

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 January 2023

Public Authority: Transport for Wales

Address: 3 Llys Cadwyn
Pontypridd
CF37 4TH

Complainant: John Taylor

Address: johntaylorukjohntayloruk@outlook.com

Decision (including any steps ordered)

1. The complainant has requested sound files for the automated announcements used on a particular class of trains. Transport for Wales ("TFW") initially refused the request under section 12 (cost) but at internal review introduced section 14(1) (vexatious) of FOIA.
2. The Commissioner has concluded that the request is not vexatious therefore TFW is not entitled to rely on section 14(1) to refuse the request.
3. The Commissioner requires TFW to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the complainant's request dated 31 July 2023 which does not rely on section 14(1).
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 31 July 2023, the complainant wrote to TFW and requested information in the following terms:

“Under the Freedom Of Information Act 2000 could you please attach all of the Elin Llwyd and Eryl Jones sound files for the automated announcements used on the new class 197/231/398/756/MK4 trains.”
6. TFW responded on 11 August 2023. It stated that it considered the information exempt under section 12 of FOIA (cost limits). TFW explained that the requested announcements were held by an external company and could not be extracted for less than £450.
7. The complainant stated they believed Worldline only held station announcements, which were not the subject of their request. Rather, they were specifically asking for the announcements used on the above new class of train.
8. Following an internal review, TFW wrote to the complainant on 12 September 2023. It revised its position to state it considered the information exempt under section 14(1) as the request was vexatious.

Reasons for decision

9. Section 14(1) of the Act states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
10. The term “vexatious” is not defined in the Act. The Upper Tribunal considered the issue of vexatious requests in the case of *Information Commissioner v Devon CC & Dransfield*¹. The Tribunal commented that vexatious could be defined as the “manifestly unjustified, inappropriate or improper use of a formal procedure”. The Tribunal’s definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
11. The Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues;

¹ <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

- the burden imposed by the request (on the public authority and its staff);
 - the motive of the requester;
 - the value or serious purpose of the request; and
 - any harassment or distress of, and to, staff.
12. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather it stressed the “importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealing, the lack of proportionality that typically characterise vexatious requests” (paragraph 45).
13. In the Commissioner’s view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

The complainant’s position

14. The complainant stated they did not consider their request vexatious, and noted that other train companies have released large numbers of audio files in response to similar requests.

The public authority’s position

15. TFW stated fulfilling this request would remove staff from substantive posts, and would not represent a good use of public money or resources. They also stated as they already publish some announcements, further publications are not necessary.

The Commissioner’s position

16. As set out above, section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
17. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority. Where relevant, this will involve the need to take into account wider factors such as the background and history of the request.

18. The Commissioner acknowledges that the complainant has submitted several pieces of correspondence regarding their original request for information to TFW. However, the Commissioner considers this is due to the complainant attempting to explain their request and chase TFW's delayed response.
19. TFW has not provided any evidence of other correspondence from this complainant, and the tone of the complainant's correspondence cannot be considered abusive or distressing. There is also no evidence to suggest this is part of a wider campaign.
20. TFW has stated some of the requested information is stored on an old system, and they are unsure if it can be accessed. It has also stated that it owns the audio voice files for the specific information requested: 197/231/398/756/MK4 trains. These are stored in the on-train database and TFW argued that the only way to comply with the request would be to record each complete announcement as it plays. However, it has not provided any details or evidence of further investigation into this. It is possible that TFW considered the request vexatious due to the burden it would impose on it, but it has not explained that this is its position.
21. In the circumstances of this case, and on the basis of the evidence provided during the Commissioner's investigation, the Commissioner is not satisfied that TFW was entitled to rely on Section 14(1) of the FOIA to refuse the request as vexatious.

Right of appeal

22. 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

23. 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.
24. 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



Susan Duffy
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