

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 March 2016

Public Authority: Transport for London
Address: 8th Floor, Windsor House
42-50 Victoria Street
London
SW1H 0TL

Decision (including any steps ordered)

1. The complainant requested a copy of the train and duty analysis sets of diagrams (TADA) from Transport for London (TfL). The request was refused on the grounds of health and safety (section 38 of FOIA).
2. The Commissioner has found that section 38(1) is engaged and that in all the circumstances the public interest in disclosure is outweighed by the public interest in maintaining the exemption. The Commissioner does not require the public authority to take any remedial steps to ensure compliance with the legislation.

Background

3. TfL has explained that it receives around 2500 requests under FOIA and Environmental Information Regulations every year. A number of these requests come from transport enthusiasts and their requests for information have shaped the proactive publication of information. This includes the Working Timetables:
<https://tfl.gov.uk/corporate/publications-and-reports/working-timetables>
4. Working Timetables (WTT) are the rail industry version of public timetables. They show all movements on the Tube network including empty trains and train movements in and out of depots. The timetables are made available for rail industry professionals and should not be confused with the passenger versions.

5. TfL had previously provided the more detailed information about train and train crew movements contained in the TADA and in the Duty Book (a combination of information from the TADA and the Working Timetables). However in 2015, following a security review a decision was taken not to disclose the Duty Book or the TADA alongside the published working timetables.

Request and response

6. On 15 September 2015 the complainant requested information concerning:

'Could I please request a copy of the LU train and duty analysis sets of diagrams (TADA) to cover all current underground line working timetables. Could I also request a copy of the London overground version or duty sets of these documents.'

7. On 6 November 2015 TfL responded citing section 38 and explained that while it had previously disclosed the TADA, it had reassessed the risk because of its duty of care to employees as the diagrams provide precise locations of staff on the London Underground network and drivers movement.

'Disclosure of this information could pose direct risk of our out of hours staff working alone, if the detailed information contained in these diagrams were available to the public.'

8. The complainant requested an internal review on 6 November 2015. On 15 November he stated that bus working timetables which included duty and relief point information had been published and he did not see why this only applies to tube and rail versions.

9. TfL sent him the outcome of its internal review on 18 November 2015 in which it upheld its original position.

'However the security concerns in question are more widespread than just in relation to buses and bus working timetables, which are predominately operated in "public view". In many cases on the London underground drivers are "lone working" and the information you seek would not only identify when a driver was unaccompanied and the movements of drivers but also when a train is unoccupied.

This creates a higher risk to driver, staff and public safety, unauthorised access to trains and the potential to impersonate staff members to gain access to non-public areas. The panel noted that there have been instances in the past of members of the public accessing and

commandeering unoccupied vehicles creating a safety risk not only to themselves but to members of the public...

The public interest in protecting individuals and infrastructure is high and our utmost priority. Apart from individual and private interests there is no wider public interest in the disclosure of this information...

This information has now been classified as TfL restricted.'

Scope of the case

10. On 26 November 2015 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
11. He provided information about a disclosure of information which '*covers the release of east London line drivers diagrams, part of which I have originally asked for but was refused*'.
12. The Commissioner considers the scope of the case to be whether TfL properly applied section 38 to this request for the underground and overground TADA.

Reasons for decision

Section 38 – Health and safety

13. Section 38(1) of FOIA states that information is exempt information if its disclosure under the legislation would, or would be likely to:
 - (a) endanger the physical or mental health of any individual, or
 - (b) endanger the safety of any individual
14. For the exemption to be engaged it must be at least likely that the endangerment identified would occur. Even if the exemption is engaged, the information must be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.
15. The Commissioner considers that the term 'endanger' in section 38(1) should be interpreted in the same way as the term 'prejudice' in other FOIA exemptions. In order to accept that the exemption is engaged, the Commissioner must be persuaded that the nature of the endangerment and the likelihood of it occurring as a result of disclosure of the information in question is "*real, actual and of substance*", rather than trivial or insignificant. As part of this he must be satisfied that some

causal relationship exists between the potential disclosure and the stated endangerment.

16. This means that three conditions must be satisfied for the exemption to be engaged.
 - First, the harm that is envisaged would, or would be likely to occur relates to the applicable interests described in the exemption.
 - Secondly, there is a causal relationship between the potential disclosure of the withheld information and the prejudice that the exemption is designed to protect against.
 - Third, there is a real risk of the prejudice, or more precisely the endangerment, arising through disclosure. In this regard, a public authority is required to demonstrate that either disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice - 'would' imposing a stronger evidential burden than the lower threshold of 'would be likely'.
17. In this case TfL's justification for applying section 38(1) of FOIA follows a security review in 2015.
18. The London Underground Scheduling Services reviewed the content of the TADA and the Duty Book with the Information Security Team. Their advice to the TfL FOI team was that disclosure of the Duty Book or TADA, along with the published working timetables:

'would enable a reasonable person to deduce where a member of staff could be at a particular time, making them vulnerable to attack, stalking or impersonation or similar crime, with some level of risk to security and delivery of service. It highlights the movements of a person who is going to operate in an isolated environment. Whilst a Timetable shows where a train is going to be at a certain time the Duty Book could be used to follow a driver and put him in a difficult situation.'
19. TfL consider that there is a risk that a driver could be targeted by a person who intends to cause them harm.
20. The Commissioner is satisfied that the nature of the harm referred to by TfL is relevant to the exemption and is of substance. The Commissioner has gone on to consider the next stage of the prejudice test, that there is a causal link between disclosure and the harm referred to by TfL.

21. In his guidance on the prejudice test¹, the Commissioner acknowledges that it will not usually be possible for a public authority to provide concrete proof that the prejudice would or would be likely to result. This is because the test relates to something that may happen in the future. However, the Commissioner considers that the engagement of an exemption cannot be based on mere assertion or belief but must reflect a logical connection between the disclosure and the prejudice.
22. TfL consider that there is a risk that the information is used to attempt to gain access to a train. TfL provided an example where a train was stolen and derailed at Melbourne station causing \$3 million damage. The station night watchman and cleaner were on site but not injured:

<http://www.abc.net.au/news/2015-11-11/train-derailed-damage-hurstbridge-railway-station/6929500>
23. TfL stated that this example illustrates the risk that there would be to a driver whose movements might be predicted by the TADA and might be attacked in order to access the train, and also the obvious danger that a stolen train poses to anyone else on, or near, the transport network.
24. TfL has concerns that if this information is not controlled there is a risk that it could be used by people who want to get behind the controls of a train. TfL considers that this incident (and another incident concerning a stolen bus) demonstrates that the risk is not hypothetical.
25. In the Commissioner's view TfL has demonstrated that there is a causal link between disclosure and the harm referred to by TfL. The more detailed crew information in the TADA could be used to deduce where a member of staff could be at a particular time and could either harm the driver or gain access to a train which could endanger the general public.
26. The Commissioner has therefore found that both sections 38(1)(a) and 38(1)(b) satisfy the second stage of the prejudice test.
27. On the issue of the likelihood of endangerment occurring, the Commissioner considers that it is necessary to consider:

¹http://ico.org.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/the_prejudice_test.pdf

- the range of circumstances in which prejudice could occur (for example, whether it would affect certain types of people or situations);
 - how frequently the opportunity for the prejudice arises (ie how likely it is for these circumstances to arise); and,
 - how certain it is that the prejudice results in those circumstances.
28. The terms 'would' and 'would be likely' have separate and distinct meanings in this context. 'Would be likely' refers to a lower level of probability than 'would', but one which is still significant.
29. TfL has demonstrated that the release of the TADA information could enable a recipient of that information, either by itself or in conjunction with other pieces of information (the Working Timetables) to adversely affect the safety of the staff or the general public. TfL provided evidence of a stolen train and the damage that followed to show that this is not a hypothetical risk to staff and the general public.
30. The Commissioner is satisfied that TfL has demonstrated that '*real, actual and of substance*' prejudice would be likely to occur: TfL has established that there is a plausible causal link between the disclosure of the information in question and the argued prejudice; there is a real possibility that the circumstances giving rise to prejudice would occur, ie the causal link must not be purely hypothetical; and the opportunity for prejudice to arise is not so limited that the chance of prejudice is in fact remote.
31. The Commissioner is satisfied that disclosing information which provides more detail about the train and train crew movements contained in the TADA would be likely to place drivers, other staff and the general public at risk.
32. His analysis of the arguments provided has led the Commissioner to conclude that sections 38(1)(a) and (b) are engaged on the basis that the risk of endangerment is substantially more than remote. As section 38 is a qualified exemption, however, consideration must be given to the balance of the public interest in disclosure.

Public interest arguments in favour of disclosure

33. The complainant has argued that he has always been able to access this information in the past and referred to another request for similar information concerning the London Overground where the information was disclosed.

34. The Commissioner recognises there is also a general public interest in disclosing documents that have been produced using public money, to ensure transparency and accountability in public sector organisations.

Public interest arguments in favour of maintaining the exemption

35. TfL stated that it routinely answers requests from transport enthusiasts and this has informed its publication of information. However, whilst TfL recognises that TADA is of interest to some people, TfL does not consider that there is a wider public interest in the information contained within it. TfL consider that these are private interests, as referred to in the ICO guidance on the public interest test:

'the requester's private interests are not in themselves the same as the public interest and what may serve those private interests does not necessarily serve a wider public interest.'

36. The TADA is technical information that helps operators to run trains to published timetables. It does not contribute to openness or transparency or increase public understanding of the delivery of services. TfL do not consider that there is anything more than the most marginal benefit to the public good through the release of the requested information. TADA does not help anyone plan a journey or assess the provision of transport services in London. TfL proactively publish working timetables to respond to the interests of transport enthusiasts outside the FOI framework.
37. TfL consider that the public interest is served by the appropriate control of TADA information, and where there is a risk to health and safety, the public interest would support the application of the exemption to prevent misuse of the information.
38. TfL investigated the release of the similar information concerning the London Overground. TfL explained that

'Services on London Overground... are contracted out to LOROL, a train operating company who run London Overground services under a Concession Agreement with Tfl <http://www.lorol.co.uk/go/about-us>

(redacted reference of the request) was passed to LOROL who provided SX, SO, SuO driver duty diagrams for the East London Line. This information is similar to the TADA...

It is regrettable that this information was disclosed The fact that the information was provided by a contractor rather than London Underground, the different format and the use of a different name to describe it meant that it was not connected with the decision taken in 2015 to withhold London Underground Duty Book related data.

We have contacted WhatDoTheyKnow to ask that they remove the information pending the outcome of this complaint. We do consider that s.38 would also apply to the information released under (redacted reference of the request) and we do not consider that the release of this information changes the fact that s38 applies to the information requested here'

Balance of the public interest

39. The Commissioner will invariably place significant weight on protecting individuals from the risk to their physical safety. The natural consequence of this is that disclosure will only be justified where a compelling reason can be provided to support the decision.
40. In this case the Commissioner understands that the complainant has a private valid reason for seeking the information as he has been provided with the information before. However, when the complainant's private interests are weighed against the endangerment that disclosure potentially poses, the Commissioner considers that the value of the information to the public is less than the value in maintaining the exemption.
41. The Commissioner considers that the strength of the arguments for disclosure that are based on the promotion of accountability and transparency and previous disclosure do not justify the risk to individuals' safety. Therefore, in all the circumstances, the Commissioner has decided that the balance of the public interest favours maintaining the exemption.

Right of appeal

42. 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

43. 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.
44. 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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