

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 March 2013

Public Authority: Transport for London
Address: 6th Floor
Windsor House
42-50 Victoria Street
London
SW1H 0TL

Decision (including any steps ordered)

1. The complainant has requested information relating to staffing at Transport for London (TfL). TfL did not respond to the request under section 17(6) of the Freedom of Information Act (FOIA). It has explained to the Commissioner that it considers that the request was vexatious under section 14 FOIA. It explained that it has previously applied section 14 FOIA to requests made by the complainant on this subject matter and a previous Decision Notice had been served by the Commissioner upholding TfL's application of section 14 FOIA. Finally TfL confirmed that it had made the complainant aware that it would not respond to further requests relating to this subject matter.
2. The Commissioner's decision is that TfL was not obliged to respond to this FOIA request under section 17(6) FOIA as the request was vexatious under section 14 FOIA.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 28 April 2012, the complainant wrote to TfL and requested information in the following terms:

"I the discovered by accident when speaking to [phone number] that both IH and RB. The former apparently left approximately March 2011 and RFB after 04 November 2011.

Despite three requests to Andrea Clarke in TfL Legal there is reluctance to confirm that firstly they actually have left; secondly, their respective dates of departure if this is true. So far as TfL Legal is concerned the matter has been reported to the Solicitors' Regulatory Authority for other reasons."

5. As the complainant did not receive a response he submitted a further request, to clarify the information required, on 10 October 2012. The request was as follows:

"...it would be helpful if the enclosed organogram could be updated or modified because information from your switchboard [telephone number]:

- a. Suggests that some of the employees shown have either left TfL/LUL or have been moved to other positions or transferred to a subsidiary entity;
- b. Are uncontactable for some other reason [SV's department already has information to this effect on written record]."

6. TfL still did not respond to the complainant.

Scope of the case

7. The complainant contacted the Commissioner on 11 October 2012 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether TfL was correct to assert that it was not obliged to respond to the request in this case under section 17(6) FOIA as the request was vexatious under section 14 FOIA.

Reasons for decision

9. In a previous decision notice, under reference FS50321625 and dated February 2011, the Commissioner found that the complainant's requests were vexatious under section 14 FOIA. The previous notice details the background to the making of the requests, namely the complainant's daughter's prosecution for fare evasion. It also details the amount of correspondence which passed between the complainant and TfL. The request in this case is for substantively similar information to the requests in case reference FS50321625, that is information relating to staffing at TfL to enable the complainant to continue his dispute with TfL relating to his daughter's prosecution. In December 2012 the Tribunal

upheld the Commissioner's decision (EA/2011/0076) in relation to case reference FS50321625.

10. Whilst the Commissioner notes that two years have elapsed since the decision notice under reference FS59321625 was served he considers that the circumstances and background set out in that decision notice are still relevant to the request to which this notice relates. Furthermore TfL has explained that during this two year period, the amount of correspondence from the complainant relating to this issue has not reduced. It has explained that the complainant has continued to write to TfL and other parties to mount challenges linked to the dispute about the prosecution of his daughter for fare evasion. TfL confirmed that it has not responded to any FOIA requests from the complainant on this issue relying on section 17(6) FOIA and a previous notice it served on the complainant explaining that it would not respond to any further vexatious requests relating to this matter.
11. The Commissioner considers that the request in this case is substantively similar to the requests relevant to case reference FS50321625 and that the same background and previous correspondence would be relevant. TfL has also provided evidence that the correspondence from the complainant relating to this issue has continued, by making FOIA requests and in other forms. TfL also confirmed that the correspondence sent to TfL was often copied to a number of individuals including the Mayor of London, the TfL Commissioner, TfL's General Counsel, TfL's Legal Director, the complainant's local MP and others. It summarised that it had received a further 70 pieces of correspondence during 2012 relating to this issue.
12. Section 14 of FOIA states that

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."
13. The Commissioner issued revised guidance entitled "Vexatious or repeated requests" in December 2008 as a tool to assist in the consideration of when a request can be treated as vexatious. The guidance sets out key questions for public authorities to consider when determining if a request is vexatious which are set out below:
 - i) whether compliance would create a significant burden in terms of expense and distraction
 - ii) whether the request is designed to cause disruption or annoyance
 - iii) whether the request has the effect of harassing the public authority or its staff

- iv) whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable
- v) whether the request has any serious purpose or value
14. The Commissioner considers that section 14 FOIA would be applicable in this case for the reasons set out in case reference FS50321625. He considers that the request in this case does relate to the issues and background relevant to that notice and that this would be relevant to this request. He is also satisfied that TfL has provided submissions which demonstrate that the complainant's correspondence relating to this issue has continued either in the form of FOIA requests or general correspondence challenging TfL's actions or decisions linked to this matter.
 15. TfL did not however respond to the complainant to explain that it was relying on section 14 FOIA in relation to this request. It said that it was not obliged to do so under section 17(6) FOIA.
 16. Section 17(6) of FOIA allows a public authority not to issue a refusal notice at all when both the following conditions are met:
 - the public authority has already given the same person a refusal notice for a previous vexatious or repeated request; and
 - it would be unreasonable to issue another one.
 17. The Commissioner will usually only consider it unreasonable to issue a further notice when an authority has previously warned the requester that it will not respond to any further vexatious requests on the same or similar topics.
 18. In this case the Commissioner considers that it would be unreasonable for TfL to issue a further refusal notice under section 14 FOIA in response to vexatious requests made by the complainant relating to this issue. This is because the circumstances have not changed since the decision notice and Tribunal judgement which was issued in relation to case reference FS50321625. TfL has said that it previously explained to the complainant that it would not respond to any further vexatious requests or correspondence on this issue. It also provided the Commissioner with a letter it sent to the complainant on 19 September 2012 confirming this position.
 19. Taking all of the above into account, and relying upon the arguments set out in detail in the decision notice under reference FS50321625, the Commissioner considers that TfL was not obliged to comply with the request in this case under section 17(6) FOIA.

Right of appeal

20. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

21. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
22. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF