

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 December 2022

Public Authority: London North Eastern Railway (LNER)
Address: East Coast House
25 Skeldergate
York
YO1 6DH

Decision (including any steps ordered)

1. The complainant has requested LNER to disclose details of complaints logged against Train Managers from 1 November 2021 to the date of their request. LNER refused to comply with the request, citing section 12 of FOIA.
2. The Commissioner's decision is that LNER is entitled to rely on section 12 of FOIA. However, LNER failed to comply with section 16 of FOIA (duty to provide advice and assistance).
3. The Commissioner requires LNER to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with advice and assistance in accordance with section 16 of FOIA to enable them to submit a refined request should they wish to do so. If no reasonable advice and assistance can be provided, LNER should inform the complainant this is the case.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court

pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 15 March 2022, the complainant wrote to the LNER and requested information in the following terms:

"1. How many complaints since 1/11/2021 have been lodged against Train Managers "TM" (IE not Hosts, Senior Hosts or PUGs (persons utilised as guards)) for the Kings Cross Depot.

2. How many complaints since 1/11/2021 have been lodged against Train Managers "TM" (IE not Hosts, Senior Hosts or PUGs (persons utilised as guards)) for the Leeds Depot.

3. In regards to 1&2 above please list the dates lodged, brief outline of complaint, and when the complaint was decided in favour of the passenger or not upheld IE decided against the passenger. Please be aware any form of compensation over and above Delay Repay would be counted as in favour of the passenger.

4: In regards to 1&2 above please list what resolution was given to the passenger. IE Free standard class tickets, free first class tickets, special periodicals, scratch card tickets, cheque payments, bacs, etc.

5: I do not wish to know the passengers names or staff names obviously."

6. LNER responded on 21 March 2022. It refused to comply with the request, citing section 12 of FOIA.
7. There was further correspondence between the complainant and LNER but no internal review was completed. This was because by the time LNER felt the complainant had requested one, it was out of time.

Scope of the case

8. The complainant contacted the Commissioner on 15 August 2022 to complain about the way their request for information had been handled. They do not agree section 12 of FOIA applies to their request and the information should therefore be disclosed.

Reasons for decision

9. This reasoning covers whether LNER is correct to apply section 12(1) (cost limit) of FOIA to the request.
10. LNER considers that the cost of complying with the request would exceed the appropriate limit under FOIA. The cost limit for LNER is 18 hours. LNER explained that it would have to use its customer service system to retrieve the requested information. It would have to classify "tickets" by "Complaints & Praise" and enter the relevant date range specified in the request. For the timeframe specified in the request there are 11752 entries.
11. LNER explained that the only way to establish if the entry is a complaint and relates to a train manager is to review each entry. There is no facility or speedier means of finding or extracting any entries which would fall within the scope of the request. It estimated that it would take two minutes to review each entry to see if it is a complaint, and if it is, if it related to a Train Manager. This element of the process alone would take 391 hours.
12. For those entries that did relate to a Train Manager, it would then have to find the headcode of the train. To do this it would need to know the exact train service, then go into the timetable system, find the headcode and then go into the rostering system to the identify the Train Manager and the depot. LNER estimated that this would take a further 10 minutes per entry, but as it is unable to say how many entries fall within the scope of the request (as to do this would exceed the cost limit by a considerable margin) it cannot estimate the actual time this would take.
13. It said that it would then have to consider elements three and four of the request. However, LNER did not consider how long these parts would take to process because it was so apparent that compliance would be well over the cost limit.
14. The Commissioner considers LNER has explained in sufficient detail why compliance with this request would exceed the cost limit prescribed by FOIA. It has confirmed that there is no other way of locating and extracting the required information. The estimate appears reasonable based on how the recorded information is held. For these reasons, he is satisfied that section 12 of FOIA applies.
15. However, section 12 of FOIA triggers the duty to provide advice and assistance under section 16 of FOIA. A public authority is required to confirm how the applicant could refine their request to enable that to be processed within the cost limit or, if no reasonable advice and assistance can be provided, confirm that that is indeed the case.

16. LNER has not to date provided advice and assistance or confirmed that it is not able to do so. It has therefore breached section 16(1) of FOIA.
17. The Commissioner requires the LNER to provide the complainant with advice and assistance to help them submit a request which falls within the appropriate limit. Or, alternatively, confirm that no reasonable or practicable advice and assistance can be provided in this case.

Right of appeal

18. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

19. 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.
20. 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:

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF