

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

### **Decision notice**

**Date:** 7 February 2022

**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 Transport for London (TfL) to disclose a breakdown of costs for paid for and sponsored digital advertisements. TfL refused to comply with the request citing section 12 of FOIA (cost limit).
2. The Commissioner's decision is that TfL is entitled to refuse to comply with the complainant's request in accordance with section 12 of FOIA. He is also satisfied that TfL complied with section 16 of FOIA and provided reasonable advice and assistance to the complainant. The Commissioner does not require any further action to be taken.

#### **Request and response**

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3. On 12 March 2021, the complainant wrote to TfL and requested information in the following terms:  
  
"1. What is the total costs of your paid and sponsored digital ads across all platforms for each year, from 2016 to 2020.  
  
2. What is the breakdown of paid ads by TFL scheme/activity for each year (2016-2020)."

3. What is the total average cost per click for all paid and sponsored digital ads for each year (2016-2020)?
  4. What is the total click through rate for all paid and sponsored digital ads for each year (2016-2020)?
  5. How many individual paid and sponsored ads have you run for each year (2016-2020)?
  6. Why schemes/activities get the most paid/sponsored digital ad spend for each year (2016-2020)?”.
4. TfL responded on 29 March 2021. It refused to comply with the request citing section 12 of FOIA. In accordance with the requirements of section 16 of FOIA, TfL advised the complainant that it could process a narrowed request within the cost limit if he, for example, limited his request to questions 1, 2 and 6.
  5. The complainant requested an internal review on 29 March 2021.
  6. TfL carried out an internal review and notified the complainant of its findings on 28 April 2021. It upheld its previous application of section 12 of FOIA. In terms of section 16 of FOIA, TfL added that the complainant could consider requesting data over a shorter time period.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 28 April 2021 to complain about the way his request for information had been handled. Specifically the complainant disagrees with TfL’s application of section 12 of FOIA and considers TfL should publish reports in digital advertising with a clear breakdown. He believes TfL is actively withholding the requested information for reasons that are unjust and do not adhere to FOIA.
8. The Commissioner considers the scope of his investigation to be to determine whether or not TfL is entitled to rely on section 12 of FOIA. He will also consider whether TfL has met its obligations under section 16 of FOIA in relation to this request.

## Reasons for decision

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### Section 12 – cost limit

9. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b) to have the information communicated to him or her if it is held and is not exempt information.
10. Section 12(1) of the FOIA says that a public authority is not obliged to comply with section 1(1) if the authority estimates that the cost of doing so would exceed the appropriate limit.
11. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can make a notional charge of a maximum of £25 per hour to undertake work to comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to the TfL.
12. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
  - a. determine whether it holds the information
  - b. locate the information, or a document which may contain the information
  - c. retrieve the information, or a document which may contain the information, and
  - d. extract the information from a document containing it.
13. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the applicant refine the request so that it can be dealt with under the appropriate limit, in line with section 16(1) of the FOIA.

### TfL's position

14. TfL explained that it uses external media partners (such as Google and Facebook) for digital advertisement campaigns which are managed via a contracted media agency. The external partners will collect digital performance data in relation to these advertisement campaigns which they use to optimise performance across their varying platforms.

15. It confirmed that it is provided with performance data from its media agency, which includes data on end of campaigns and post campaign analysis after each campaign. However this performance data does not include the information the complainant requested at the granular level he requires. TfL went on to say that its spend in digital marketing – and all paid for marketing communications – is based on its overall business priorities. These can vary from year to year, as does its overall advertising budget. For each campaign there is a strategy that is influenced by a number of factors including the target audience, the scale of the challenge, the nature of the message that needs to be communicated (eg the level of detail vs broad awareness), timings and location specifics.
16. TfL advised that once these are agreed, there will be an analysis and recommendation made on the most appropriate media channels. This is done in conjunction with the development of the creative work to support the advertising message, and this can also sometimes influence where ads are placed. It stated that whether digital activity runs as stand alone or in conjunction with other media channels, is subject to all of the factors previously outlined. It confirmed that every pound invested is monitored and audited by a third party auditor and there is comprehensive budget control and management.
17. TfL commented that the complainant's information request covers a period of 5 years – 2016 to 2020. Historical digital performance data is not housed by TfL but is stored by its media partners. It stated that as media owners in their own right, they have their own requirements and retention policies on how the data is stored and for how long.
18. TfL has contacted its Customer Marketing & Behaviour Change Lead, who in turn has liaised further with its media agency regarding the complainant's information request. TfL's media agency has confirmed that it only holds aggregated performance data for the last two years and not for the five year period specified in the request. It asked the media agency to explain what would be involved in retrieving, extracting and preparing six months' worth of data, so it can be seen how much time and cost would be required.
19. The media agency stated that it would firstly have to locate and retrieve digital campaign data from its advertisement server/database for a period of six months. TfL book media campaigns 'by burst' meaning it is just for a specific period of time as and when required within a given year rather than booking a full year's worth of activity, which lends to the complexity of retrieving the data. It explained that for any given campaign (of which it has many across its differing transport modes) there could be several 'bursts' of activity or different strands of activity with differing objectives and desired outcomes. As a result the data that

would need to be retrieved would result in potentially thousands of lines of data activity covering each media channel TfL has used for digital advertisements. At this stage, the data sheet would be unintelligible to be able to disclose into the public domain. Therefore, staff at TfL's media agency would then have to manually review thousands of lines of data to aggregate and match it specifically to an individual campaign in all its varying forms to identify the different 'bursts' of activity within each of these campaigns over the 6 month selected time period.

20. TfL commented that there is no other process available to the media agency to retrieve the requested information, as there is no consistent naming convention used when 'booking' campaigns on its system. The bookings can be entered by any number of different individuals within the media agency and can be recorded under varying titles or campaign names dependent on the person who is entering the booking. As a result the naming conventions will differ significantly. For example, it said one advertisement campaign may initially be called Active Travel but other 'bursts' of activity within that campaign title throughout the year could be called Active Travel, Cycle Training, TfL Cycling, Active Travel 1 etc.
21. TfL provided another example of a differing campaign – the Ultra Low Emission Zone campaign currently operating in London. The different 'bursts' of activity could have been named ULEZ, ULEX, ULEZ Prime Stage, Prep 1/Prep 2 or Change to name just a few. It explained that the relevant campaign managers at the media agency would need to ensure the right 'bursts' of activity are allocated to the correct overall campaign to validate any data regarding "cost per click".
22. Furthermore, TfL said that different campaigns have different primary objectives or key performance indicators (KPIs) and these will also differ in how they are shown on the media agency's booking system. For example for cycle training it would show as cost per completed training or app download and not by "cost per click" as the complainant requires, meaning that the media agency would have to manually review all the data to ascertain "cost per click" data.
23. It stated that another issue would be if a campaign has been booked onto the system in one name but last minute adjustments to the message have been made, meaning a different campaign had to be ran, but it may still show on the system as the original campaign prior to any changes being made. It advised that this means the digital activation teams at the media agency would need to liaise with the relevant campaign planning teams to manually verify all the data.
24. The media agency estimates that for 6 months' worth of data alone, it would require 2 to 3 people to manually identify, retrieve and extract the data needed to answer the complainant's request. It argued that

locating and retrieving the data is not a simple automated task where reports can be run or exported with one simple click. To locate and identify the data would involve the media agency dedicating time away from its core activities for, what it has estimated to be a conservative estimate of, 3 days.

25. It confirmed that once this data is received, TfL's Customer Marketing & Behaviour Change Lead would then need to focus her time on manually reviewing potentially thousands of lines of data to compare and verify its accuracy whilst formatting it into a legible document prior to its disclosure. Again it has estimated that this would take approximately 3 days for just 6 months' worth of data. This process would then have to be completed for the two years of data it does hold.

### **The Commissioner's position**

26. The Commissioner is unsure whether TfL is saying that it would require 2 to 3 members of staff for 3 days, or if it is saying that combined it would equate to 3 days work. Taking the latter, based on a 7 hour day, this equates to 21 hours of work, which is over the cost limit prescribed by FOIA of 18 hours. If it is the former, it would clearly be significantly more.
27. TfL is then saying that its own staff would then need a similar amount of time to check the data and get it ready for public disclosure, taking the grand total to 42 hours just for 6 months' worth of data. Whether this final verification and production of legible data is required or not, the cost limit is exceeded before this stage and only for a 6 month period. To fully comply with the complainant's request, it would have to conduct the same process a further three times in order to prepare the two years of data it holds.
28. As the cost limit is exceeded for 6 months' worth of data alone, the Commissioner is satisfied that TfL is entitled to refuse to comply with the complainant's request on the basis of cost. He is therefore satisfied that section 12 of FOIA is engaged.

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

29. Section 12 triggers the duty to provide advice and assistance under section 16 of FOIA. TfL confirmed that it provided the complainant with guidance on how he could potentially narrow his request by outlining specifically what elements of his request it could possibly answer within the cost limit. However, to date it states that the complainant has chosen not to engage further or submit a narrowed request for consideration.

30. The Commissioner is satisfied that TfL has considered how it may process a narrowed request and informed the complainant of the options available to him. It stated that he could either reduce the timeframe for the data required or submit a further request limited questions 1, 2 and 6.
31. For the above reasons, the Commissioner is satisfied that TfL has met its obligations under section 16 of FOIA and offered reasonable advice and assistance to the complainant to enable him to submit a revised request, which could be processed within the cost limit.

## 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.

## Signed

**Samantha Coward**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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