

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 December 2014

Public Authority: Department for Transport (DfT)

Address: Great Minister House
33 Horseferry Road
London
SW1P 4DR

Decision (including any steps ordered)

1. The complainant has requested the written advice from the Association of Train Operating Companies (ATOC) to the DfT on the impact of fare-splitting on rail ticket revenues, and correspondence between ATOC and DfT officials and between DfT officials regarding that advice during 2011. The DfT disclosed some information but refused to provide the remaining information under section 35(1)(a), section 41, section 42 section 43(2) and section 44 FOIA. During the course of the Commissioner's investigation the DfT also applied section 36 FOIA.
2. The Commissioner's decision is that the DfT has correctly applied section 44(1)(a) FOIA to the withheld information.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 19 June 2014, the complainant wrote to the DfT and requested information in the following terms:

"I am only seeking the written advice from ATOC to the DfT on the impact of fare-splitting on rail ticket revenues, and correspondence between ATOC and DfT officials and between DfT officials regarding that advice, during 2011."

5. On 13 August 2014 the DfT responded. It disclosed some information but refused to provide the remaining information under section 35(1)(a), section 41, section 42 and section 43(2) FOIA.
6. The complainant requested an internal review, but said that he did not require the DfT to review redactions made to commercially sensitive information (under section 43(2) FOIA). The DfT sent the outcome of its internal review on 11 September 2014. It upheld its application of section 35(1)(a) and section 41 FOIA. It also applied section 44(1)(a) FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 12 July 2014 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether the DfT was correct to apply section 35(1)(a) or section 36 (in the alternative), section 41, section 42 or section 44 FOIA to the withheld information in this case.

Reasons for decision

9. Section 44(1) of FOIA states that, "Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it- (a) is prohibited by or under any enactment".
10. The DfT explained that the proposed amendments to the National Rail Conditions of Carriage (NRCoC) which ATOC provided to the DfT in 2011 were obtained by the DfT by virtue of a provision in the Railways Act 1993 (RA). Section 145(1) of the RA states that, "Subject to the following provisions of this section, no information with respect to any particular business which— (a) has been obtained under or by virtue of any of the provisions of this Act; and (b) relates to the affairs of any individual or to any particular business, shall, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business."
11. The DfT went on to explain the information was provided to it by virtue of sections 8 and 9 of the RA. It said that section 8 provides that Train Operating Companies (TOCs) are authorised to operate by being granted a licence. It said that section 9 covers conditions of such licences. Section 9 provides that the licence issued to a TOC may require things falling to be done under the licence, to be referred for approval by a

qualified person, that is the Secretary of State for Transport (SSfT). It went on that the licence may require the qualified person to be provided with such documents or other information as may be required for the purpose of exercising any functions conferred or imposed on the SSfT under or by virtue of the licence.

12. It explained that the TOCs represented by ATOC have to consult with the SSfT on any proposals to amend the NRCoC because the SSfT has to approve those changes. It said that the withheld information in this case, relating to split ticketing, including the proposed amendments to the NRCoC, which ATOC provided to the DfT on behalf of the TOCs for this purpose. It therefore concluded that the information provided to the DfT by ATOC was obtained by virtue of a condition in the licences issued under the RA 1993.
13. The DfT confirmed that the withheld information relates to a business, train operation, which continues to be carried out. It also confirmed that ATOC, representing the TOCs had objected to the information being released.
14. It said that as section 145 was applicable in this case, the DfT were exempt from disclosure of the withheld information under section 44(1)(a) FOIA.
15. The Commissioner considers that the withheld information was provided to the DfT under section 8 and 9 of the RA as ATOC on behalf of the TOCs sought the SSfT's approval to amend the NRCoC. It therefore obtained the information by virtue of section 145 of the RA and the Commissioner does not consider that any of the preceding subsections within section 145 RA would dis-apply subsection (1) in this case. The Commissioner therefore considers that section 44(1)(a) FOIA was correctly applied to the withheld information.

Right of appeal

16. 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

17. 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.
18. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF