

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 February 2019

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

Decision (including any steps ordered)

1. The complainant made a multi-part request to Transport for London (TfL) for information about the recruitment procedures of MTR Crossrail. TfL responded to each element of the request, but the complainant remained dissatisfied with some of those responses. Following an internal review TfL's position is that it does not hold any additional information in respect of the three elements of the request which are the focus of this complaint.
2. The Commissioner's decision is that TfL does not hold any additional information and is therefore not under a duty, imposed by section 1(1)(b), to communicate that information to the complainant. Furthermore the Commissioner finds that in respect of the request for a particular job advert, TfL did not hold the information at the time the request was received. Although TfL tried to be helpful by obtaining some relevant information from MTR Crossrail, by failing to make it clear to the complainant that TfL did not hold the job advert itself, TfL has breached section 1(1)(a) of the FOIA.
3. However as the situation has now been clarified in this notice, the Commissioner does not require the public authority to take any further action in respect of this matter.

Request and response

4. On 6 July 2018 the complainant requested information of the following description:

"I am writing to request information under the Freedom of Information Act 2000. My questions are as follows:

1. Which recruitment organisation or firm was used for advertising, selecting and employing the staff at TFL Concession Operator, MTR Crossrail, prior to the start date of the concession agreement - 31st of May 2015?

2. I am aware that MTR Crossrail currently has a Recruitment & Selection Policy in use and set out in a document, which was issued on 29/06/17, and the organisation may not have had any recruitment policy document prior to that date. Kindly confirm the Recruitment & Selection Policy document that was in effect prior to 29/06/17?

3. What is the composition of the joint TFL- MTR Crossrail Concession team; which stakeholders are represented on the team?

4. I am aware that the MTR Crossrail recruitment team are required in their policy to advise the Concession Team of every new vacancy and TFL is updated directly. Please clarify the following:

A) Is TFL updated throughout the recruitment process?

B) Does TFL have the power to influence the recruitment process in any way, or provide suitable candidates from any other part of the organisation to fill an MTR Crossrail vacancy?

C) Is TFL updated/notified of the names of all successfully recruited candidates from the MTR Crossrail recruitment process?

D) What is the purpose of MTR Crossrail updating TFL of its vacancies?

E) How is consent for sharing the personal data of applicants between MTR Crossrail and TFL obtained in the recruitment process?

F) What measures are in place to prevent victimisation and discrimination of candidates from occurring in that recruitment process?

5. Send me a copy of the Job Advert with reference MTR0291.

6. Who were the decision-making managers for the following recruitment campaigns (Job Title and Employer only):

A) MTR0291

B) MTR0049

C) MTR0087

D) MTR0088

E) MTR0042

F) MTR0040

7. What is the screening and scoring system used to create the first shortlist/longlist of potentially suitable applicants that have responded to MTR Crossrail job adverts?

8. Are decision-making recruitment managers at MTR Crossrail and TFL required to keep records of their reasons for deselecting candidates from the first shortlist of applicants, i.e. candidates not invited to interview after initial selection? Are the comments and reasons from the selectors/decision-makers captured electronically?
9. On MTR Crossrail's online applicant tracker system, there is a column headed "Stage", which has a drop down menu that includes the phrase "Rejected after Shortlisting". What does the phrase mean and which subset of applicants does it apply to?
10. What are the other options on the Stage drop down menu in use for administering the Recruitment & Selection Policy digitally?
11. I have been informed by a member of the MTR Crossrail recruitment team that LUL Train Driver Licences and NVQs in Train Driving are not acceptable for MTR Crossrail roles. Is that information correct? What are the Train Driving Licence/s for MTR Crossrail drivers and driver team managers?
12. Which rolling stock will be used on the Elizabeth Line? Was MTR Crossrail involved in the construction of the Line at any point or stage in the construction process?
13. Are former employees of TFL who left the organisation via voluntary severance or ACAS COT3 Agreements prohibited from being selected or appointed to MTR Crossrail roles and vacancies?"
5. On 31 July 2018 TfL responded to each of the questions posed. It provided explanations in response to some of the questions, provided information in response to others and in some cases it advised the complainant that no information was held.
6. In respect of the requests that ultimately became the focus of this investigation, the TfL provided a copy of a job advert in response to question 5. In respect of question 6, it provided answers to parts A to D, but in respect of the vacancies referred to in parts E and F, TfL said that the job title and employer of the decision makers were, "Unknown no records held". In response to question 7 TfL simply said that, "There is no unified scoring system. It differs depending on roles."
7. On 1 August 2018 the complainant requested an internal review. So far as is relevant, his concerns were as follows:
 - He informed TfL that the job advert it had provided in response to question 5 was not the one he had asked for;

- He asked TfL to clarify whether the 'Head of Operations; referred to in its response to parts B, C and D of question 6 was the 'Head of Stations Operations. He also queried whether TfL's response to parts E and F meant it did not hold the requested information.
 - He stated that the TfL had not answered question 7 and explained that the question sought information on the actual scoring systems used when long and shortlisting candidates for each of the six posts listed. As it appeared from its response to question 6 that TfL did not hold information in respect of two of those posts, he asked TfL to provide this information in respect of the four posts it did hold records for.
8. On 15 August 2018 TfL provided the outcome of the internal review. In respect to question 5, TfL stated that the job advert it had previously released was the correct one. In respect to question 6, it provided the name of the operations manager referred to and explained that reference to the details requested at parts E and F being 'Unknown' meant the data had been deleted in line with MTR Crossrail's recruitment policy. In respect to question 7, TfL again explained that there was no unified scoring system and no such system was contained in any policy; that the scoring and selection criteria was based on the judgement of the hiring manager. It concluded by saying TfL did not hold any record information in respect of this part of his request.
9. It is noted that the when seeking an internal review on 1 August 2018, as well as challenging the substance of some of TfL's responses, the complainant also made a number of fresh information requests. TfL took the pragmatic approach of dealing with both the internal review of the original request and the fresh requests as one matter. Unfortunately this approach caused some confusion which was only resolved in correspondence from TfL on 5 September 2018. Immediately following receipt of that explanation the complainant sought further clarification in respect of TfL's response to question 5, again arguing that the job advert TfL had provided was not the one he had asked for. TfL responded the following day and said that,
- "MTR Crossrail have confirmed that the job advert provided to you is the only job advert that they hold and there is no other advert for this post."

Scope of the case

10. The complainant contacted the Commissioner on 16 August 2018 to complain about the way his request for information had been handled. Following an exchange of correspondence with the complainant he confirmed that the focus of his complaint was TfL's response to

questions 5 and 7. In particular he considered that the job advert that had been provided in response to question 5 was not the one he had requested and therefore asked the Commissioner to consider whether TfL held a copy of the advert that he did request. If it did not, he argued that TfL should have said so. He also considered that the TfL would hold the detailed scoring, long and short listing criteria, requested in question 7. For completeness the Commissioner has also considered whether TfL has complied with the information which formed question 6, in respect of the decision makers in the recruitment processes listed.

11. The Commissioner considers the matters to be decided are whether TfL has handled the requests included in questions 5, 6 and 7 in accordance with the FOIA. That is whether, in respect of question 5, it has provided the complainant with the information it holds in relation to the job advert specified, in respect of question 6, whether it holds any additional information on the decision makers and whether it holds the scoring information etc. requested in question 7.
12. In respect of question 5 the Commissioner will also consider whether TfL complied with its duty to confirm whether the requested job advert was held.
13. In summary these are decisions on whether TfL has complied with its duties under section 1 of the FOIA.

Reasons for decision

14. Section 1(1) of the FOIA states that any person making a request for information to a public authority is entitled –
 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.
15. The job advert specified in question 5 relates to the post of Group Station Manager for MTR Crossrail at the Woolwich Arsenal station. The post had been advertised in the summer/autumn of 2017. TfL provided the complainant with a copy of a job advert for the role of Group Station Manager. The advert does not name a particular station. It does however have a closing date for applications which coincides with the complainant's recollection of the advert which he responded to. Importantly however, as well as not naming Woolwich Arsenal station, it does not include a unique reference number. The complainant argued that the original advert did contain these details. Within the body of the advert which TfL did disclose was a reference to the successful applicant needing experience and understanding of operating a sub-surface

station. The complainant is adamant that this requirement was not in the original advert. It is for these reasons he believes the advert that TfL has disclosed is not the one the correct one.

16. In respect of request 6, TfL provided the job title and employer in respect of four of the six recruitment exercises listed. When the complainant asked TfL to clarify whether the job title provided was a reference to Head of Stations Operation, TfL provided the name of the actual individual to clarify the situation. The complainant has subsequently stated that the named individual is deceased.
17. The complainant also challenged TfL's response that it did not hold the requested information on the decision makers for the last two recruitment exercise listed. This is the information which TfL said had been deleted in line with MTR Crossrail's recruitment policy. The complainant was sceptical of this as, in response to another of his questions, TfL had advised him that MTR Crossrail did not have a recruitment policy until 29/06/2017. He does however recognise that although there may not have been a recruitment policy in place at the time these posts were originally filled, that does not prevent the information being deleted in line with the new recruitment policy once that policy had been introduced.
18. In respect of question 7, the details of how applications were long listed and then shortlisted, the complainant does not accept that no records of the criteria used when drawing up long and short lists were held, especially in relation to the four roles for which TfL had provided the details of the decision makers on in response to question 6.
19. The Commissioner understands that all the posts and recruitment exercises referred to in the requests are posts within MTR Crossrail. MTR Crossrail is the private company which won the concession to operate the Crossrail train service on what is known as the Elizabeth line. It is entirely separate to TfL and should not be confused with Crossrail Ltd which is a wholly owned subsidiary of TfL set up by TfL to construct the actual rail line (the Elizabeth Line) on which the Crossrail service will run. It is noted that MTR Crossrail is not a public authority for the purposes of the FOI. MTR Crossrail's relationship with TfL is established under a concession Agreement which has been published on TfL's website. Although there is one provision within that agreement relating to the recruitment process, which the Commissioner will look at in more detail later, TfL's position is that MTR Crossrail is solely responsible for the recruitment and selection of its own staff. TfL has consulted with MTR Crossrail on this point and MTR Crossrail has stated that in respect of all the roles which the requests relate to,

"... , there is no obligation or contractual agreement [for MTR Crossrail] to consult with TfL prior to appointing successful candidates. Indeed, in

all the cases where the complainant applied to MTR Crossrail, no such consultation took place. The information which the complainant is seeking is way beyond any reporting requirement within our Concession Agreement."

It went on to state,

" We believe that MTR Crossrail has sovereignty over the recruitment process as it does not account or report to TfL for the recruitment of staff. Information on the recruitment exercise referred to by [the complainant] is not held by MTR Crossrail on behalf of TfL."

20. TfL explained to the Commissioner that upon receipt of the request its FOI Case Management team wanted to assist the complainant as best it could. Therefore in order to be helpful it used the contacts it had developed within MTR Crossrail to obtain the responses that were ultimately provided to the complainant on 31 July 2018. It is understood that the information used in those responses were provided by Head of Business Readiness at MTR Crossrail. The information was provided on a voluntary basis. TfL did not hold this information until it was passed to them by MTR Crossrail.
21. TfL accepts that with hindsight it may have been more helpful to state clearly in its original response to the complainant that it did not hold the information requested in questions 5, 6 and 7 and that it should also have been clear that MTR Crossrail is an entirely separate legal entity.
22. Following correspondence and telephone calls with the complainant he made the point that TfL had not been clear that the information it had provided to him has been provided by MTR Crossrail. In fact he argued that at the internal review stage when dealing with his concerns around TfL's response to question 3 of his request, TfL had stated that TfL and MTR Crossrail are the same business. He also directed the Commissioner to a particular clause within the Concession Agreement which he argued provided grounds for believing TfL may hold a copy of the job advert he requested at question 5 in its own right.
23. The Commissioner therefore went back to TfL with further enquiries. In respect of the relationship between TfL and MTR Crossrail it reiterated its position that the two organisations were completely different legal entities. The Commissioner notes that in its internal review response relating to question 3 TfL did not say TfL and MTR Crossrail were the same company, but rather that 'TfL Rail' and MTR Crossrail were the same company. As far as the Commissioner can ascertain, TfL Rail is a brand name used by MTR Crossrail when operating certain services on existing infrastructure in advance of the launch of Crossrail services on the Elizabeth line. Therefore although there is clearly room for confusion over who is who and who does what, the Commissioner understands

there to be no contradiction between the statements that TfL Rail and MTR Crossrail are the same company, but that TfL and MTR Crossrail are separate legal entities.

24. The clause within the Concession Agreement which the complainant referred the Commissioner to, is paragraph 11 of Schedule 15.3. This requires the operator of the concession (i.e. MTR Crossrail) to notify TfL when it is placing a job advert and provide certain details. Those details being the employment vacancy, the date of the advertisement and the publication in which the advertisement is to appear. TfL has consulted with MTR Crossrail over this and has advised the Commissioner that this duty can be adequately discharged through an informal process whereby MTR Crossrail provides TfL verbally or by email. Importantly TfL has stated categorically that MTR Crossrail never provides copies of the actual adverts they using and that this applied equally to the job advert requested in question 5.
25. The complainant has also directed the Commissioner to section 4 of MTR Crossrail's Recruitment and Selection Policy. This states that,

"Before advertising the recruitment team will advise the Concession team of any new vacancy to be posted so they can directly update TfL."
26. In light of the assurances provided by TfL the Commissioner has not pursued this point as she is satisfied that this is simply part of the procedure through which MTR Crossrail complies with its duty under Schedule 15.3 of the Concession Agreement.
27. The Commissioner considered it possible that TfL may cooperate with MTR Crossrail by advertising MTR Crossrail vacancies on the TfL website. When asked about this TfL was very clear that it has no involvement in MTR Crossrail's recruitment processes and that it does not advertise their vacancies on its website. It acknowledged that it may on occasion advertise job vacancies for Crossrail Ltd, but as explained in paragraph 19, Crossrail Ltd is not the same body as MTR Crossrail despite the similarity between their names.
28. The complainant suggested that in his experience TfL holds information on behalf of its concession holders centrally. This was put to TfL who has reassured the Commissioner that it does not hold any information about such recruitment processes on behalf of MTR Crossrail centrally and again stated unambiguously that it has never been provided with information to the level of detail which the complainant expects and that MTR Crossrail is fully responsible for the recruitment of its own staff.
29. Finally the complainant argued that although the jobs he is interested in were all advertised as being for MTR Crossrail, in practice he believed the successful candidates were employees of TfL. The Commissioner put

this to TfL. In response TfL stated that the complainant's understanding of the position was incorrect. It explained that MTR Crossrail was required to demonstrate that it was ready for the launch of the Elizabeth Line and as part of this process MTR Crossrail was operating services on existing lines under the brand 'TfL Rail'. As explained previously, the Commissioner understands that TfL Rail is simply a brand which MTR Crossrail uses for this purposes; to be employed by TfL Rail in effect means to be employed by MTR Crossrail.

30. It therefore seems that the complainant has simply misunderstood the relationships between the different bodies involved. The Commissioner appreciates how easy it is to become confused with tangle of bodies operating in this area, particularly given the similarity of names used. The names adopted may create a unified appearance to passengers, but TfL could have anticipated the confusion this can cause when the public want to understand more clearly the responsibilities and status of the different bodies providing that service. It would have assisted the complainant greatly had TfL been clearer from the outset what its relationship with MTR Crossrail was and, that in dealing with his requests it had chosen not to limit its response to just that required under the FOIA, but instead was relying on the voluntary cooperation of MTR Crossrail to access information.
31. In light of the repeated and unambiguous statements from TfL that MTR Crossrail was not required to provide it with information relating to the recruitment process and that MTR Crossrail did not provide it with such information prior to the request being received, the Commissioner is satisfied that TfL does not hold any additional information in respect of questions 5, 6 and 7.
32. TfL recognises that it may have been more appropriate to have informed the complainant that it did not hold the requested information and did not have direct access to that information. The Commissioner agrees with TfL. It is clear from its submission that at the time of the request TfL did not hold the information requested in questions 5, 6 and 7. Although it subsequently informed the complainant that no further information was held in respect of elements of the requests contained in questions 6 and 7 the Commissioner does not consider TfL has clarified the situation with the complainant in respect of the job advert requested at question 5. This was a matter specifically raised with the Commissioner by the complainant. TfL was obliged under section 1(1)(a) to inform the complainant whether it held a copy of the job advert at the time the request was received. By failing to do so the Commissioner finds that TfL failed to comply with section 1(1)(a). However as TfL's position has now been made clear through this notice, the Commissioner does not require TfL to take any additional steps.

Right of appeal

33. 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

34. 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.
35. 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

Rob Mechan
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