Information Act Request F0017196

Thank you for your email of 5 March 2019 in which you asked for the following:

- Any advice DfT has issued to highway authorities – either before TSRGD 2016 came into effect or subsequently – suggesting that MCL white lines do NOT indicate that vehicles other than pedal cycles are prohibited from being parked in MCLs during their hours of operation, and that other restrictions are therefore necessary to prevent this.
- Any internal correspondence or legal advice relating to the decision to replace the word “used” (in TSRGD 2002) with “driven, or ridden” (in TSRGD 2016), to describe what amounted to an offence if committed in a MCL with a vehicle other than a pedal cycle during its hours of operation.
- Any internal correspondence or legal advice relating to the decision not to explain the above change of wording, or its impacts to local authorities and other stakeholders, either as part of the consultation on TSRGD 2016 or in Circular 01/2016 or other documentation explaining TSRGD 2016 following its adoption.
- Any internal correspondence or legal advice relating to the forming of DfT’s view, as expressed in its email to Cycling UK of 9th January 2019, that the changes of wording made in TSRGD 2016 did not amount to a change in the regulatory meaning of MCLs (or their associated white line markings).

Your request has been considered under the Freedom of Information Act (FOIA) 2000.

I am writing to confirm that the Department for Transport (“the DfT”) has now completed a search of its paper and electronic records for the information you have requested. The DfT does hold the information you requested, but has decided that some of this information cannot be disclosed for the reasons given below. The information that can be released is enclosed.

Some of the information being withheld falls under the exemption in section 42(1) of the FOIA in respect of legal professional privilege. In applying this exemption, we have had to

balance the public interest in withholding the information against the public interest in disclosure. The attached Annex A to this letter sets out the exemption in full and details why the public interest test favours withholding the information.

In addition, the names of certain external stakeholders and junior government officials, that is staff below the Senior Civil Service, have been withheld in reliance on the personal information exemption at section 40(2) and 40(3) of the FOIA (the full wording is included in Annex B). These individuals have an expectation that their names will not be put into the public domain, therefore it would be unfair for us to release them and would contravene current data protection legislation.

If you are unhappy with the way the DfT has handled your request or with the decisions made in relation to your request you may complain within two calendar months of the date of this letter by writing to the DfT's FOI Advice Team at:

Zone D/04
Ashdown House
Sedlescombe Road North
Hastings
East Sussex TN37 7GA
E-mail: FOI-Advice-Team-DFT@dft.gsi.gov.uk

Please send or copy any follow-up correspondence relating to this request to the FOI Advice Team to help ensure that it receives prompt attention. Please also remember to quote the reference number above in any future communications.

Please see attached details of DfT's complaints procedure and your right to complain to the Information Commissioner.

Yours sincerely

Sally Gibbons

Your right to complain to the DfT and the Information Commissioner

You have the right to complain within two calendar months of the date of this letter about the way in which your request for information was handled and/or about the decision not to disclose all or part of the information requested. In addition a complaint can be made that DfT has not complied with its FOI publication scheme.

Your complaint will be acknowledged and you will be advised of a target date by which to expect a response. Initially your complaint will be re-considered by the official who dealt with your request for information. If, after careful consideration, that official decides that his/her decision was correct, your complaint will automatically be referred to a senior independent official who will conduct a further review. You will be advised of the outcome of your complaint and if a decision is taken to disclose information originally withheld this will be done as soon as possible.

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

ANNEX A

Exemption in full	
<p>Section 42 Legal professional privilege.</p> <p>(1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.</p> <p>(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) in respect of which such a claim could be maintained in legal proceedings.</p>	
Public interest test factors for disclosure	Public interest test factors against disclosure
<ul style="list-style-type: none">• Policy is already formulated so the advice is historic rather than live.• Public interest may favour disclosure as cycle lanes, and how they are signed is relevant to road users, and that therefore they should know how the Department came to its decisions	<ul style="list-style-type: none">• Material is subject to legal professional privilege. This should be respected in order to maintain the confidentiality of the relationship between lawyer and client.• Requester references possible legal action. Releasing material may prejudice any future legal case.• The material is not being redacted in full. Internal correspondence which will be released does provide information about policy development on this subject.
<p><u>Decision</u></p> <p>On balance, the conclusion is that the public interest is in favour of withholding the legal advice covered by section 42 of the Freedom of Information Act 2000.</p>	

ANNEX B

Exemption in full

Section 40 Personal Information

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if—

- (a) it constitutes personal data which does not fall within subsection (1), and
- (b) the first, second or third condition below is satisfied.

(3A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act—

- (a) would contravene any of the data protection principles, or
- (b) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded.

(3B) The second condition is that the disclosure of the information to a member of the public otherwise than under this Act would contravene Article 21 of the GDPR (general processing: right to object to processing).

(4A) The third condition is that—

- (a) on a request under Article 15(1) of the GDPR (general processing: right of access by the data subject) for access to personal data, the information would be withheld in reliance on provision made by or under section 15, 16 or 26 of, or Schedule 2, 3 or 4 to, the Data Protection Act 2018, or
- (b) on a request under section 45(1)(b) of that Act (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section.

(5A) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).

(5B) The duty to confirm or deny does not arise in relation to other information if or to the extent that any of the following applies—

- (a) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a)—
 - (i) would (apart from this Act) contravene any of the data protection principles, or
 - (ii) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded;
- (b) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene Article 21 of the GDPR (general processing: right to object to processing);
- (c) on a request under Article 15(1) of the GDPR (general processing: right of access by the data subject) for confirmation of whether personal data is being processed, the information would be withheld in reliance on a provision listed in subsection (4A)(a);
- (d) on a request under section 45(1)(a) of the Data Protection Act 2018 (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section.

(6).....

(7) In this section—

“the data protection principles” means the principles set out in—

(a) Article 5(1) of the GDPR, and

(b) section 34(1) of the Data Protection Act 2018;

“data subject” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);

“the GDPR”, “personal data”, “processing” and references to a provision of Chapter 2 of Part 2 of the Data Protection Act 2018 have the same meaning as in Parts 5 to 7 of that Act (see section 3(2), (4), (10), (11) and (14) of that Act).

(8) In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (disapplying the legitimate interests gateway in relation to public authorities) were omitted.