

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

### **Decision notice**

**Date:** 19 November 2024

**Public Authority:** Transport for London  
**Address:** 5 Endeavour Square  
London  
E20 1JN

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

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1. The complainant has requested information about fraud losses incurred from accepting contactless payments. Transport for London ('TfL') relied on section 12 of FOIA (cost of compliance) to refuse the request.
2. The Commissioner's decision is that TfL was entitled to rely on section 12(1) of FOIA to refuse the request. The Commissioner also finds that TfL complied with its section 16 obligation to offer advice and assistance.
3. The Commissioner does not require further steps to be taken.

#### **Request and response**

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4. On 14 March 2024, the complainant wrote to TfL and requested information in the following terms:

"I'd like to request documents that show losses from fraud incurred by Transport for London from accepting contactless payments from credit and debit cards and these cards in mobile wallets connected with Apple Pay and Google Wallet and other NFC mobile wallets.

The documents should include fraud losses by year for the past four years and fraud losses as a percentage of total contactless fare revenue. I'd also like to request any records that indicate the type of fraud involved in the losses."

5. On 15 April 2024, TfL responded and stated that it was relying on section 31 of FOIA (law enforcement) and section 43 of FOIA (commercial interests) to withhold the requested information.
6. On 20 June 2024, TfL provided its internal review response and stated that it was instead relying on section 12 of FOIA to refuse the request.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 17 July 2024 to complain about the way their request for information had been handled.
8. The complainant expressed dissatisfaction with TfL's initial reliance on sections 31 and 43 of FOIA. The Commissioner explained that as TfL had changed its position at internal review to rely on section 12 instead, he would not consider sections 31 and 43 as part of his investigation.
9. The Commissioner therefore considers that the scope of his investigation is to determine whether TfL was entitled to rely on section 12 of FOIA to refuse the request.

### **Reasons for decision**

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#### **Section 12 – cost of compliance**

10. The following analysis covers whether complying with the request would have exceeded the appropriate limit.
11. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the "appropriate limit" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations")
12. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for TfL is £450.
13. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for TfL.
14. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in

carrying out the following permitted activities in complying with the request:

- determining whether the information is held;
  - locating the information, or a document containing it;
  - retrieving the information, or a document containing it; and
  - extracting the information from a document containing it.
15. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. The Commissioner considers that any estimate must be sensible, realistic and supported by cogent evidence. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
16. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
17. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

### **The complainant's position**

18. The complainant has challenged TfL's reasoning that the scope of the request was too broad. In their complaint to the Commissioner, they stated:

"It described in the first part of its decision why the wording of FOI request is so ill-defined, that it would force the agency to engage in an incredibly time-consuming and expensive search for the documents I seek. Then in the second part it appears to nullify this argument by zeroing in on exactly the type of fraud, "retokenization," that I've been writing about. And "subject-matter experts" at the agency know well the amount of fraud incurred from this and other types of fraud in accepting contactless payments."

## **TfL's position**

19. TfL explained that the request sought all documents covering a four year period and it considers that 'document' is a broad term which potentially covers a wide range of recorded material.
20. Given the breadth of what would fall under a request for 'documents', TfL considered that establishing what documents it may hold within the scope of the request required a company-wide email search. It explained that when such wide ranging requests are received, its FOI Case Management Team carries out remote email searches using a tool called eDiscovery. This provides the ability to use 'keyword' search criteria (taken from the request) to return a 'hit' result of emails or email chains which contain any iteration of the keyword search terms.
21. The FOI Case Management Team carried out three separate email searches all covering the time period from 14/3/2020-14/3/2024 which was specified in the request. Search one used the keyword criteria of 'Fraud' AND 'Mobile Wallets' which returned a 'hit' result of 2,002 emails or email chains. Search two used the keyword criteria of 'Fraud' AND 'Apple Pay' which returned a 'hit' result of 97,974 emails or email chains. Search three used the keyword criteria of 'Fraud' AND 'Google Wallet' which returned a 'hit' result of 5,608 emails or email chains. TfL explained that these searches returned a combined total of 105,584 'hit' results'.
22. TfL explained that the search results are not individual emails but may be email chains comprising multiple different emails or attachments, some of which may not focus on the specific area of interest but are caught by the search simply due to those terms being referenced at any point in the email or attachment.
23. As the search results will inevitably contain irrelevant content, as well as duplication, TfL explained that the only way to determine exactly what 'documentation' is held that may fall within the scope of the request would be to do a full manual review to allow for the relevant emails and documents to be identified, extracted and collated.
24. TfL allowed a conservative estimate of two minutes per email, email chain, or email attachment. It estimated that search one would take 66 hours, search two would take 3,265 hours and search three would take 186 hours. This equates to 3,517 hours of staff time in total.
25. TfL stated that it did not carry out a sampling exercise but it confirmed to the Commissioner that use of the EDiscovery tool was the most efficient way to search for information within scope of the request.

26. As part of its internal review response, TfL also considered the request on the narrowed basis of it asking for 'data and or figures'. Taking this into account, TfL liaised with the appropriate subject matter experts regarding the data that would be required to address the request for a four year period and whether it is held. It was advised that it does not have the required data reporting readily available. It would therefore need to allocate specialised subject matter experts to analyse the underlying source data, develop the necessary scripts to extract the data and then produce the data in a reportable format prior to final validation for accuracy. TfL estimated that undertaking this work would require approximately 30 hours of staff time to complete, again exceeding the cost limit.

### **The Commissioner's view**

27. The Commissioner is satisfied that complying with this request would exceed the appropriate limit.
28. The Commissioner finds the search processes described by TfL to be reasonable. He agrees that the broad scope of the request and the number of potentially in scope search results that would need to be checked mean that it is not possible for TfL to comply with the request within the cost limit.
29. The Commissioner notes that, even if the TfL's estimate was slightly high, in order for it to comply with the request without exceeding the cost limit, it would need to review each search result in less than a second – which the Commissioner does not consider feasible.
30. Complying with the request would therefore exceed the cost limit and so TfL was entitled to rely on section 12(1) of FOIA to refuse the request.

### **Procedural matters**

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#### **Section 16 – advice and assistance**

31. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.
32. When a public authority refuses a request because the cost of compliance exceeds the appropriate limit, it should explain, to the requester, how they could refine their request such that it would fall within that limit. In rare cases, it will be appropriate for the public authority to explain to the requester why their request cannot be meaningfully refined.

33. In this case, the TfL informed the requester in its internal review response that the term 'document' was too broad. It suggested the complainant could refine the request as specific questions or for specific documentation to try and bring it in line with the cost limit. TfL advised however that the nature of the requested information meant that it would be likely to be withheld under sections 31 and 43 of FOIA, even if the request did fall within the cost limit.
34. The Commissioner is therefore satisfied that TfL complied with section 16 of FOIA when dealing with this request.

### **Other matters**

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35. The Commissioner notes that the complainant has stated that TfL has contradicted itself in its internal review response by first advising the scope of the request was too broad, then mentioning 'retokenization' as a type of fraud.
36. The Commissioner finds that TfL interpreted the wording of the request correctly and that it mentioned 'retokenization' only as part of its explanation that even if the cost limit did not apply, the requested information would still be likely to be withheld under FOIA.

## **Right of appeal**

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37. 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)

38. 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.
39. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Keeley Christine**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**