

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 May 2014

Public Authority: Transport for London
Address: Windsor House
42 – 50 Victoria Street
London
SW1H 0TL

Decision (including any steps ordered)

1. The complainant made a freedom of information request to Transport for London (TfL) for the number of penalty charge notices issued in each of TfL's 21,500 enforcement zones. TfL refused the request by relying on the law enforcement exemptions in sections 31(1)(b), 31(1)(g) and 31(1)(h).
2. The Commissioner's decision is that the requested information is exempt under section 31(1)(g) of FOIA and the public interest in maintaining the exemption outweighs the public interest in disclosure. However, the Commissioner also found that TfL breached sections 10(1) (time for compliance) and 17(1) (refusal of a request) of FOIA in its handling of the request but he requires no steps to be taken.

Request and response

3. On 3 May 2013 the complainant made the following freedom of information request to TfL.

Can you provide the information at B-E

In respect of parking contraventions for the period from 1 April 2012 to 31 March 2013 for each street individually:

- B. the total number of Penalty Charge Notices issued thanks to fixed installation cctv observation*
 - C. the total number of Penalty Charge Notices issued thanks to camera car observation*
 - D. the total number of Penalty Charge Notices issued by Civil Enforcement Offices by hand*
 - E. the total number of Penalty Charge Notices issued by PCSO by hand*
- for each of the 21,500 enforcement zones individually in a spreadsheet within the 18 hours allowed under FOI?*

4. TfL responded on 17 September 2013, over 4 months after receiving the request. No reason was given for the delay. TfL now confirmed it held the requested information but said that it was exempt under sections 31(1)(b) and 31(1)(g) of FOIA because disclosure would or would be likely to prejudice the apprehension or prosecution of offenders or the exercise of functions for the purpose of ascertaining whether any person has failed to comply with the law.
5. The complainant subsequently asked TfL to carry out an internal review of its handling of the request and it presented its findings on 29 November 2013. The review upheld the earlier decision to refuse the request. It also confirmed that section 31(1)(g) was being applied on the basis that disclosure would prejudice TfL's functions for the purposes specified in section 31(2)(a) – the purpose of ascertaining whether any person has failed to comply with the law. It also said that the information was considered to be additionally exempt under section 31(1)(h).

Scope of the case

6. On 30 December 2012 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The Commissioner agreed that the scope of his investigation would be to consider whether TfL is entitled to rely on the exemptions in section 31 of FOIA as a basis for refusing to provide the withheld information.

Reasons for decision

7. TfL has refused the requests by relying on a number of exemptions contained within section 31 of FOIA. The relevant parts of this section of FOIA are:

31.-(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

(a) the prevention or detection of crime,

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection 2,

(h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment,

8. TfL has confirmed that the exemptions in sections 31(1)(g) and 31(1)(h) are engaged by virtue of section 31(2)(a):

(a) the purpose of ascertaining whether any person has failed to comply with the law.

9. The Commissioner considers that in this case the most appropriate exemption is section 31(1)(g) and therefore the Commissioner has decided whether this exemption applies in the first instance.

10. In order for the exemption to be engaged, the Commissioner requires the function identified by the public authority for the purposes of section 31(1)(g) to be a function which is:

(i) designed to fulfil one of the purposes specified in section 31(2) and,

(ii) imposed by statute (or in the case of a government department, authorised by the Crown) and,

(iii) specifically entrusted to the relevant public authority to fulfil (rather than just a general duty imposed on all public authorities).

11. In this case the relevant function is TfL's enforcement of parking control orders in relation to the TfL Road Network (TLRN), better known as the "Red Routes". This is a 580km network of the most important strategic roads in London. The red route network is designated a No Stopping network because these are strategic roads which make up only 5% of the roads in London but carry over 30% of the city's traffic. TfL explained that section 16 of the Traffic Management Act 2004 places it under a duty in relation to the management of the TLRN as a "local traffic authority". The duties are as follows:

16 The network management duty

(1) It is the duty of a local traffic authority to manage their road network with a view to achieving, so far as may be reasonably practicable having regard to their other obligations, policies and objectives, the following objectives—

(a) securing the expeditious movement of traffic on the authority's road network; and

(b) facilitating the expeditious movement of traffic on road networks for which another authority is the traffic authority.

(2) The action which the authority may take in performing that duty includes, in particular, any action which they consider will contribute to securing—

(a) the more efficient use of their road network; or

(b) the avoidance, elimination or reduction of road congestion or other disruption to the movement of traffic on their road network or a road network for which another authority is the traffic authority;

and may involve the exercise of any power to regulate or co-ordinate the uses made of any road (or part of a road) in the road network (whether or not the power was conferred on them in their capacity as a traffic authority).

12. Section 6 of the Road Traffic Regulation Act 1984 gives TfL the power (as a traffic authority) to make traffic orders for controlling or regulating vehicular and other traffic. TfL explained that a traffic order is an order made by the local authority which details the nature and extent of traffic and parking controls within the authority's area.
13. Section 73 of the Traffic Management Act 2004 provides that parking contraventions (under part 1 of Schedule 7 to the Act) are subject to civil enforcement, in the form of penalty charges.
14. Therefore the Commissioner considers that the relevant function is the enforcement of traffic control orders under the enactments referred to above. The Commissioner is satisfied that this is a function imposed by statute and that as regards the TLRN it is specifically entrusted to TfL to fulfil. The Commissioner is also satisfied that it is designed to fulfil the purpose in section 31(2)(a) – the purpose of ascertaining whether any person has failed to comply with the law – because failing to comply with a traffic control order is a civil offence, enforced through the use of penalty charge notices. The Commissioner would note at this point that

the complainant had challenged the use of the section 31 exemption on the basis that the enforcement of traffic laws is a civil rather than a criminal matter. However, section 31 is not limited to just criminal proceedings and includes law enforcement more widely.

15. The Commissioner must now also consider how disclosure of the requested information would prejudice the relevant function identified by the public authority. On this point TfL explained that Penalty Charge Notices (PCN's) are issued at specific locations on the red routes, known as Enforcement Zones (EZs), of which it said there were approximately 21,500 at locations such as loading zones, yellow box junctions, bus lanes, etc.. Enforcement is undertaken by TfL's camera operators and by Police Community Support Officers (PCSO's) employed by the Metropolitan Police on behalf of TfL. It explained that it did not use camera cars or Civil Enforcement Officers.
16. TfL explained that it has only a limited resource of cameras and PCSO's and that therefore it is not practicable to maintain its enforcement activities across the whole of the TLRN. The request was for a list of the number of PCNs issued at each of the enforcement zones across the TLRN. Therefore, disclosure would allow the complainant or any member of the public to identify the locations of TfL's enforcement zones but also those parts of the TLRN that are not covered by enforcement zones and thus are not likely to be actively enforced. Similarly, disclosure of the requested figures would make it possible to establish which enforcement zones are not currently being enforced or are only lightly or irregularly enforced.
17. The Commissioner is satisfied that TfL has established a causal link between disclosure and the prejudice that would be caused to its enforcement functions. Clearly, if motorists were able to determine where there was the least risk of receiving a penalty charge notice for a parking contravention this would increase the likelihood of this occurring and make it harder for TfL to stop. As TfL has argued, it relies on the deterrent effect of parking enforcement as it can never ensure 100% coverage of the TLRN. It is readily apparent that this deterrent effect would be compromised if the information was disclosed.
18. As regards the likelihood of prejudice occurring the Commissioner is aware that there is, what TfL referred to as, a "well established network of information available online which deliberately seeks to undermine legitimate enforcement of this nature". Given that disclosure under FOIA is to the public at large, the Commissioner's view is that disclosure would lead some to ignore parking controls and avoid the TfL's enforcement activities and he accepts that there is a high likelihood of this prejudice occurring.

19. The Commissioner finds that section 31(1)(g) is engaged because disclosure would prejudice the exercise of TfL's functions for the purpose specified in section 31(2)(a), namely, the purpose of ascertaining whether any person has failed to comply with the law.

Public Interest Test

20. As section 31 is a qualified exemption, the Commissioner has now carried out a public interest test, balancing the public interest in maintaining the exemption against the public interest in disclosure.

Public interest arguments in favour of disclosure

21. In favour of disclosure TfL acknowledged that there was a general public interest in openness and that there may be a public interest in understanding how TfL operates its parking enforcement activities.

Public interest arguments in favour of maintaining the exemption

22. The Commissioner has summarised TfL's arguments for maintaining the exemption below:
- If the requested information was made public there would be a clear impact on traffic flows as compliance with parking controls began to drop – caused by illegally stopped vehicles reducing the available space on the most important roads. This would be to the detriment of TfL's Network management duty of keeping traffic moving, reducing congestion and maintaining journey time reliability. This would affect public transport vehicles as well as individual drivers. TfL's ability to manage the available road space to provide a fair opportunity for all road users would be limited.
 - There is an inherent public interest in not undermining the deterrent effect of parking enforcement and the associated measures intended to ensure legal compliance and maintain effective road network management.
 - TfL would be likely to have to divert resources to TLRN enforcement in the event of disclosure, both in terms of staff and funds, in order to maintain the current level of service on the TLRN. TfL's resources are under strain and it would not be in the public interest to place avoidable extra demands on its limited resources.
 - Increased congestion would present a significant reduction in the quality of life in London, especially for those living close to the

TLRN. This could include increased emissions from congestion and increased noise and traffic.

- There is an established and independent appeals mechanism for those receiving PCN's. The Parking and Traffic Adjudicator provides a statutory oversight of how TfL manages its enforcement responsibilities and disclosure to the general public would not add to this oversight, whilst at the same time undermining the operation of the TLRN.

Balance of the public interest arguments

23. In balancing the competing public interest arguments the Commissioner would agree with TfL that the case for disclosure is very limited. Whilst there is some public interest in disclosure this is only in the most general sense in that disclosure of any public information helps to promote greater transparency and accountability. The Commissioner is not aware of any compelling reason for disclosure in this case and is mindful that there is an established appeals process which anyone who wishes to challenge a PCN can avail themselves of.
24. On the other hand, there are obvious and strong arguments for maintaining the exemption. In the Commissioner's view it is very strongly in the public interest that TfL is able to properly enforce the parking control orders as this ensures it is able to manage the road network effectively which is to the benefit of all road users. It would not be in the public interest if there were extra congestion and traffic problems caused by motorists seeking to take advantage of the information by parking in areas that TfL does not currently enforce. In balancing the public interest the Commissioner considers that these arguments carry significant weight.
25. The Commissioner also finds that there is a very strong public interest in ensuring that TfL is able to maintain a deterrent effect when it comes to parking enforcement. As TfL notes, disclosure would mean that it would have to divert additional resources to its enforcement activities to maintain current levels of service. This obviously has a cost on other areas of TfL's responsibilities and this cannot be in the public interest given TfL's limited resources and especially in a time of spending restraint across the public sector.
26. The Commissioner considers that there is a very limited public interest in disclosure which is strongly outweighed by the public interest in maintaining the exemption. Therefore, the Commissioner's decision is that in all the circumstances of the case the public interest in

maintaining the section 31(1)(g) exemption outweighs the public interest in disclosure.

Other matters

27. Given the lengthy delay in responding to the request the Commissioner has decided to record the following procedural breaches of FOIA.

Section 10 – time for compliance

Section 17 – refusal of a request

28. Section 10(1) of the FOIA provides that a response to an information request must be provided within 20 working days of receipt. Section 17(1) provides that a notice refusing a request must be provided within the same timescale.
29. In this case the complainant made his request on 3 May 2013 but TfL failed to respond until 17 September 2013. By failing to respond within 20 working days TfL breached section 10(1) and section 17(1) of FOIA.

Right of appeal

30. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

31. 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.
32. 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
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