

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 December 2024

Public Authority: Tyne and Wear Passenger Transport Executive
(Nexus)

Address: Nexus House
33 St James' Boulevard
Newcastle upon Tyne
NE1 4AX

Decision (including any steps ordered)

1. The Commissioner's decision is that Nexus is entitled to withhold the requested information about a complaint under section 40(2) of FOIA. The information is another person's personal data and disclosing it would be unlawful.
2. It's not necessary for Nexus to take any corrective steps.

Request and response

3. The complainant made the following information request to Nexus on 20 May 2024:

"I am writing to request the withheld information regarding my complaint, reference [redacted].

I understand that some information may have been withheld due to certain exemptions. However, under the Freedom of Information Act (2000), I believe I have a right to access the full details of the investigation and its findings.

I am requesting that you reconsider your decision to withhold this information and provide me with a complete account of the investigation's outcome."

4. In its refusal of 6 June 2024, Nexus advised that it was withholding the information under section 40(2) of FOIA.
5. The complainant requested an internal review saying,

“While I understand that personal data protection is essential, your reliance on this exemption without further explanation raises serious concerns about transparency and accountability. The public interest in disclosing information about this incident outweighs any potential privacy concerns.”
6. In its internal review of 2 July 2024 Nexus maintained its reliance on section 40(2).
7. The complainant submitted a complaint to the Commissioner on 29 July 2024.
8. In view of the circumstances of their complaint, described below, the Commissioner suggested to the complainant that their complaint could be concluded informally. In his view, section 40 was engaged and, in any case, their substantive complaint to Nexus had been resolved. The complainant preferred to conclude their complaint formally, through a decision notice.

Reasons for decision

9. This reasoning covers Nexus’ application of section 40 to the complainant’s request.
10. Nexus has provided the Commissioner with a background to the complainant’s request and a copy of the service complaint that the complainant submitted to Nexus. It has also provided associated correspondence and a copy of the information being withheld.
11. The complaint concerned a member of Metro staff and stemmed from one of a party of four having what appeared to be an invalid Metro ticket.
12. Nexus has explained that no formal “investigation” took place but that that the Manager of the staff member concerned had considered the complaint.
13. The information Nexus is withholding is a record of a meeting between the Metro staff member and their manager, and an internal email.
14. Under section 40(1) of FOIA, information is exempt from disclosure if it’s the personal data of the applicant themselves.

15. Under section 40(2), information is exempt from disclosure if it's the personal data of an individual other than the applicant and disclosure would contravene any of the principles relating to the processing of personal data that are set out in Article 5 of the UK General Data Protection Regulation (UK GDPR).
16. The most relevant principle is Article 5(1)(a). This states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.”
17. The Commissioner has first considered whether the information Nexus is withholding under section 40(2) can be categorised as the complainant's own personal data, to which section 40(1) would apply.
18. Personal data is defined as information that relates to a living individual and from which the individual can be identified.
19. Regarding section 40(1), the Commissioner notes that the information Nexus is withholding relates to the complainant, as it concerns a complaint they made, but it doesn't identify them. He's therefore satisfied that the withheld information can't be categorised as the complainant's own personal data. He's gone on to consider section 40(2).
20. The member of Metro staff concerned is named in the record of the meeting with their manager. The Commissioner is satisfied that this information and the associated email would identify the staff member, and that this information relates to them. Even if the staff member's name were to be redacted from the information, the Commissioner still considers that they could be identified. Other members of Metro staff could identify them, for example, based on the date, time, location, and nature of the incident described in the information. Or they may already know that the incident took place and who was involved.
21. The information therefore meets the above definition and is the personal data of another individual – the 'data subject.'
22. The Commissioner has gone on to consider whether disclosing that data would breach Article 5(1)(a) which, as above, states that personal data must be processed lawfully.
23. Personal data is processed when it's disclosed in response to a FOIA request. In order to be lawful under Article 5(1)(a), the lawful basis under Article 6(1)(f) of the UK GDPR must apply to the processing. It must also be generally lawful.
24. Article 6(1)(f) states:

- “processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.”
25. In order to determine whether disclosing the personal data would be lawful the Commissioner has considered three ‘tests’: the legitimate interest test, the necessity test, and the balancing test.
 26. The Commissioner appreciates that the complainant has a personal interest in the withheld information; it concerns a service complaint they submitted to Metro. However, there’s little wider public interest in the information, in the Commissioner’s view, save for disclosure demonstrating that Nexus is open and transparent.
 27. The Commissioner has next considered whether disclosing the information would be necessary to meet the identified legitimate interest.
 28. Nexus advised the Commissioner that the complainant’s service complaint to it was resolved following correspondence between them, Nexus and the Rail Ombudsman. It has provided the Commissioner with related correspondence between Nexus and the Rail Ombudsman. He can see that on 25 July 2024 the Rail Ombudsman confirmed that the complainant had told it that they weren’t seeking information about individual members of staff but wanted to be reassured that relevant training was being introduced.
 29. Following a letter that Nexus sent to the complainant, on 1 August 2024 the Rail Ombudsman confirmed to Nexus that the complainant had accepted its response as a resolution to their complaint.
 30. In the circumstances, the Commissioner doesn’t consider that disclosing the withheld information is necessary to meet the legitimate interests that have been identified. The complainant has told Nexus that they didn’t want information about individual staff members, they have received a response to their complaint from Nexus and have accepted that the complaint has been resolved. In their request and request for an internal review, the complainant noted that at least some of the information they’d requested would be likely to be exempt and acknowledged that protecting personal data was “essential.”

31. The Commissioner considers that the complainant's legitimate interest in their complaint to Nexus has been sufficiently addressed. Regarding the general interest in transparency, the Commissioner considers that this is met through the information about complaints and its performance that Nexus publishes on its website¹.
32. As the Commissioner has decided in this case that disclosure isn't necessary to meet the legitimate interests in disclosure, he hasn't gone on to conduct the balancing test. As disclosure isn't necessary, there's no lawful basis for this processing and it's unlawful. It therefore doesn't meet the requirements of the principle under Article 5(1)(a).
33. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he doesn't need to go on to consider separately whether disclosure would be fair or transparent. The Commissioner's decision is that Nexus is entitled to withhold the information under section 40(2) of FOIA.

¹ <https://www.nexus.org.uk/metro/looking-after-our-customers/customer-satisfaction-and-performance>

Right of appeal

34. 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

35. 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.
36. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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