

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 January 2019

Public Authority: Transport for London
Address: 55 Broadway
London SW1H 0BD

Decision (including any steps ordered)

1. The complainant has requested information associated with reconsideration hearings. Transport for London (TfL) refused to comply with the request which it categorised as vexatious under section 14(1) of the FOIA. TfL has subsequently confirmed that, notwithstanding its reliance on section 14(1), it considers the requested information is exempt from release under section 31(2)(c) (law enforcement) and section 40(2) (third person personal data).
2. The Commissioner's decision is as follows:
 - The request is not vexatious and does not engage section 14(1).
 - The information that has been requested is exempt from release under section 31(1)(g) leading to 31(2)(c), as disclosure would be likely to prejudice TfL's regulatory functions. The public interest favours maintaining this exemption.
 - TfL did not breach section 16(1) with regard to the advice and assistance it provided to the complainant.
3. The Commissioner does not require TfL to take any remedial steps.

Request and response

4. On 29 May 2018 the complainant wrote to TfL and requested information in the following terms:

"Can you please supply copies of all typed notes made of Reconsideration Hearings from 1/1/17 to 31/12/17 in the TPH Dept at TFL."
5. TfL responded on 26 June 2018, refusing to comply with the request under section 14(1) of the FOIA. TfL said the request was vexatious because complying with it would be a disproportionate burden.
6. The complainant requested an internal review on 27 June 2018. He reduced the scope of his request to four months: 1 September 2017 to 31 December 2017.
7. TfL provided an internal review on 16 July 2018. It confirmed it considered this request to be vexatious under section 14(1) of the FOIA.
8. During her investigation TfL advised the Commissioner that, if she was to find that the request was not vexatious, it considers the information would be exempt from release under 31(2)(c) of the FOIA and section 40(2). On 18 December 2018, the Commissioner instructed TfL to communicate this position to the complainant and TfL did so the same day.

Scope of the case

9. The complainant contacted the Commissioner on 18 July 2018 to complain about the way his request for information had been handled.
10. The Commissioner's investigation has first focussed on whether TfL can rely on section 14(1) of the FOIA to refuse to comply with the refined request of 27 June 2018.
11. If necessary the Commissioner has been prepared to consider whether TfL can rely on section 31(1)(g)/31(2)(c) or 40(2) to withhold the requested information.
12. The complainant also considers that TfL did not offer him any help with a view to him possibly receiving some of the information he is seeking. The Commissioner has therefore also finally considered whether TfL breached section 16(1) of the FOIA (advice and assistance).

Reasons for decision

Section 14 – vexatious and repeat requests

13. Under section 14(1) of the FOIA a public authority is not obliged to comply with a request if the request is vexatious.
14. The term 'vexatious' is not defined in the FOIA but the Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in her published guidance and, in short, they include:
 - Abusive or aggressive language
 - Burden on the authority – the guidance allows for public authorities to claim redaction as part of the burden
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance
15. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
16. The Commissioner's guidance goes on to suggest that, if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.
17. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
18. In its submission to the Commissioner TfL has provided a background and context to the complaint. It says that TfL has a statutory duty to regulate the taxi and private hire trades in London under the London Hackney Carriages Act 1843 and Private Hire Vehicles (London) Act 1998. This legislation covers the licensing of taxi and private hire drivers, taxi and private hire vehicles, and private hire operators. When a taxi driver has their licence suspended, revoked or refused, they are entitled to a reconsideration hearing as part of the appeals process. This provides the driver with an opportunity to state their defence, discuss mitigating factors and provide explanation, reasoning and

justification for why they are a fit and proper person to hold a taxi driver's licence. Similarly, the hearing is an opportunity for TfL in its role as regulator of London's Taxi and Private Hire industry to reconsider its decision based on the additional evidence placed before it and come to a conclusion as to whether the driver is a 'fit and proper' person to be licensed.

19. TfL has provided the Commissioner with reasons why it considers that the complainant is familiar with the reconsideration hearing process, which she does not intend to reproduce in this notice. TfL has also told the Commissioner that the complainant has submitted two previous FOI requests during 2018 regarding the content of reconsideration hearings and it has provided the Commissioner with these two requests: they concern reconsideration hearings associated with a particular type of incident that might occur in a taxi.
20. TfL says it refused the first request (which featured as part of a wider request) under section 12 (cost exceeds the appropriate limit). The second request was for the same information 'up to the cost threshold'. TfL says that although this presented it with a burden, it processed this request in order to alleviate any specific concerns the complainant may have held about the prevalence of the type of incident in question.
21. After reviewing 100 individual reconsideration hearings preceding the date of this request TfL says it did not find a single case that involved allegations of the type of incident about which the complainant is concerned. TfL communicated this to the complainant. It says that the complainant did not appeal this response but that it has now led to this current request. In TfL's view the current request appears to be an expanded, less specific request. This has led it to conclude that the burden that was overlooked in order to provide the requested information in the previous request was not to TfL's or the complainant's benefit.
22. TfL has provided the Commissioner with the following arguments in support of its view that the current request can be categorised as vexatious:
23. **Unreasonable persistence:** As it has detailed above, TfL says that a significant amount of staff time was taken up in addressing what appeared to be a genuine concern about a particular type of incident that may have led to a reconsideration hearing being heard. TfL says it processed the complainant's second request specifically to close the matter off and allay any fears he may have had. These concerned the risk to the general public who may choose to use a taxi, as well as any fears taxi drivers may have had about finding themselves in a particular, difficult position.

24. In that case TfL considered that the burden placed upon it in processing this request was justified by being able to comprehensively address something which is a direct concern of the complainant and possibly to the wider public and other taxi drivers. TfL therefore considers that this latest request demonstrates unreasonable persistence on an issue that it considers to have been resolved. In TfL's view, it is clear that providing the requested information on this subject in this case will simply trigger a pattern of persistent fishing expeditions to build up a portfolio of these hearing documents. TfL acknowledges that the motive for such a portfolio is not clear, but says it appears trivial, and is most likely highly personalised and of little benefit to the wider public.
25. **Scattergun approach:** TfL says that the complainant's previous request focussed on a specific issue. However, TfL has noted that the complainant has now asked for copies of the reconsideration hearings themselves. It says that, having been given a precise answer on a subject matter of interest, the complainant has now expanded this to the point where it lacks any clear purpose or value.
26. TfL has explained to the Commissioner that reconsideration hearings focus on an extremely varied number of issues and this is something the complainant will be aware of. Because he has a knowledge of reconsideration hearings TfL considers that the complainant's request has been designed for the purpose of fishing for information without any idea of what might be revealed.
27. TfL argues that because the complainant's suggestion of a refined request was focussed around a narrower time period, rather than honing in on a specific subject matter as he had done previously; this suggests that his request lacks any serious purpose or value. Furthermore, TfL says that given the complainant's recent request history, it is likely that providing this information under a narrowed timeframe would simply lead to a following request for concurrent periods of time.
28. **Disproportionate effort:** TfL has advised the Commissioner that reconsideration hearings are highly personalised matters that focus very heavily on the personal lives of those to whom the hearing relates. It says it would require significant resource on its part to review the documents that fall within the scope of the request and come to a conclusion on which aspects of the hearing would require redaction based on one or more exemptions set out in the FOI Act and what information (if any) would be suitable for disclosure.
29. TfL says that reconsideration hearings generally focus on personal relationships, physical and mental wellbeing (both of the driver and of those close to them), fitness of the individual to operate as a licensed taxi driver, current and spent convictions and descriptive terminology

around the conduct, demeanour, behaviour and character of the driver who is subject to the hearing. TfL argues that it is therefore evident that it that would require a very strong consideration of section 40(2) - both to the content of the reconsideration hearing and, indeed, to all the associated documents.

30. TfL has noted that, furthermore, it licenses and regulates all of London's taxi and private hire drivers, vehicles and operators, as well as operating as the enforcement authority to ensure that drivers, operators and vehicles are compliant with taxi and private hire legislation, regulations and policy. It says it would therefore also need to consider, in depth, the application of section 31(2)(c) to some or all of the information requested.
31. TfL has provided the Commissioner with 10 examples of reconsideration hearings caught by the request to enable her to see what TfL considers to be the highly personalised and evidently biographical nature of these reviews. TfL has also provided the Commissioner with other information – the nature of which she does not intend to note in this notice – to enable her to consider the context that TfL has explained above.
32. With regard to the burden that redacting the disputed information would cause to TfL, TfL has advised that the complainant's original request covered 105 reconsideration hearings and his suggestion of a more refined request covered 25 hearings. It says these hearing documents vary from between two and eight pages and so, using an average of 4 pages per hearing, the requests cover approximately 400 and 100 pages respectively. Each of these pages and documents would need to be very carefully read, reviewed and considered against any applicable exemption. This would, TfL has told the Commissioner, require a line by line review with input and consideration required from its Privacy team, its Taxi & Private Hire team, the FOI Case Management Team and its Compliance team to ensure that all concerns had been sufficiently met and addressed.
33. In TfL's view it is clear that potentially exempt information is scattered throughout the requested material and, indeed, serious consideration would have to have been made as to whether one or more exemptions might apply to the documents in their entirety. TfL says there is no way of isolating potentially exempt material and so it would require manual redaction after a decision had been reached by all of the interested parties referenced above.
34. TfL argues that it is obvious that these documents contain potentially exempt information and, for the reason the Commissioner has noted, it should also be obvious to the complainant. To that extent TfL says it must also consider that the request is deliberately frivolous and

designed purely to cause disruption to TfL's functions. It seems illogical to TfL that the complainant would consider it reasonable to disclose other individuals' reconsideration hearings whilst possessing the particular knowledge that he does with regard to those hearings.

35. From the information provided to her, the Commissioner has not been persuaded that the complainant's request of 27 June 2018 can be considered to be vexatious. First, she understands that he submitted three requests during 2018; refining the third request to result in the fourth request above, that is the subject of this notice. The Commissioner does not consider four requests for information in one year to be excessive.
36. Second, the Commissioner has also considered the wider circumstances from the complainant's perspective and is of the view that, given those circumstances, it is not unreasonable for the complainant to seek further information on reconsideration hearings and the particular type of incident and associated risks that are of concern to him; albeit that the current request may have lost some of the original focus.
37. Third, TfL argues that the requested information comprises the notes of 25 reconsideration hearings, that redacting these would be a burden and the burden would be unreasonable. The Commissioner acknowledges that carrying out this work would take up TfL staff time. However, she considers that reviewing and redacting approximately 100 pages would not be an oppressively significant burden. In addition, because the request does have a degree of value, she considers that such a burden would not be wholly disproportionate. For these reasons the Commissioner has decided that, on this occasion, TfL could not rely on section 14(1) of the FOIA to refuse to comply with the request. She has gone on to consider the exemptions that TfL has now applied to the requested information.

Section 31 – law enforcement

38. In its submission TfL has not referenced the subsection of section 31(1) that it is relying on. The Commissioner has assumed TfL is relying on subsection 31(1)(g). Under subsection 31(1)(g) information is exempt information if its disclosure would, or would be likely to, prejudice the exercise of any public authority of its functions for any of the purposes specified in subsection (2).
39. Subsection 31(2)(c), on which TfL has confirmed it is relying, is the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist, or may arise.
40. To engage the exemption a public authority must:

- demonstrate that it has been entrusted with a function to fulfil this regulatory purpose
- confirm that the function has been specifically designed to fulfil that purpose; and
- explain how the disclosure would or would be likely to prejudice that function.

41. As a qualified exemption, section 31 is subject to the public interest test.
42. TfL has confirmed to the Commissioner that it has a statutory duty to regulate the taxi and private hire trades in London under the London Hackney Carriages Act 1843 and Private Hire Vehicles (London) Act 1998. This legislation covers the licensing of taxi and private hire drivers, taxi and private hire vehicles, and private hire operators.
43. The Commissioner is satisfied these pieces of legislation provide TfL with a range of functions in respect of the regulation of the drivers and operators of private hire vehicles and taxi services, and that the first of the conditions at paragraph 40 has been met.
44. The information to which TfL considers section 31(2)(c) applies comprises the notes of 25 reconsideration hearings (covering the period 1 September 2017 to 21 December 2017), 10 of which it has provided to the Commissioner by way of examples. The Commissioner has reviewed these notes and is satisfied they contain information as TfL has described in paragraph 29. The notes discuss the reasons why a driver's taxi licence has been suspended and record the decision as to whether or not to reinstate the licence and the associated reasoning.
45. The Commissioner is satisfied that the second condition set out in paragraph 40 is met: a reconsideration hearing functions as an appeal against the Licencing Authority's (ie TfL's) decision to revoke an individual's taxi driver's licence. As such, it is designed to fulfil TfL's role as a regulator. She will now go on to consider whether the disclosure would prejudice TfL's regulatory functions.
46. Section 31(2)(c) can be engaged on the basis that disclosing the information either 'would' prejudice TfL's regulatory functions, or that disclosure would only be 'likely' to prejudice those functions. From its submission to the Commissioner it is understood that TfL applied the exemption on the basis of the lower threshold of prejudice, ie that disclosure would be likely to prejudice its regulatory functions. Nevertheless this still means that TfL is of the opinion that there is a real and significant risk that the prejudice would occur if the requested information was released.

47. TfL says that it is concerned that if the information the complainant has requested were to be made public it would diminish its ability to continue with the free flow of information between TfL and drivers. TfL has argued that this free flow of information is critical to maintaining fair and robust decision making which is clearly an essential requirement of the appeals process set out in the legislation.
48. TfL considers that disclosing the information would also be likely to prejudice future hearings as the investigated party would obviously be less likely to cooperate to the fullest extent if there was a chance that the content of these hearings would be made a matter of public record.
49. The result of this, according to TfL, is likely to be that individuals may not be as forthcoming and descriptive with explanation, justification and any relevant mitigating circumstances. This would severely inhibit both those individuals' right to a free and fair hearing and TfL's ability to come to a decision based on possession of the full facts of a case.
50. TfL argues that effective working between the trade and the regulator relies on a safe space where information can be shared in confidence in a way that ensures the smooth and effective operation of the appeals process. As well as being critical to its function as a regulatory body, TfL says the taxi trade benefits from being able to share information in confidence because it allows drivers to provide full answers to regulatory matters which better supports the effective regulation of the taxi trade.
51. The Commissioner notes that TfL's arguments are focussed more on the extent that disclosing the information will have on future regulatory activity rather than on its ability to gather information for any current or particular reconsideration hearing.
52. However, the Commissioner recognises the logic in TfL's rationale for applying the exemption. Even if TfL had powers to compel a taxi driver to provide it with information, it is likely to obtain higher quality information, and to obtain that information more quickly, where a taxi driver is prepared to cooperate with the regulator. However the extent to which disclosing the information it gathered for the purpose of reconsideration hearings would have on taxi drivers' willingness to cooperate with TfL in the future will depend on how sensitive the withheld information was at the time of the request. If TfL only disclosed fairly neutral information then it is unlikely to have the chilling effect on future cooperation that TfL fears. The sensitivity of the information is also dependent on the timing of the request.
53. The Commissioner does not consider the requested information to be neutral. She agrees with TfL that it is highly sensitive, concerning as it does the reasons and circumstances behind individuals having their taxi-

driver's licence suspended, revoked or refused. The notes of some of the cases include discussion of the circumstances of a driver's wider personal life. Even if individuals' names were redacted, the Commissioner considers that – given the specific circumstances discussed in each hearing, and the familiarity that London taxi drivers are likely to have with each other and situations that arise within that community – there is a good chance that specific taxi drivers could still be identified from information contained in the hearing notes.

54. With regard to timing, the complainant submitted his original request on 29 May 2018, and submitted the refined request on which this decision is focussed on 27 June 2018. The information he has requested covers the period 1 September 2017 to 31 December 2017. In view of the nature of the information that has been requested, the Commissioner does not consider that six to ten months is a sufficient length of time to have passed for the information to have lost its sensitivity.
55. The Commissioner notes that in some other hearings decisions are published and individuals are named, for example Medical Practitioners Tribunals in which doctors' fitness to practice is considered. This is not the case in TfL reconsideration hearings, details of which are not published. The Commissioner therefore agrees with TfL that if a taxi driver was to believe that details of their hearing could be put into the public domain through a FOI request, this would be likely to inhibit the information they would be prepared to disclose to the hearing. Not having full possession of all the facts, beliefs, views and circumstances of each situation would, in turn, compromise TfL's ability as a regulator to make robust and fair decisions with regard to the licencing of London taxi drivers. The Commissioner is therefore satisfied that the third of the conditions at paragraph 40 is met; disclosure would be likely to prejudice TfL's function as a regulator.
56. Since all the conditions are met, the Commissioner finds that the requested information engages the exemption under subsection 31(1)(g) leading to 31(2)(c). She has gone on to consider the public interest test. Even though the section 31 exemption is engaged, the information might still be released if there is sufficient public interest to justify doing so.

Public interest test

Public interest in disclosing the information

57. TfL says it has carefully considered the public interest in disclosing the information as, in some cases, the hearings relate to matters of potential public safety. As a public authority with a regulatory role, TfL

says it strives for its decision making to be transparent and open to public scrutiny.

Public interest in maintaining the exemption

58. TfL considers that the balance of the public interest is best served in being able to support the effective and timely sharing of information between TfL and the taxi trade. TfL says it should be able to preserve its ability to act as an effective regulator by sharing information; this ensures that the services offered by the taxi trade are safe and compliant.

Balance of the public interest

59. There is a strong public interest in London's taxi trade being safe and well regulated. The Commissioner appreciates that the complainant has what appears to her to be a genuine concern about a particular situation that London taxi drivers (and the users of this service) might, on occasion, face. However, she notes that as a result of an earlier request from the complainant, TfL was able to advise him that, having reviewed 100 individual reconsideration hearings preceding the date of that request, it had not found any cases that involved allegations associated with the type of incident in question.
60. Incidences of London taxi drivers posing a threat to passengers, and of passengers falsely accusing taxi drivers, while extremely upsetting for the parties involved, are very rare. The Commissioner is not aware of a wider public concern about the safety, or otherwise, of London taxi drivers. Even if there was such a concern, the information the complainant has requested is not likely to uncover any related or strong evidence since it comprises the notes of only 25 reconsideration hearings that concern a variety of different matters.
61. Having considered both sides of the argument, the Commissioner considers that there is a stronger public interest in TfL being able to carry out its role as a regulator effectively, which helps to ensure that London's taxi trade is safe. To be effective in this role, TfL needs taxi drivers to be willing to engage with it fully and frankly and to provide it with all the information it needs; in reconsideration hearings and in other situations. In the Commissioner's view, this confidence in TfL would be likely to be compromised if it was known that TfL could release the notes of its reconsideration hearings into the public domain. She is satisfied that, in this case, the public interest favours maintaining the section 31(1)(g) / 31(2)(c) exemption. It has therefore not been necessary to go on to consider whether the information engages the exemption under section 40(2) of the FOIA.

Section 16 – duty to provide advice and assistance

62. Under section 16(1) of the FOIA a public authority has a duty to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.
63. Section 16(2) says that any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice¹ under section 45 will have complied with section 16(1) in that case.
64. The duty to provide advice and assistance arises in certain situations. These are broadly:
- a) before an applicant has submitted a request for information and is, for example, clarifying with the public authority what information it holds
 - b) if a request for information is not clear to the public authority
 - c) if complying with a request would exceed the appropriate cost limit under section 12 of the FOIA, a public authority should, if it is reasonable to do so, offer the applicant advice and assistance to refine the request so that it can be complied with within the cost limit; and
 - d) transferring the request to another public authority.
65. Points b) and c) could be relevant in this case. With regard to point b) TfL did not indicate to him that the complainant's request was not clear and, in his request for a review, the complainant did not indicate that TfL had misinterpreted his request. The Commissioner therefore considers that an unclear request is not an issue here. With regard to point c), TfL responded to the complainant's request by relying on section 14(1) and not section 12.
66. As above, section 16(1) places an obligation on an authority to provide advice and assistance so far as it would be reasonable to expect it to do so. TfL refused to comply with the request not because the cost of doing so would exceed the appropriate limit, but because it considered

1

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

the request to be vexatious. In the circumstances of this case the Commissioner is therefore inclined to the view that TfL was not obliged to help the complainant to refine his request, and did not breach section 16(1).

Right of appeal

67. 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: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

68. 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.
69. 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
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