

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 October 2019

Public Authority: Transport for London
Address: 55 Broadway
London
SW1 0BD

Decision (including any steps ordered)

1. The complainant has requested information relating to the number of trains that were taken out of service due to graffiti and any information Transport for London (TfL) held on how long those trains remained in service with graffiti, before being taken out of service and cleaned. TfL ultimately explained that it did not hold the requested information. However this was outside the 20 working day, statutory time for compliance.
2. The Commissioner's decision is that TfL breached section 10(1) by failing to confirm that the information was not held within 20 working days.
3. However, as TfL did ultimately clarify the information was not held, the Commissioner does not require it to take any further action.

Request and response

4. On 17 February 2019 the complainant requested information of the following description:

"I would like to request:

The number of trains (or carriages?) taken out of service due to graffiti

-It would be great if it could be broken down by year and by quarter

-Can you break it down by underground and overground

The average time period before graffiti was spotted on a train by TfL and when it was taken out of service

-It would be great if it could be broken down by year and by quarter

-Maybe this is not something you collect? I believe that more trains with graffiti on them are going into service and staying in service for longer before they are cleaned (If there is some other metric that you use to measure this then it would be great if you could provide me with that)

For all data requested:

-Could I get data that goes back to 2010? (If this is not possible I would like data that goes back as far as possible within the time/cost limit)

-I would appreciate it if the data was as up-to-date as possible

-Can all data please be supplied to me in Excel format"

5. On 7 March 2019 TfL responded. It said that the information was held but, refused to provide that information. It cited the exemptions provided by section 38(1)(b) – disclosure would endanger the safety of any individual, and section 43(2) – prejudice to commercial interests, as the basis for doing so.
6. The complainant requested an internal review on the same day, i.e. 7 March 2019. TfL sent him the outcome of the internal review on 4 April 2019. TfL upheld its original position.
7. The complainant subsequently complained to the Commissioner.
8. As part of the Commissioner's investigation TfL were asked to provide a copy of the withheld information. TfL provided the Commissioner with, what it described as, a sample of the information. This comprised of a log of incidents of vandalism, including graffiti. On inspecting this information the Commissioner found that it only contained a limited amount of information that was relevant to the request.
9. When TfL were asked to provide all the requested information, it explained that it had not compiled all the information because it believed that to do so would exceed the appropriate (cost) limit provided by section 12 of the FOIA. It had chosen not to rely on section 12 when

refusing the request because the complainant had stated that if the cost limit proved an obstacle, he would be satisfied with a response which only provided information up to the cost limit.

10. TfL therefore considered the most constructive approach would be to move straight to the application of the exemptions that it would wish to apply to any information it held relating to the length of time trains remained in service before graffiti was removed. TfL's concern was that providing such information could, depending on its contents, encourage graffiti artists to vandalise trains.
11. The sample information provided to the Commissioner represented just one of the sources which TfL believed it would have to extract details from in order to produce the requested information in full. It believed the information contained in the sample was sufficient to demonstrate the sensitivity of the information being requested. However as the Commissioner did not consider the sample information on its own met the terms of the request, she asked TfL to provide her with all the information captured by the request.
12. She also advised both TfL and the complainant that a request made by reference to the appropriate limit, i.e. a request seeking all the information that can be provided up to the appropriate limit, is not a valid request. This approach is explained in more detail in paragraphs 67 to 70 of the Commissioner's guidance, 'Recognising a request made under the Freedom of Information Act (section 8)'. In line with that guidance, the Commissioner considers the only part of the complainant's request which is valid, is that which seeks information going all the way back to 2010. This meant that extracting any relevant data was likely to involve searching a significant volume of information.
13. Therefore when asking TfL to provide all the information captured by the request she also gave it the opportunity to consider the application of section 12 and, if it believed it had grounds for applying that provision, to provide her with a detailed submissions in support of its use. This included a requirement for TfL to calculate the time/cost involved in producing a sample of the information, i.e. a sample which addressed all the elements of the request in full, but for only a limited number of graffiti incidents. The intention was that this figure could be used to estimate the cost of answering the request for all such incidents going back to 2010.
14. It was only when TfL addressed these issues that it realised it did not record that all the information that would be needed to answer the questions posed by the request. As a consequence TfL informed the complainant on 8 October 2019 that it did not hold the requested information.

Scope of the case

15. The complainant initially contacted the Commissioner on 5 April 2019 to complain about the way his request for information had been handled. At this stage he had been advised that the information was held, but that TfL were withholding it under the exemptions provided by section 38 and 43. He therefore wished to challenge the application of those exemptions.
16. Once TfL had explained that it did not hold the information and why this was the case, the complainant accepted that his request would not yield any meaningful information. He therefore did not wish to challenge whether the information was held. However he remained dissatisfied with the length of time it had taken TfL to inform him that no information was held.
17. In light of the above the Commissioner considers the matter to be decided is whether TfL complied with its obligation to inform the complainant whether the information was held within 20 working days in accordance with the provisions of section 10(1) of the FOIA.

Reasons for decision

Section 10 time for compliance

18. So far as is relevant section 1(1) of the FOIA states that any person making a request to a public authority is entitled to be informed in writing whether the information specified in the request is held.
19. Section 10(1) of the FOIA states that a public authority is required to comply with section 1(1) no later than the twentieth working day following the date of receipt.
20. The request was received on 17 February 2019. TfL failed to confirm that it did not hold the information until 8 October 2019. This is clearly a breach of section 10.

Other matters

21. Although not forming part of the formal decision notice, the Commissioner uses 'Other matters' to comment on issues that have come to light during the investigation. The Commissioner does not consider that TfL acted in bad faith when it initially advised the complainant that it did hold the information. The Commissioner is satisfied that it anticipated it would hold the necessary 'building blocks' of data which would be necessary to produce the statistics that had been requested.
22. The Commissioner also accepts that TfL was attempting to expedite matters by moving straight to the application of the exemptions it would have wished to apply had it held the information (it should be stressed that the Commissioner is not in any position to comment on whether there were any grounds for applying those exemptions). However TfL's failure to establish what information was in fact held and therefore whether, subject to the application of any exemptions, it was in a position to comply with the request, has resulted in a very frustrating delay for the complainant.
23. The Commissioner notes however that TfL has now undertaken to provide the complainant with additional explanations of the range of information that it does hold on incidents of graffiti and the level of detail in which that information is recorded. This should allow the complainant to make a fresh request should he wish to do so.

Right of appeal

24. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

25. 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.
26. 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

Rob Mechan
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