

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 22 October 2024

**Public Authority:** Reading Transport Limited trading as Reading Buses

**Address:** Great Knollys Street  
Reading  
RG1 7HH

#### **Decision (including any steps ordered)**

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1. The complainant requested bus audio announcements. Reading Transport Limited (trading as 'Reading Buses') ("RTL") refused the request under the exemption in section 43 (commercial interests).
2. The Commissioner's decision is that RTL failed to demonstrate that the exemption in section 43 is engaged and breached section 17 by failing to issue a proper refusal notice.
3. The Commissioner requires RTL to take the following steps to ensure compliance with the legislation.
  - Disclose the requested audio announcements to the complainant.
4. The public authority must take these steps within 30 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**

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5. On 25 March 2024 the complainant asked RTL for the following information:

"I wish under the Freedom of Information Act to have a copy of your audio announcements on-board your buses. Many other transport companies have been willing to give their audio announcements to people. Would it also be possible to know who voiced these announcements too?"
6. RTL responded on 22 April 2024 and confirmed that it was refusing to provide the requested audio announcements, referring to its commercial interests. It confirmed the name of the artist who voiced the announcements.
7. On 22 April 2024 the complainant asked for an internal review to be carried out. RTL provided a review response the same day. This confirmed that it was maintaining its position.

## **Scope of the case**

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8. On 24 April 2024 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
9. The Commissioner noted that in refusing to disclose the requested information, RTL had not cited a relevant exemption. He, therefore, wrote to RTL and directed it to either cite a relevant exemption or to disclose the information to the complainant.
10. RTL responded to the Commissioner and, whilst it did not explicitly cite section 43 of the FOIA, it provided arguments in support of withholding the information on the grounds that disclosure would be likely to prejudice its commercial interests. The Commissioner has, therefore, considered whether RTL is entitled to withhold the information under section 43.

## Reasons for decision

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### Section 43 – commercial interests

11. Section 43(1) of the FOIA provides an exemption from disclosure for information which is a trade secret.
12. The FOIA does not define the term 'trade secret'. However, with reference to The Trade Secrets (Enforcement, etc.) Regulations 2018, the Commissioner considers that, to be a trade secret, information should:
  - be secret, in the sense that it is not generally known among, or readily accessible to, people within the circles that normally deal with that kind of information;
  - have a commercial value, because it is secret. Its disclosure should also be liable to cause real (or significant) harm to the owner or be advantageous to any rivals; and
  - be subject to reasonable steps under the circumstances, taken by the owner, to keep it secret.
13. Section 43(2) of the FOIA allows a public authority to withhold information whose disclosure could harm its own commercial interests or those of another party.
14. In order for section 43(2) to be engaged, three criteria must be met:
  - the harm which the public authority envisages must relate to someone's commercial interests;
  - the public authority must be able to demonstrate a causal relationship between disclosure and prejudice to someone's commercial interests. Furthermore, the resultant prejudice must be real, actual or of substance; and
  - the level of likelihood of prejudice being relied upon by the public authority must be met (ie it must be shown that disclosure would, or would be likely to, result in prejudice occurring).
15. In support of its position RTL explained to the Commissioner that the information contained in the requested audio file includes "commercially sensitive information". It also suggested that section 43(1) of the FOIA might be relevant, arguing that:

"the trade secrets include announcements for private contracts and non-public services provided for private purposes. These should not be

shared to protect the identities of private clients and are not broadcast routinely (except on the contracts/work to which they relate and have been commissioned for) or placed in the public domain.”

16. RTL further explained that the requested audio file also includes details of potential service changes including new routes that have been planned but not yet publicised. It argued that publishing these files to a competitor would diminish its commercial interests/position as a competitor may use this to register matching services. It explained that, as a private limited company it operates in a competitive, deregulated market and that it does not share any files with commercially sensitive data as it could undermine their position if it was in the hands of a competitor.
17. In order to apply the exemption, a public authority must be able to show a clear causal link between disclosure and the harm it considers may occur. In the Commissioner's view, RTL has failed to demonstrate why its own commercial interests would be harmed by disclosure.
18. The Commissioner accepts that RTL operates in a competitive marketplace and that elements of the withheld information may not been known to others operating in the same marketplace. However, in order to demonstrate commercial harm, RTL must show not only that its competitors do not currently have access to the information, but if they did have access to it, how they could exploit it to RTL's detriment.
19. In this case the Commissioner has not been provided with a copy of the withheld information / the audio file. However, he does not consider it is necessary for him to listen to it as it is sufficient for him to refer to RTL's description of the content in order to reach his conclusions in relation to its application of section 43.
20. RTL has not explained to the Commissioner how audio announcements made on buses, which though they might have a restricted audience when broadcast, could reveal insights of sufficient detail to benefit a competitor (to RTL's commercial detriment). RTL has also not explained who its competitors are or described the competitive dynamics of bus routes. He also considers that, given RTL's confirmation of variation in bus routes, either contemplated or enacted, even if the information were of value to a competitor, it is likely that information disclosed will be unlikely to remain relevant or of commercial use for long.
21. In attempting to resolve this matter informally the Commissioner explored with RTL the possibility of disclosing a redacted version of the information, with details of "private" announcements being removed from the file provided. The Commissioner noted that the complainant specified to RTL on 22 April 2024, at the time of the internal review, that

they would be content to receive the "...PUBLIC version of your announcements? Like the ones commuters would hear on the bus everyday?"

22. RTL subsequently confirmed to the Commissioner that it was unable to do this as all announcements were contained within a single audio file and it was unable to extract public announcements from this.
23. RTL has not properly explained to the Commissioner what the format of the audio file is but, on the available evidence, it does not seem plausible that elements of an audio file could not be extracted using readily available editing software.
24. However, this decision notice is considering whether the entire audio file can be withheld under section 43. The Commissioner does not consider it plausible that a competitor would invest time and resources in listening to a single audio file of, presumably, considerable length, in order to potentially glean insights into possible bus routes which may or may not reflect RTL's current operating model.
25. Having considered RTL's arguments the Commissioner is left with the impression that it has attempted to apply the exemption on a general basis without proper consideration of the specific potential effects of disclosure.
26. He does not consider that RTL has demonstrated that the information amounts to a trade secret as defined in section 43(1). The request identifies information which is broadcast as announcements on public buses so, in broad terms, it cannot be considered secret. In relation to announcements involving "private clients", whilst it might involve a more restricted audience, it is still unclear how this might be defined as "secret". Moreover the Commissioner considers that RTL has failed to properly explain how announcements relating to "private clients" identifies information that might be defined as a trade secret. He considers that it is RTL's responsibility to explain why this is and why this specific content falls into this category of information. He gave RTL ample opportunity to do this, but it failed to do so. In such cases, the Commissioner does not consider that it is his role to generate such arguments or explanations on an authority's behalf.
27. In relation to commercial prejudice under section 43(2), on the basis of the arguments provided, the Commissioner is not convinced that it is likely that disclosure would result in prejudice to RTL's commercial interests. He considers that the arguments it has provided are highly speculative and do not properly explain the link between the specific content of the information and the putative effects. In his view there

does not seem to be a real likelihood that disclosure of the information would result in any prejudice to RTL's commercial interests.

28. As he has found that section 43(2) of FOIA is not engaged in relation to any of the information, the Commissioner does not need to go on to consider the balance of the public interest.

## **Procedural matters**

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### **Section 17 – refusal notice**

29. Where a public authority is refusing to provide information identified in a request it needs to issue a refusal notice which states that fact, specifies the exemption in question, and states (if that would not otherwise be apparent) why the exemption applies.
30. In this case RTL initial response and internal review failed to specify which exemption it was relying on to withhold the requested information.
31. In view of this the Commissioner finds that RTL breached section 17(1) of the FOIA.

## Right of appeal

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32. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

33. 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.
34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Christopher Williams**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
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