

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 June 2019

Public Authority: Department for Transport
Address: Great Minster House
33 Horseferry Road
London
SW1P 4DR

Decision (including any steps ordered)

1. The complainant has requested a list of all the current Restricted Zones that form part of the Channel Tunnel. The Department for Transport (DfT) disclosed the locations of the larger zones but withheld the smaller zones applying section 24(1) (National Security) and 31(1) and (32) (law enforcement – prevention and detection of crime) of the FOIA to withhold the information.
2. The Commissioner's decision is that the DfT correctly applied section 24(1) of the FOIA to withhold information.
3. The Commissioner does not require the DfT to take any steps.

Request and response

4. On 22 June 2018 the complainant wrote to the DfT and requested information in the following terms:

"Please could you confirm that the West London Line is still a Restricted Zone as defined in the Channel Tunnel Security Order 1994, and also provide a list of other Restricted Zones currently in force."

5. On 9 July 2018 the DfT responded. It confirmed that there have been no restricted zones on the West London Line since 2007. It also confirmed that a number of sites are designated Restricted Zones but applied section 24(1) and 31(1) of the FOIA to withhold this information.
6. On 1 August 2018 the DfT conducted a review and wrote to the complainant maintaining its original decision.

Scope of the case

7. On 7 November 2018 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. During the course of the Commissioner's investigation the DfT re-considered the request and disclosed the identity of the larger Restricted Zones.
9. The Commissioner has therefore first considered whether section 24(1) of the FOIA has been applied correctly to withhold the locations of the smaller Restricted Zones.

Reasons for decision

Section 24(1) - National Security

10. Section 24(1) of the FOIA states:

"Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security."

11. The Commissioner's interpretation of "required" is taken by the approach in the European Court of Human Rights where interference to human rights can be justified where it is necessary in a democratic society for safeguarding national security. 'Necessary' in this context is taken to mean something less than absolutely essential but more than simply being useful or desirable. 'Required' in this context is therefore 'reasonably necessary'. It is not sufficient for the information sought simply to relate to national security; there must be a clear basis that disclosure would have an adverse effect on national security before the exemption is engaged.

12. It is not necessary to show that disclosing the information would lead to an immediate threat to the UK, the exemption can be engaged to prevent a disclosure that would have adverse consequences. Safeguarding national security also includes protecting potential targets even if there is no evidence that an attack is imminent.

The complainant's view

13. The complainant said that in his view although the information could be of interest to those looking to commit crimes / acts of terrorism, it would be of no more than general interest to them compared to a map or satellite images. He also said that there is a public interest in the vulnerabilities, or lack thereof of the Tunnel system and that the Channel Tunnel (Security) Order 1994 (the Order) makes it an offence to be present in a Restricted Zone and therefore an individual who finds themselves in a zone should not be prosecuted for a secret offence.

The DfT's submission

14. The DfT said that the Channel Tunnel is a critical part of the UK's infrastructure and any threat to, or attack on sites associated with it could compromise public, passenger and worker safety, UK international rail travel (trains), the continuation of the economy (from stopping movement of commercial goods through the Tunnel), its agreement with the French authorities and have a detrimental impact on the UK's reputation. It works with partners across government, the police, industry and private contractors to ensure that all sites associated with the Tunnel are kept safe from such threats.
15. The DfT said that all Restricted Zones are a fundamental provision in the Order, forming part of a range of protective security measures. They are designed to restrict access to the most sensitive sites housing infrastructure necessary for the functioning of the Tunnel and/or provide points of access to trains, goods, and loads using the Tunnel, so that only those who need to have access do. They allow the DfT to ensure the security of passengers and staff by providing security screening and in the case of staff vetting requirements to pass controls, to ensure that no unauthorised persons or objects are brought into the Tunnel system.
16. The Order defines a "*Restricted zone*" as the part of the Fixed Link Situated in each State that is subject to special protective security measures. The Channel Tunnel (International Arrangements) Order 1993 also refers to special protective security measures. The DfT has explained that all Restricted Zones are protected by fences, or other

types of barriers to a detailed specification and with signage to reflect that the area is a Restricted Zone. They also have CCTV coverage and security patrols to ensure the integrity of the zone.

17. The DfT said that terrorism is a crime that undermines national security and compromises public safety. It has taken into account the threat of terrorism on the continent and how it may affect the Channel Tunnel infrastructure and public, passenger and worker safety. It said that the smaller zones are not identifiable (collectively or otherwise) as Restricted Zones from open sources and they rely on their anonymity as a key element of their security regime. It said that these zones do not have a Police or other public authority presence and instead have a lower profile private security presence to counter any threat. Some of these sites are remote and a policing response, if not present on an ad hoc basis, could take longer than that at the larger zones. Disclosing their locations would make them identifiable and therefore attractive to individuals looking to infiltrate them and introduce explosives and/or weapons into them in order to mount an attack compromising their security regime and by extension that of the Tunnel system. It also said that the information could be put together with publicly available information and/or other information that such individuals may have access to, in order to identify other parts of the Tunnel system that may in their view be less secure in order to gain access to the Tunnel system and mount an attack. It says that examples of individuals accessing the Tunnel system and causing damage have recently been seen in Calais (France). Where migrants now attempt to (and do) board Lorries bound for the UK before getting to Calais and the Tunnel system. Whilst systems are in place to detect those migrants at the border, it highlights that Channel Tunnel access routes outside restricted zones are also vulnerable to incursion.

The Commissioner's view

18. The Commissioner acknowledges the general view that knowledge of the existence of restricted zones should prevent those seeking to commit acts of terrorism at these sites from doing so. She however also notes that acts of terrorism (both domestic and international) have been perpetrated even where there has been a law enforcement presence and/or other preventative measures in place. She recognises that terrorists can be highly motivated and may go to great lengths to gather information, have perpetrated acts that involved some degree of planning and co-ordination, and that they commonly target buildings, public spaces and public transport and result in casualties to ensure they are successful.

19. The Commissioner has viewed the withheld information and disagrees that it would be of no more value than a map to individuals seeking to plan an attack on the Tunnel system. She notes that the Order specifically designates particular areas of the Tunnel system as 'Restricted Zones' and that the DfT has explained these house sensitive infrastructure that are the most sensitive for operation of the Tunnel and services and that the Channel Tunnel (International Arrangements) Order 1993 states that they are subject to protective security measures. It is therefore her view that disclosing the locations of the smaller zones along with the larger zones would provide individuals seeking to plan an attack the information required to easily create a map of all sensitive infrastructure points of the Tunnel system in the UK enabling them to plan and co-ordinate a significant attack on the Tunnel system increasing the scale and likelihood of threat to the public and the safety of UK international rail travel. The Commissioner equally accepts that the information could be used to identify and target non restricted areas that maybe perceived as less secure in order to access the Tunnel system at these points and mount an attack. The Commissioner also notes that the smaller zones are not identifiable as restricted zones from public sources, that they have a private security presence, are remote and it could take longer for police to respond at those sites (if an incident occurred) and is therefore persuaded that these sites rely on their anonymity as part of their security regime.
20. In the Commissioner's view, withholding the locations of the smaller zones because of the significance of an attack is therefore reasonably necessary in order to safeguard national security.

Balance of the public interest

21. The exemption at section 24(1) is qualified by the public interest test set out in section 2(2)(b) FOIA. Therefore, the Commissioner must determine whether in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure.
22. The Commissioner accepts that there is a public interest in knowing about the existence or lack of vulnerabilities in the Channel Tunnel infrastructure. She also accepts that the Order makes it an offence to be present in a Restricted Zone without authority, and that a member of the public should not be prosecuted for a secret offence. She however notes the special provision for protective security measures of the restricted zones to ensure their integrity and that the DfT has confirmed that these are in place as part of the security regime at the smaller zones in the UK, e.g., fences, barriers, CCTV, patrols and private

security. She also notes that one of the requirements of the protective security measures is that the zones must contain signage to reflect that the area is a restricted zone and therefore a member of the public who finds themselves near a zone is likely to easily identify it as a restricted area, that they cannot access the area and that they are likely to be committing an offence if they do.

23. The Commissioner must however balance this public interest against the significant public interest in safeguarding national security. She has already set out why she considers that protecting the information held by the public authority is reasonably necessary for safeguarding national security. For the same reasons, she accepts the public authority's submissions that the public interest in maintaining the exemption is significantly weightier than the public interest in disclosure.
24. The Commissioner therefore finds that the public authority was entitled to rely on the exemption at section 24(1). Consequently, she has not considered the applicability of the remaining exemption.

Other matters

25. After the DfT disclosed the locations of the larger Restricted Zones, the complainant contacted the Commissioner and said that he believed that 'any' request for a list of restricted zones must include a description or a map of the boundary of the zones, similar to those required by the Serious Organised Crime and Police Act 2005.
26. The Commissioner does not agree that 'any' request for a list implies that other unspecified items (such as descriptions and/or maps) are caught within the scope of the complainant's specific request ("*a list of other Restricted Zones currently in force*"). She refers to the Oxford Dictionary definition of a 'list' (a number of connected items or names written or printed consequentially, typically one below the other) in her view is that the wording of the request was for the printed locations of the restricted zones, and therefore no further action is required by the DfT.

Right of appeal

27. 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

28. 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.
29. 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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**