

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 March 2024

Public Authority: Northern Trains Limited
Address: Northern House
9 Rougier Street
York
YO1 6HZ

Decision (including any steps ordered)

1. The complainant has requested the Trisha Jarman announcements that are onboard Northern Trains' 'TrainFX' system. Northern Trains Limited (Northern) refused the request under section 12(1), section 14(1), section 43(1), section 24 and section 38 of FOIA.
2. The Commissioner's decision is that Northern has demonstrated the request is vexatious under section 14(1) of FOIA. He has therefore not gone on to consider the other exemptions and he requires no steps to be taken.

Request and response

3. On 6 November 2023, the complainant wrote to Northern and requested information in the following terms:

"I would like to request the Trisha Jarman Announcements that are onboard your TrainFX system. Multiple operators have given out their onboard sound files. Some of these are: LNER, TFL (London Overground and Underground) DLR, Tyne and Wear Metro, Transpennine Express, and Croydon Trams to name a few."
4. Northern responded on 6 November 2023 stating that it did hold information within scope of the request but was refusing it under section 12(1), section 14(1), section 43(2), section 24 and section 38 of the FOIA.

5. The complainant requested an internal review on 7 November 2023, this was refused as Northern maintained its original position.

Scope of the case

6. The complainant contacted the Commissioner on 17 November 2023 to complain about the way their request for information had been handled.
7. The Commissioner considers that the scope of his investigation is to decide whether Northern correctly refused the request.

Reasons for decision

Section 14 – vexatious request

8. Section 14 of FOIA states that:

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.”

9. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC)¹. It commented that ‘vexatious’ could be defined as the ‘manifestly unjustified, inappropriate or improper use of a formal procedure.’ The Dransfield case considered four broad issues: the value or serious purpose of the request, the burden imposed by the request (on the public authority), the motive of the requester, and harassment or distress of and to staff.
10. The Upper Tribunal cautioned that these considerations were not meant to be exhaustive. It emphasised that:
“...all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA”
11. In its internal review, Northern explained to the complainant that requests made under FOIA for copies of its audio files, whether for on-board or station use, fall squarely within the definition of private interests and that there is no public interest to be served in the disclosure of these files.
12. Northern argued that although there may be multiple requests from rail enthusiasts for such information this does not equate to a legitimate

public interest as defined within FOIA and the Commissioner's guidelines.

13. Northern also referred to a decision of the Upper Tribunal¹ considering vexatiousness in which the issue of purpose or value was discussed. Public interest in this case was defined as a wide range of values and principles relating to what is in the best interests of society, including, but not limited to:
 - holding public authorities to account for their performance;
 - understanding their decisions;
 - transparency; and
 - ensuring justice
14. It explained that it considers requests for these announcements to be unsupported by any legitimate public interest argument and improper use of the FOIA process.
15. Northern also explained that providing the information requested would place an unreasonable burden as it does not consider the request to have value or serious purpose. It argued that it is essential for its colleagues to prioritise the safe and efficient operation of the rail network across the North and it considers that the public interest lies in committing its resources to deliver this service for the people of the North.
16. Northern stated that it believes answering this request would require a disproportionate effort and the redirection of limited specialist resources away from its core functions, who could otherwise be supporting other essential activity.
17. Northern explained in its internal review that the recordings are contained on SD cards and are in small snippets encoded by proprietary software for use on its trains. It also explained that the recordings are provided by a third party supplier.
18. Northern explained that to obtain the files for onward distribution, it would need to request that its supplier extract the files and convert them into a readable format and that there would be a cost to retrieve the information. Northern stated that the charge would be comfortably

¹ [Dransfield & Anor v The Information Commissioner & Anor \[2015\] EWCA Civ 454 \(14 May 2015\) \(bailii.org\)](https://www.bailii.org/uk/ew/cas/2015/454.html)

in excess of the appropriate limit under the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations') of £450 or 18 hours. Although the Regulations relate specifically to section 12 of FOIA and are not directly applicable when assessing burden under section 14, they nevertheless provide a useful point of reference when considering whether complying with a request would incur an unreasonable cost.

19. During the Commissioner's investigation he asked Northern to provide a breakdown of the cost it claimed it would be charged. Northern confirmed that it would take 84 hours for its supplier to provide the requested information. It stated that the figure provided is based on maintenance experience and given the cost/time estimate provided by its suppliers it considers it to be a conservative estimate of the time involved.
20. Northern provided a breakdown to the Commissioner stating that it takes four hours to download all the files requested and an additional 80 hours to re-encode the files. It stated that it would take four hours per 50 clips to re-encode a file and there are approximately 1000 files; this is how it came to its total of 84 hours.
21. The Commissioner considers there is a high threshold for refusing requests on the grounds that a request places a grossly oppressive burden on a public authority or is excessively disproportionate. He would expect the public authority to be able to show that the complainant has asked for a substantial volume of information or that complying with the request would be grossly oppressive or burdensome relative to the value of the request.
22. The Commissioner cannot comment on how other public authorities respond to similar requests and must consider this request on its own merit.
23. In this case, the issue appears to be that the third party supplier would likely impose a charge for compiling the information into an audio file and this charge would be excessive and burdensome on Northern. The Commissioner accepts that complying with this request is likely to impose a considerable financial burden on Northern but to accept that this on its own is enough to refuse the request as vexatious he must consider the value of the request relative to the impact on the public authority of complying with the request.
24. The Commissioner recognises that the complainant and rail enthusiasts have an interest in this information, however, this does not equate to a wider public interest in the information. It is difficult to see how the requested information would contribute to transparency, accountability

or understanding decision making at Northern. There is no obvious wider public interest in the information, for example, to shed light on an issue or to gain an insight into public spending.

25. Whilst the Commissioner considers there is a high threshold to be met for a request to be deemed vexatious, if there is no apparent obvious public interest in the information, and therefore no wider value to the request, it is not unreasonable to consider that when such a high financial burden is involved in complying with the request, that this could be seen as being grossly oppressive. Particularly as this will divert funds and resources from Northern's essential services.
26. The Commissioner therefore considers that Northern has sufficiently argued that the request is vexatious under section 14(1) of FOIA. He has not gone on to consider if any of the other cited exemptions may provide a basis for refusing the request.

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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

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