

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 28 February 2011**

**Public Authority:** Transport for London  
**Address:** 6th Floor  
Windsor House  
42-50 Victoria Street  
London  
SW1H 0TL

### Summary

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The complainant made a number of requests for information to the public authority. Some of these requests were refused by virtue of section 14(1) (vexatious requests) and others were not answered. The Commissioner has been asked to consider eleven requests substantively and to consider the timeliness of two others.

During the investigation, the Commissioner asked the public authority to issue a refusal notice in respect of the six requests that had not been answered. The public authority did so.

The public authority has applied section 14(1) to all eleven of the requests under substantive consideration. The Commissioner has considered the arguments of both sides and has determined that section 14(1) has been applied correctly to each of those eleven requests.

The Commissioner has also noted that the public authority has committed a number of procedural breaches of sections 10(1) and 17(5) in this case, but requires no further remedial action to be taken.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

2. In this case, the Commissioner has decided to consider the handling of thirteen requests for information in a single Decision Notice. This is because they are all made to the same public authority, by the same complainant and connected to a central subject.

## Background

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3. The Commissioner notes that the substantive issue relates to the actions of London Underground Limited. London Underground Limited is publicly owned and operated by Transport for London. Transport for London is a public authority listed under paragraph 29 of Schedule 1 of the Act. It follows for the sake of clarity this Decision Notice will refer to Transport for London as "the public authority".
4. The complainant's daughter was prosecuted for fare avoidance by the public authority<sup>1</sup>. This was because in the public authority's view she tried to travel using the complainant's Freedom Pass. The Freedom Pass allowed only the complainant to use its services for free. She was found guilty and was fined. The public authority also confiscated the Freedom Pass.
5. This led to the complainant taking court action against the public authority on two fronts:
  - (i) He contended that London Underground Limited breached its contract with him by confiscating the Freedom Pass; and
  - (ii) He made a claim against four named London Underground Limited employees.
6. Both actions were struck out and the complainant was ordered to pay London Underground Limited's costs in relation to one of them.
7. The complainant has sought further information that he believes he needs in order to make complaints against a number of members of staff regarding their conduct in relation to the events that led to the prosecution and their actions since. He has also challenged the evidence that was submitted to court. The public authority was reluctant to consider these complaints until the court cases were concluded. The complainant has explained to the public authority and the Commissioner that he believes that the complaints should be seen as separate from the court case.

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<sup>1</sup> This is an offence under section 5(3)(a) of the Regulations of the Railways Act 1889, as amended.

## The Request

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8. The complainant made a number of requests for information between 2008 and 22 July 2010. He has asked the Commissioner to consider eleven of those requests substantively and to look at the delays in relation to two further requests. The Commissioner has appended to this notice the requests, their dates, how they have been responded to individually and when.
9. The situation at the start of the Commissioner's investigation was that:
  - (i) The public authority had applied section 14(1) (vexatious requests) to five requests for information outlined as requests 1 to 5 in Annex A;
  - (ii) The public authority had not answered six requests for information, outlined as requests 6 to 11 in Annex A; and
  - (iii) The public authority had answered two requests fully, but late. These are outlined as requests 12 and 13 in Annex A.
10. The situation at the date of this Notice is that:
  - (i) The public authority has applied section 14(1) to requests 1 to 11 and believes that it is excluded from answering them;
  - (ii) The public authority has issued appropriate refusal notices outlining its position for requests 6 to 11; and
  - (iii) The public authority has acknowledged that requests 12 and 13 were answered late.

## The Investigation

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### Scope of the case

11. On 30 June 2010 the complainant contacted the Commissioner to complain about the way his requests for information had been handled. The complainant specifically asked the Commissioner to consider the following eleven points:
  - (i) That the information he has requested is required to enable him to properly format complaints against the public authority's senior management;

- (ii) That the public authority has failed to make its complaints process apparent to him – in that the appropriate staff have not been identified;
- (iii) That the public authority has failed to provide him with the information that he has repeatedly asked for;
- (iv) That the public authority has failed to answer the requests in a timely manner;
- (v) That the public authority has not offered appropriate advice or assistance;
- (vi) That the public authority has not provided him with the information in the correct format;
- (vii) That the public authority has failed to properly explain its reasons for refusing the numerous requests;
- (viii) That the public authority has provided misleading 'mis/dis-information' when it has provided information;
- (ix) That the refusal of information due to the ongoing court case was inappropriate – as his information access rights are not suspended then; and
- (x) The internal review process was in his view defective in process and evidence.

12. On 14 September 2010 the complainant agreed that the scope of the Commissioner's investigation would comprise of the following four elements:

1. Whether or not the exclusion found in section 14(1) (vexatious requests) was applied appropriately to requests 1 to 3;
2. Whether or not the exclusion found in section 14(1) was applied appropriately to requests 4 and 5;
3. Whether the complainant had received appropriate responses to requests 6 to 9 and if not, to obtain a response that accords with the Act for those requests; and
4. To consider the issue of delay in respect to requests twelve and thirteen.

13. During the course of the Commissioner's investigation the following things happened that were material to the scope of this case and require noting:
- (i) Another two requests were identified that had not been answered and they are requests 10 and 11;
  - (ii) A refusal notice was issued on 26 November 2010 in respect of requests 6 to 11; and
  - (iii) The public authority also applied section 14(1) to requests 6 to 11 and for completeness the Commissioner has decided to consider them substantively in this Notice.
14. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. The Commissioner is not able to judge a public authority's complaint process and its efficacy, nor can he consider whether the prosecution and subsequent civil cases were decided correctly. He is also not able to consider the alleged inaccuracy of any information that may have been provided. The Commissioner can only consider information access matters under the Act, including whether relevant recorded information held by the public authority has been appropriately withheld.

## **Chronology**

15. This chronology lists the key correspondence exchanged in this case.
16. On 9 August 2010 the Commissioner wrote to the complainant and the public authority to confirm that he had received an eligible complaint.
17. On 8 September 2010 the Commissioner wrote to the complainant to explain the nature of his role and to set the scope of the investigation.
18. On 14 September 2010 the complainant replied and confirmed his agreement with the proposed scope of the investigation. He also provided further information.
19. On 24 September 2010 the Commissioner wrote to the public authority. As he was not satisfied (at that stage) that section 14(1) applied to the requests he asked the public authority to either disclose the requested information or answer his detailed questions on the application of section 14(1). He also asked it to confirm whether responses had been issued to those he considered to be outstanding and, if not, asked the public authority to respond to them. The public authority replied on the same day to tell the Commissioner that it did not view this complaint as being appropriate to resolve informally and it would answer his questions about section 14(1) instead.

20. On 12 November 2010 the public authority provided the Commissioner with its arguments about the application of section 14(1). It also asked for the Commissioner to clarify exactly which requests he deemed to be outstanding.
21. On 15 November 2010 the Commissioner clarified the nature of the requests that had not been answered and also asked the public authority to outline the nature of the relevant court cases, providing appropriate documentation as evidence.
22. On 29 November 2010 the public authority provided its response. It explained that it had issued a new response to the complainant explaining that the six outstanding requests were also vexatious within the meaning of section 14(1). It provided a copy of this new response to the Commissioner. It also gave the Commissioner a copy of the relevant documentation that he asked for on 15 November 2010.

## Analysis

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### Substantive Procedural Matters

#### Exclusion: Section 14(1)

23. The principal issue that the Commissioner has been asked to determine is whether requests 1 to 11 have been correctly characterised as being vexatious. The Commissioner will consider each request. The lead requests are requests 1 to 3 which were all submitted on 16 April 2010. He will then decide whether the same reasoning can apply to the other requests that were submitted by the complainant subsequently.
24. The public authority contends that the requests are vexatious when correctly considered in their context and that it should be entitled to rely on section 14(1). The Commissioner will consider its detailed arguments below.
25. The complainant argues that his requests are not vexatious and that a reasonable public authority could not rely on section 14(1) in this case. The Commissioner will also consider his detailed arguments.
26. Section 14(1) is an exclusion that provides that –  
  
*“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”.*
27. The Commissioner’s view is that whether a request is vexatious for the purposes of the Act must be considered as at the date it was received by the public authority.

28. When assessing vexatiousness the Commissioner adopts the view of the Information Tribunal (the 'Tribunal') decision in *Ahilathirunayagam v Information Commissioner's Office* (EA/2006/0070) (paragraph 32); that it must be given its ordinary meaning: would be likely to cause distress or irritation. Whether the request has this effect is to be judged on objective standards. This has been reaffirmed by the Tribunal in *Gowers v Information Tribunal and London Camden Borough Council* (EA/2007/0114) ('Gowers') (paragraph 27). The Commissioner has developed a more detailed test in accordance with his guidance but it is important to understand that it has developed from these general principles and these guide him in applying his test.
29. The Commissioner also endorses the Tribunal's consideration of this point in *Mr J Welsh v the Information Commissioner* (EA/ 2007/0088) ('Welsh') (paragraph 21) where it stated:

*'In most cases, the vexatious nature of a request will only emerge after considering the request in its context and background. As part of that context, the identity of the requester and past dealings with the public authority can be taken into account. When considering section 14, the general principles of FOIA that the identity of the requester is irrelevant, and that FOIA is purpose blind, cannot apply. Identity and purpose can be very relevant in determining whether a request is vexatious. It follows that it is possible for a request to be valid if made by one person, but vexatious if made by another; valid if made to one person, vexatious if made to another.'*

30. The Commissioner has taken into account the complainant's previous interaction with the public authority when determining whether the request can be correctly characterised as vexatious. This means that even if the request appears reasonable in isolation, it may be vexatious when considered in context. The public authority has argued that the request by itself should be regarded as vexatious and this can be consolidated through considering the background of the request.
31. The Commissioner has issued guidance as a tool to assist in the consideration of what constitutes a vexatious request<sup>2</sup>. This guidance explains that for a request to be deemed vexatious the Commissioner will consider the context and history of the request as well as the

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<sup>2</sup> This guidance is called 'When can a request be considered vexatious or requested?' and can be located at the following link:

[http://www.ico.gov.uk/~/\\_media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/VEXATIOUS\\_AND\\_REPEATED\\_REQUESTS.aspx](http://www.ico.gov.uk/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/VEXATIOUS_AND_REPEATED_REQUESTS.aspx)

strengths and weaknesses of both parties' arguments. The Commissioner considers arguments put forward in relation to some or all of the following five factors to reach a reasoned conclusion as to whether a reasonable public authority could refuse to comply with the request on the grounds that it is vexatious:

- (1) whether compliance would create a significant burden in terms of expense and distraction;
- (2) whether the request has the effect of harassing the public authority or its staff;
- (3) whether the request can fairly be characterised as obsessive;
- (4) whether the request has any serious purpose or value; and
- (5) whether the request is designed to cause disruption or annoyance.

32. When considering the public authority's reliance upon section 14(1), the Commissioner has had regard to the Information Tribunal's decision in *Welsh* at paragraph 26. In that case, the Tribunal spoke of the consequences of determining a request vexatious. It pointed out that these are not as serious as those of finding vexatious conduct in other contexts and therefore the threshold for vexatious requests need not be set too high.
33. The public authority has told the Commissioner that it believes that the first three factors apply in this case, but that it also wanted the Commissioner to consider its submissions on the other factors. The Commissioner will look at these factors in turn and also factor (4) in order to consider whether the request has a serious purpose and if so, whether that purpose is such that it can outweigh all the other factors and render the request valid.

*Do requests 1-3 constitute a significant burden in terms of expense and distraction?*

34. When considering this factor the Commissioner endorses the Tribunal's approach in *Welsh* (in paragraph 27). It stated that whether a request constitutes a significant burden is:

*"...not just a question of financial resources but also includes issues of diversion and distraction from other work..."*

35. The Commissioner therefore expects a public authority to show that complying with requests 1 to 3 would cause a significant burden both in terms of costs and also diverting staff away from their core functions.



36. The Tribunal in *Gowers* emphasised that previous requests received may be a relevant factor (at paragraph 70):

*'...that in considering whether a request is vexatious, the number of previous requests and the demands they place on the public authority's time and resources may be a relevant factor'*

37. The public authority has confirmed that answering just requests 1 to 3 would not cause a significant burden in terms of expense or distraction
38. The complainant has explained to the Commissioner his belief that members of staff have acted inappropriately and the burden of these three requests is very mild.
39. The Commissioner initially agreed that the burden of the requests dated 16 April 2010 on their own is not great.
40. However, the public authority believes that their context and history are crucial to consider in this case. It explained that the burden in terms of expense and distraction of the previous request was so great that it was reasonable to say that requests 1 to 3 caused a significant burden within their context. The public authority asked the Commissioner to take into account the following arguments about the requests' context, which the Commissioner considers to be relevant to the burden of these requests:
- The previous requests received and these requests 1 to 3 (and the other requests that are to be considered later) all related to the complainant's concern about the prosecution of his daughter and his belief that the prosecution papers were flawed;
  - It explained that it does not routinely record the amount of time that it spends answering requests. It did however provide an incomplete schedule of 39 pieces of correspondence that related to requests for information that preceded these requests and post-dated June 2008. It explained that it had written to the complainant on 27 June 2009 and 12 August 2009 to explain that it was concerned about the costs being incurred in this matter and that it would restrict its communications to matters that had not previously been answered. These communications did not have any effect on the complainant and the public authority explained that it had become necessary for it to issue a further notice on 8 September 2009 explaining that the volume of correspondence was unreasonable (as it had received letters dated 19, 25, 28 and 31 August and 1 September 2009);
  - The volume of requests meant that it often received duplicate requests and further requests, before a response had been issued to the original request;

- It believed that the requests constituted an administrative burden. The volume of correspondence has led to this conclusion, for it believes that the complainant is trying to use every mechanism possible to prove the prosecution papers are flawed. While, it accepts it should be accountable, the prosecution was successful and civil actions have already been dismissed by the court;
  - The burden was exacerbated by the complainant writing to numerous employees about similar matters simultaneously and it provided evidence of this;
  - The volume of requests has put such pressure on the relevant departments that it prevented them from dealing with anything else. For example, it explained that the Dispute Resolution Team received 46 different communications from the complainant over a four month period, regularly receiving more than one different communication per day and multiple copies of some communications;
  - The complainant has not limited his correspondence to single departments. He has frequently decided that members of staff are not sufficiently senior to be competent to deal with his enquiries and therefore directed the same enquiries to senior members of staff adding to the burden and distraction;
  - The amount and nature of correspondence resulted in frequent distraction from individuals' key tasks and from the departments that they work for;
  - It believed that the complainant was likely to remain unhappy whatever was provided and that from experience the provision of further information would lead to other correspondence, further requests, and in all likelihood complaints against individual officers. It provided evidence of this occurring in relation to previous requests and explained that as a public authority it must be possible to draw an appropriate line under this issue; and
  - The provision of the information requested is not required for the complainant to make a formal complaint through its complaint procedures. It explained that if there was a complaint about the line manager of a member of staff, then that line manager's actions would be assessed, whether the complainant is certain of their names or not.
41. The Commissioner has considered the above ten points, the evidence the public authority has provided to support them and the content of the requests referred to in the schedule of correspondence from June 2008. He is satisfied that the evidence provided by the public authority shows that the ten points are supported by the evidence. He is satisfied that

the burden is increased by the complainant's insistence that his correspondence cannot be dealt with by the individuals who are normally delegated with these responsibilities.

42. The Commissioner believes that it is fair to consider in detail the context of the requests. The Commissioner is satisfied that a great deal of the public authority's time has already been spent dealing with previous requests and with complainant's associated correspondence about the prosecution of his daughter.
43. The Commissioner has considered the reasoning in the Tribunal decision of *Coggins v Information Commissioner* [EA/2007/0130] ('*Coggins*') about what constitutes 'a significant administrative burden' and is satisfied that dealing with the requests in this case would have contributed to a '*significant distraction from its core functions*' (paragraph 27). Indeed, the Commissioner is satisfied that the sheer number of the multiple interlinking requests dispersed with serious allegations about individual members of staff (without at that time engaging with the complaints process) have caused a real burden for the public authority.
44. The Commissioner is satisfied that the unceasing potential for further requests about an issue where the disagreement between the parties was not possible to resolve (outside the appropriate complaints procedure and perhaps even within it) supports the public authority's view that answering requests 1 to 3 would constitute a significant burden in both expense and distraction. It is noted that all the requests were made when the complainant was already in possession of the information he requires to access the public authority's complaint process.
45. The Commissioner has also considered the approach in *Betts v The Information Commissioner* [EA/2007/0109], where the Tribunal indicated that it would be reasonable for the public authority to consider its past dealings with the complainant, particularly in relation to its experience of answering one request which would likely lead to still further requests. This had the effect of perpetuating the requests and adding to the burden placed on the authority's resources. The Tribunal said:

*'...it may have been a simple matter to send the information requested in January 2007, experience showed that this was extremely likely to lead to further correspondence, further requests and in all likelihood complaints against individual officers. It was a reasonable conclusion for the Council to reach that compliance with this request would most likely entail a significant burden in terms of resources.'*

46. The Commissioner has considered the public authority's arguments and examined the pattern of the requests and has no doubt that this was what was happening in this case. He believes that the public authority has demonstrated that the complainant, when unhappy with any response received from the public authority (or where it does not accord with his view of the situation), will continue to correspond in an effort to sway the public authority to respond in a manner more to his liking. He believes that the complainant continues to make requests under the Act to try and force the public authority into answering his allegations about specific members of staff. The Commissioner finds that it is reasonable for the public authority to consider that compliance would lead to further correspondence, thereby imposing a significant burden.
47. The complainant has provided a considerable weight of arguments as to why he believes that the context of these requests should be disregarded and/or that the previous interaction was reasonable given that the concerns that he has. The Commissioner believes that they can be summarised as follows:
1. He believes that the public authority acted inequitably in relation to the issues contained in his substantive complaint;
  2. Accountability was therefore crucial for him to be able to understand the depths of this perceived inequity;
  3. He believes that the public authority was wrong that the complaints against the staff could not be investigated before the court action was concluded;
  4. He believes that the public authority has provided what amounts to mis/dis-information about this matter and therefore it was correct for him to address more senior staff for the same information when he believed that this was so;
  5. He has concerns about the complaints process and therefore needs to know this information to be certain that the public authority deals with those complaints correctly; and
  6. That the public authority failed to answer previous requests appropriately and in line with the Act.
48. The Commissioner has considered the complainant's arguments, including those summarised above. He has not been satisfied that the significant burden in terms of expense and distraction can be put down to the public authority's previous poor performance. While, the public authority had delayed responding to a number of requests, the sheer quality and quantity of correspondence was burdensome and was not necessary. The Commissioner appreciates that the complainant

believes that he and his daughter have been wronged. However, he believes that it is necessary for public authorities to delegate responsibilities to the appropriate staff. The repetition of requests when the answers were stated to be not acceptable to the complainant continued to create further work, further distraction and did not in the Commissioner's view constitute a responsible use of the Act.

49. Assessing all the circumstances of the case, the Commissioner finds that the three requests dated 16 April 2010, taken in the context of the hours spent dealing with the previous correspondence about the prosecution and the resulting distraction from the public authority's core purposes, would impose a significant burden in terms of both expense and distraction. He therefore finds in favour of the public authority on this factor. The Commissioner finds that this is a significant factor in favour of applying section 14(1) on the facts of this case.

*Do requests 1 to 3 have the effect of harassing the public authority or its staff?*

50. The complainant contends that there is no evidence of this request harassing the public authority or its staff, other than correctly holding it accountable for its actions. Instead he believed it was important that the information held was out in the open so that the public authority's actions were open to scrutiny. He also believed that the information was necessary for him to have confidence in the process of the public authority.
51. The public authority has explained that the requests in context do not cause serious distress, but that they do have the effect of harassing its staff.
52. The Commissioner appreciates that to harass is a strong verb and emphasises that it is the effect of the requests and not the requester that must be considered. It is an objective test: so a reasonable person must be likely to regard the request as harassing or distressing. The Commissioner's guidance states that the features that could make a request have the effect of harassing the public authority or its staff are:
- Volume and frequency of correspondence;
  - The use of hostile, abusive or offensive language;
  - An unreasonable fixation on individual members of staff; and
  - The mingling of requests with accusations and complaints.

53. The public authority has argued that the effect of these requests should be carefully judged in light of both the way the specific requests were worded and the complainant's previous behaviour.
54. In relation to the way the specific requests were worded, the structure of the request appeared calculated to reiterate the complainant's personal grievances with members of staff. They explained the allegations that he was making, asked for information about the line management and then in some cases provided an ultimatum about what would happen if they did not provide this information. The Commissioner believes that it was reasonable to connect these requests to any previous interaction that related to those ongoing grievances.
55. The public authority has argued that the way the complainant behaved previously means that it was correct to consider that these requests had the effect of harassing its members of staff.
56. The Commissioner accepts it was not the intention of the complainant to harass the staff or cause unwarranted distress in this case. However, he must note that there are aspects of the background that have had this effect. For example:
  - He has alleged that one member of the staff has made 'written verbal misrepresentations to the court' and threatened to report him to the Solicitors Regulatory Authority for 'professional misconduct' (16 Aug 2008);
  - He has alleged that another member of staff of having 'made blatant unfounded written observations in her report' and suggests that she lied under oath (16 April 2010 – in the letter containing one of the requests for information);
  - He has continually questioned the witness signature for that member of staff and alleged that it had been forged; and
  - He has informed three other members of staff that he does not accept correspondence from them as authoritative and stated that they are not competent to deal with his correspondence.
57. The Commissioner notes that the requests are mingled with accusations; they are focussed on those staff that the complainant believes have wronged his daughter and are hostile. He believes that in this case the repetition of allegations in a manner where they are to him self reinforcing amounts to an unreasonable fixation on those individuals. In light of the history and volume of correspondence, these effects are enhanced. It follows that the complainant's requests have all four features that are mentioned in the Commissioner's guidance

and so he has determined that a reasonable public authority could find that requests dated 16 April 2010 had the effect of harassing its members of staff.

58. The Commissioner supports this conclusion with the First Tier Tribunal (Information Rights)<sup>3</sup> decision of *Tony Wise v The Information Commissioner* [EA/2009/0080] which he considers to be analogous in respect of this point. In this case the Tribunal found that the complainant repeatedly called the Council '*corrupt, dishonest, unethical liars*' and that the requests '*cannot be divorced from the correspondence upon the same topic being sent to those at the Council tasked with answering the information requests*'. The Commissioner is satisfied that the public authority was under the same sort of unmitigated pressure in this case.
59. The Commissioner believes that *Coggins* provides further support. The Information Tribunal considered whether the requests amounted to having the effect of harassing the public authority and found that it did because:

*"...what we do find is that the Appellant often expressed his dissatisfaction with the CCU in a way that would likely have been seen by any reasonable recipient as hostile, provocative and often personal...and amounting to a determined and relentless campaign to obtain any information which he could then use to discredit them....we find that taken in their context, the requests are likely to have been very upsetting to the CCU's staff and that they...are likely to have felt deliberately targeted and victimised...."* (paras 53 & 54).

60. For analogous reasons as stated in *Coggins*, the Commissioner is satisfied that the requests in their context did have the effect of harassing the public authority. The Commissioner therefore believes that this factor strongly supports the application of section 14(1) in this case. He has also decided this factor deserves real weight on the facts of this case.

*Can requests 1 to 3 be fairly characterised as obsessive?*

61. The complainant contends that his requests for information are not obsessive. He has identified what he perceives as being wrong and potentially criminal behaviour. He therefore requires a full investigation of the situation, requires access to all of the appropriate information

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<sup>3</sup> The First Tier Tribunal (Information Rights) is the body that has replaced the Information Tribunal.

and the permission to verify data accordingly. He explained that he believes his actions were reasonable and any contention that he was obsessive has not been supported by any evidence. He simply wished to make a complaint against staff of the correct seniority. Indeed, he had challenged the internal review and the public authority refused to provide him with suitable evidence about why it came to this conclusion (request 4). The Commissioner has also taken the arguments summarised in paragraph 47 into account.

62. The public authority indicated that it viewed the request as obsessive. It presented the following arguments:

- The public authority is actively reviewing the initial incident and its handling of the case and the information requested at the date of the request was not required in order for him to submit this complaint;
- Prior to its review, the prosecution of the complainant's daughter was successful and two civil actions instigated by the complainant were unsuccessful. It argued that these requests and the Commissioner's involvement was orchestrated by the complainant to reopen his issues that have already been debated and considered;
- The volume and frequency of correspondence (as noted in the significant burden section) was considerable and this underlines that the approach to the substantive complaint was obsessive;
- There are a number of examples of requests that are answered and this did not stop the requests being resubmitted; and
- The background of the complaint supports its view that the requests formed part of an obsessive campaign relating to his view that the prosecution of his daughter was flawed.

63. As above, the Commissioner has noted that the arguments about burden and the repeats are supported by the evidence.

64. The Commissioner has carefully considered where the balance lies in this case and notes that he is considering the situation on 16 April 2010. The Commissioner accepts that at times there is a thin line between obsession and persistence and each case should be determined on its own facts.

65. The Commissioner believes that the complainant's general approach has indeed been obsessive and at the time of the requests it was clear that these requests did form part of an obsessive campaign against the public authority and its employees.



66. The Commissioner appreciates that there is importance in accountability and transparency where possible. However, against this he also feels that it is important that public authorities are able to use their resources effectively to promote the public good. Protection should therefore be provided where a sequence of parallel requests concerning issues under current consideration and become a continuous burden on the public authority's resources.
67. It follows that in this case, the Commissioner considers that the requests have an obsessive quality. He considers that there was little possibility of satisfying the complainant in this case. The Commissioner therefore accepts that a reasonable public authority would find these requests obsessive, so also finds in the public authority's favour on this factor. The Commissioner has not placed as much weight on this factor, for he believes that the obsessive behaviour is less pronounced in this case than the burden and the reasons why he found the requests to be harassing its staff.

*Did the request have value and/or a serious purpose?*

68. While the public authority did not originally argue that the requests lack a serious value or purpose, the Commissioner believes that it is important that he considers this factor as he believes that in some cases the serious value and purpose of a request can be such as to make an otherwise vexatious request valid.
69. The public authority agreed that it would provide its arguments to the Commissioner even though it placed its reliance on the above three factors. It explained that it accepted that the complainant believed that the requests would have serious value and purpose as he thinks that the information requested would assist him in asserting that the prosecution of his daughter was flawed.
70. However, it argued that the substantive complaint was considered in the successful prosecution, the two civil cases and the current investigation it was undertaking. In addition, it explained that the information requested was not required by the complainant to submit complaints against individual members of staff and that it did not believe that the continued request had a serious purpose in this context.
71. The complainant, as noted above in paragraph 47, argued that this request had both a serious purpose and value, for it will enable him to scrutinise the public authority's conduct in respect of the treatment of his daughter. It is clear that he believes that there are serious questions about the nature of the events that led to the prosecution

and that the requested information is required for there to be confidence in the public authority's handling of his complaint.

72. The Commissioner is satisfied that there was a serious purpose to these particular requests for information at the time they were made. The Commissioner recognises that there is an assumption built into the Act that disclosure of information by public authorities on request is in the public interest in order to promote transparency and accountability in relation to the activities of public authorities. He has therefore found that this factor favours the complainant.
73. As noted above, the Commissioner has considered whether the purpose is such as to render the requests not vexatious. This is because he believes that it is prudent to consider the position in light of the Information Tribunal's comments in *Coggins* (at paragraph 20), where it:

*"could imagine circumstances in which a request might be said to create a significant burden and indeed have the effect of harassing the public authority and yet, given its serious and proper purpose ought not to be deemed as vexatious . For instance, one could imagine a requester seeking to uncover bias in a series of decisions by a public authority, covering many years and involving extensive detail, each of fairly minor importance in themselves but representing a major issue when taken together. This might indeed be experienced as harassing but given the issue behind the requests, a warranted course of action."*

74. Therefore the Commissioner has considered whether the serious purpose can be considered to have sufficient weight to overcome the other factors. In this instance he is not persuaded that sufficient weight can be placed on the serious purpose identified to make it inappropriate to deem the request vexatious in this case. This is in view of the overall context of these particular requests and his conclusions above about other aspects of this case.

*Could a reasonable public authority refuse to comply with requests 1 to 3 on the grounds that they are vexatious?*

75. The Commissioner recognises that there is sometimes a fine balancing act between protecting a public authority from meritless applications and the promotion of the transparency in the workings of the authority.
76. He has had regard to the Information Tribunal's decision in *Welsh*, where the Tribunal commented that the threshold for vexatious

requests need not be set too high. He notes that it is not necessary for every factor mentioned in his guidance to be made out from his guidance for the requests to be correctly characterised as vexatious.

77. The Commissioner has considered all the evidence presented in this case, including the history and context of the requests. The Commissioner is satisfied that the requests had a serious purpose. However, he has found that they were harassing, obsessive and burdensome in terms of both expense and distraction. The Commissioner is satisfied that in all the circumstances the public authority was entitled to find requests 1 to 3 vexatious. He emphasises that this determination was made on the circumstances as they existed on 16 April 2010.

### Later requests

78. Every request imposes obligations on the public authority to consider the situation at the date it receives the request. The Commissioner is therefore required to make a decision about the remaining eight requests for information and whether a reasonable public authority could find them vexatious at the time when they were submitted:

- *Request 4 dated 14 June 2010.*

79. The public authority presented the same arguments for this request. It explained that the value of this request was limited as it was a meta-request for information that had already been provided through the communication of its internal review. It explained that the arguments about the burden, harassment and obsession were the same for this request.

80. The complainant explained that he was concerned about the internal review process and that this information was required for him to judge its authenticity and was not vexatious. The Commissioner has considered these arguments and is of the view that they have little merit for this request. He has determined that a reasonable public authority could find this request vexatious for the same reasons as outlined for requests 1 to 3.

- *Request 5 dated 20 July 2010*

81. The public authority presented the same arguments for this request. It explained that the value of this request was significantly reduced because the website quoted by the complainant was not one over which it had any control. It explained that the arguments about the burden, harassment and obsession were the same for this request.

82. The complainant did not provide the Commissioner with further arguments about why this particular request was not vexatious. The Commissioner has determined that a reasonable public authority could find this request was vexatious for the same reasons as outlined for requests 1 to 3.

▪ *Request 6 dated 6 June 2010*

83. Request 6 asks for similar information as requests 1 to 3 and further information that relates to the allegedly flawed prosecution of his daughter.

84. In the Commissioner's view this request would also within its context and history create a significant burden in terms of expense and distraction, be obsessive and harass the member of staff to which it was directed. He believes that the arguments above for requests 1 to 3 are equally applicable in this case, although the obsessive point is better developed with this extra correspondence. It follows that a reasonable public authority could find this request vexatious too.

▪ *Request 7 dated 17 July 2010*

85. Request 7 amounts to a meta-request in respect to request 6. The Commissioner is satisfied that a reasonable public authority can find the request vexatious for the same reason as request 6. He has noted that this request has a more serious purpose for it was not clear to the complainant at that time why he had not received a response to his request. However, he has decided that given the history the significant burden, obsessive and harassing effect of the request outweighs this serious purpose. He relies on the same arguments for these factors as cited above for requests 1 to 3.

▪ *Request 8 dated 20 July 2010*

86. Request 8 concerns a connected allegation that there were administrative deficiencies in preparing the papers to prosecute his daughter. The Commissioner is satisfied that this request within its context can be said to create a significant burden in terms of expense and distraction. He relies on the same arguments for these factors as cited above for requests 1 to 3. He finds that a reasonable public authority could find this request vexatious.

▪ *Requests 9 and 10 both dated 22 July 2010*

87. The Commissioner believes that requests 9 and 10 both individually and collectively constitute a significant burden in terms of expense and distraction. He has considered the nature of the requests and finds that

a number of them contain unproven allegations that are directed against members of staff and considers that they would have the effect of harassing those staff. He believes that the requests are also obsessive. He accepts that all the arguments for requests 1 to 3 apply to these requests too. He therefore finds that a reasonable public authority could find this request for information vexatious and section 14(1) has been properly applied to it.

88. The Commissioner's view is that these requests become cumulatively more vexatious as time goes on. This is because the evidence of harassment and obsession becomes greater. He has considered whether the submission of further requests by the complainant was reasonable, given that the earlier requests were not answered to his satisfaction and has decided that, even taking this into account, in all the circumstances the requests were vexatious.

▪ *Request 11 dated 21 June 2010*

89. Finally, request 11 is in itself most voluminous. In many respects it asks for the public authority to justify itself in the face of his allegations. Indeed, some of the requests refer the public authority to 'his report' and he also alleges fraud. The Commissioner's view is that this request in its context is indicative of the harassment that the public authority has experienced. It shows that the complainant is obsessed about the allegedly flawed prosecution papers and that dealing with the request would cause a significant burden. He accepts that all the arguments for requests 1 to 3 also apply to this request and that a reasonable public authority would find this request vexatious.
90. It follows that the Commissioner is satisfied that a reasonable public authority could find each of the eleven requests vexatious and he upholds the application of section 14(1) to them.

### **Procedural Requirements**

91. The history of these requests has been marked by a number of procedural breaches of the Act. The Commissioner will conclude this Notice by noting them in order.

#### *Section 10(1)*

92. Section 10(1) requires that a public authority complies with section 1(1) promptly and within twenty working days.
93. As the public authority failed to do this, for request 12 and 13, the Commissioner finds that the public authority breached section 10(1) in respect of these requests.

### *Section 17(5)*

94. Section 17(5) requires (subject to limited exceptions that are not relevant to this case) that where a public authority is relying on the exemption found in sections 12 or 14 then it should issue a refusal notice within twenty working days explaining that this is so.
95. The public authority failed to issue any refusal notice, prior to the Commissioner's intervention for requests 6 to 11. It therefore breached section 17(5) in relation to these requests.
96. The Commissioner requires no remedial steps to these breaches because the public authority issued an appropriate refusal notice upon his instruction during the course of this investigation.

### **The Decision**

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97. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
  - It was entitled to apply section 14(1) to each of the eleven requests that were substantively considered in this investigation.
98. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
  - It failed to issue an appropriate refusal notice for requests 6 to 11 and therefore breached section 17(5) of the Act; and
  - It failed to issue a response in time for requests 12 and 13 and therefore breached section 10(1).

### **Steps Required**

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99. The Commissioner requires no steps to be taken.

## Right of Appeal

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100. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

101. 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.

102. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 28<sup>th</sup> day of February 2011**

**Signed .....**

**Graham Smith  
Deputy Commissioner  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## **Appendix A – A schedule of all the requests that have been considered by the Commissioner in this case**

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### *Request one*

1. On 16 April 2010 the complainant wrote to a member of the public authority's staff [Individual D redacted] and explained the allegations that he would make against that member of staff, issued an ultimatum and stated:

*'I have been given to understand that your line manager is [Individual A redacted]. In accordance with the Freedom of Information Act would you please be good enough to confirm that this is still the case and that he was so also during the period 8:12H Sunday 17 June 2007 and 09 April 2008.'*

### *Request two*

2. On 16 April 2010 the complainant wrote to another member of the public authority's staff [Individual U redacted] and explained the allegations that he was going to make against them. He stated:

*'I have been given to understand that your immediate line manager is [Individual B redacted]. In accordance with the Freedom of Information Act would you please be good enough to confirm this.'*

### *Request three*

3. On 16 April 2010 the complainant wrote to another member of the public authority's staff [Individual R redacted] and explained his allegations against them, issued an ultimatum and stated:

*'I understand that your immediate line manager is [Individual C redacted] so I will make my first formal complaint to him. In accordance with the Freedom of Information Act would you please be good enough [sic \*to] confirm that he is still your immediate line manager, and was during the period 21 June 2007 and 09 April 2008.'*

4. The public authority issued its response to requests one to three on 14 May 2010. It explained that it believed that the requests were vexatious and that it was excluded from the Act by virtue of section 14(1) [vexatious requests]. It explained why this was the case. It explained that it would continue to consider future requests on a request by request basis.



5. The complainant then requested an internal review and asked for a number of issues to be taken into account.
6. On 10 June 2010 the internal review was completed. The public authority upheld its decision.
7. On 13 June 2010 the complainant responded and explained that he believed that the internal review process was defective. He used the opportunity to make a further request for information which is noted as request four in this Notice.

*Request four*

8. On 14 June 2010 the complainant responded and explained the defects that he believed were embedded in the internal review process for requests 1 to 3. He listed 11 defects that he perceived has occurred and explained that 'it is almost certainly the case that this matter will find its way to the High Court. He also asked for the following:

*'Accordingly I request a copy of The Panel's written 'Decision' on which I can base my submission to, in the first instance, the Commissioner.*

*This document will have been signed by the members and indicating their status and current offices held within TfL; nobody from LUL should have been on The Panel.*

*The Decision should contain precise reasons why:*

- (a) *The identity of RCI [Individual D redacted] cannot be clarified in order to avoid complaining against the incorrect person;*
- (b) *Further to a why [Individual D redacted], can refuse to her [sic] name her immediate line manages [sic] in order to complain to the correct person;*
- (c) *Why [Individual E redacted] and [Individual F redacted] can refuse to name there [sic] immediate line managers to complain about their having used [Individual D redacted]'s false information to draw up prosecution papers.*
- (d) *LUL can refuse to allow fotos [sic] to be taken of Liverpool Street in to [sic] order to illustrate conclusively the false statements [Individual D redacted] made in her report of Thursday 24 June 2007;*

(e) *LUL has consistently refused to provide me with a procedure for complaining against its senior managers.*

(f) *LUL is not considering matters during 2008.*

*If there has been no written record then I will find it hard to accept that a Panel even sat at all.*

*If you are refusing to comment on any one or all of the issues raised above then please give specific reasons based on the correspondence that you would have had to consult for the purposes of history and context and reasoned judgment.'*

9. On 26 June 2010 the complainant received a response. The public authority confirmed that it held relevant recorded information in relation to this request. However, it explained that it believed that the request was vexatious and it was excluded from the obligation to provide it by virtue of section 14(1). It said that the same reasoning applied as in its response to requests one to three and that it would continue to consider each request on a case by case basis.
10. On 31 July 2010 the complainant explained that he was unhappy with this response. He explained that the public authority had misconstrued his request and that he believed that an individual was not competent to deal with his correspondence. He explained that he believed that this complaint would go to the Tribunal and beyond and that the transcriptions were therefore very important. He explained that without this request being answered he would conclude that the reviews did not take place.

#### *Request five*

11. On 20 July 2010 the complainant requested the following information:
  - *When did [Individual G redacted] leave TfL*
  - *Why has his information not been removed from the TfL website*
  - *Why has his replacement not been named on the TfL website*
  - *Who is his replacement*
  - *Does London Underground (LU) have its own HR Department*
12. On 30 July 2010 the public authority issued its response. It provided similar grounds to the refusal notice issued in respect to requests one to three. It said it would continue to consider each request on its own merits. It also explained that to the best of its knowledge all the

information on the websites that it runs were up to date and accurate. It has also told the Commissioner that the website cited by the complainant was not under its control.

*Request six*

13. On 6 June 2010 the complainant submitted a new request for information [the requests were broken up with commentary and the Commissioner has chosen to list the requests for the purposes of his Notice and number them consistently for the sake of clarity]:

(a) *The three employees referred to in the enclosures*

*I would be obliged if you let me know*

*[1] who is the immediate line manager of RCI [Individual D redacted] (name stated in five different ways).*

*[2] Confirm [sic] that [Individual C redacted] is the immediate line manager of both [Individual E redacted] and [Individual F redacted].*

(b) *A further (allegedly erstwhile) employee known to me between Thursday 21 June 2007 and 25 September 2008 by the initials 'AB', LUL even refused to identify the person for the purposes # of submitting court papers in a civil action...*

*Given both the verbal and written statements to the court would you please clar [sic] ip [sic] this conflicting information by confirming that a [Individual I redacted]*

*[3] is indeed now an erstwhile employee,*

*[4] ceased to be employed by LUL sometime between 25 September 2008 and 1 October 2008 (the intervening weekend of 27/28 September notwithstanding)*

*[5] in the absence of circumstances warranting dismissal or the breaking of his contract by simply 'walking off the job', LUL was willing to ignore any required period of notice....*

(c) *.... Please let me know*

*[6] if [Individual J redacted] is [Individual K redacted]'s immediate line manager;*

*[7] who is [Individual J redacted]'s immediate line manager...*

*[8] Therefore in respect [sic] of ATPs. I'd be obliged if you would clarify who 'approves' and how it is done.'*

*Request seven*

14. On 17 June 2010 the complainant wrote another letter to the public authority. Within that letter he asked a specific grade of staff the following:

*'I refer to my letters of 6 June 2010 [request 6] and 17 June 2010....*

*Please let me know whether you intend to reply or whether you have passed the whole or only part of the enquiry over to [Individual L redacted] for his attention instead.'*

*He also sent a copy of the letter to [Individual L redacted]'*

*Request eight*

15. On 20 July 2010 the complainant wrote another letter and within the appendix of that letter he requested a number of items of information from [Individual J redacted]:

*'Refer to the 'Rolling Log' already on your records*

*Bearing in mind that you ought to have been aware of the 'correspondence trail' down from [Individual M redacted]'s office to your (info by fone [sic] per [Individual K redacted]) would you please confirm that:*

- 1. You sent neither corrections nor comments to the Rolling Log, nor requested [Individual K redacted] to do so.*
- 2. You did not instruct either [Individual K redacted] or anyone else to take action as in 1., or if instructed by you, they took no action anyway.*
- 3. After your 6 weeks' 'holiday absence' (per [Individual K redacted]) you either fully de-brief [sic] [Individual K redacted] or not.*

4. *Since – presumably – you were [Individual K redacted]'s immediate line manager between 28 August and 04 October 2008, you might wish to de-brief her before replying to any of the above.*
5. *What are your reasons for the failure to reply to all my letters up to this point in time, or arranging for someone to do so.*
6. *Was [Individual N redacted] is [sic] your immediate line manager at all material time [sic], and now*  
*If 'no', who was/is.*
7. *Are you [Individual K]'s immediate line manager and was she authorised to make admin decisions and take appropriate actions when you were on holiday for approximately six weeks, specifically, in connection with this matter/*
8. *Is it standard LUL practice to leave a managerial function without a locum for six weeks.*  
*Did LUL HR or TfL HR or the CEO agree to such an arrangement.'*

*Request nine*

16. On 22 July 2010 the complainant wrote to [Individual C redacted] and requested the following for a 'legitimate legal purpose/action':

*'A. Re the RCI's*

1. *Her identity: by whatever name she is known in HR, to you and work colleagues:*
  - (a) *Have you at all material times been between 0812H Sunday 2007 [sic] and the present time been [Individual D redacted]'s immediate line manager. If no, please advise to whom you will be re-directing these requests.*
  - (b) *Please confirm what was her correct identity during all material times.*

- (c) *Notwithstanding the admission to the BTP on or about 28 April 2008 and the acknowledgment by TfL on 7 July 2008 of a possible 'typographical error' please resolve the matter of the handwriting issues [sic] remains to be resolved by sending documents or detailed explanations which are required for legitimate legal purpose/action.*

2. *RCI's training, operating procedures and expertise*

*Those local procedural manuals or training manuals or written authority or similar documents within or outside LUL, or any mandatory legal reading material for prosecuting staff which permit(ed) or authorise(d) or recommend(ed) or provided other relevant information that LUL in general and your department in particular, is (was) entitled to do any of all of the following:*

- (i) *Present to [Individual O redacted] and [Individual P redacted]'s department written evidence such as the WS of the RCI without corroborative photographic [sic] of the Liverpool Street Station crime scene;*
- (ii) *Refuse to provide corroborative evidence of the RCI's report even when discrepancies in the physicalities were challenged in my own [the complainant's] report.*

*Specifically*

*[1] I request photographic corroborative evidence of the RCI's WS and which is provided either by your department of the above, or by me under the supervision of your department.*

*Alternatively*

*[2] The discrepancies can be checked by myself accompanied by an official from your department.*

- (iii) *To gather, record and then present evidence in such a way which pre-judged the mitigating evidence required by [Individual C redacted] department under the REPP's provisions.*

*Specifically:*

*The RCI's WS says that '... She did not accept [my daughter's] explanation...' [or words to that effect]:*

*The 'explanation' was actually 'evidence in mitigation' which ought to have been recorded and passed to SI for evaluation and not pre-judged on the spot.*

- (iv) *To give evidence under oath in court which exempts her from properly identifying herself to the court in the manner required by a person acting in the capacity of a police officer.*

*Specifically:*

*By giving function/status/office, name and identification number. The RCI KD did not do this and is required to explain why she told only half the truth under oath.*

*B. Information required re 'AB'*

*Therefore please confirm that*

- 1. 'AB' / [Individual I redacted] was indeed employed in your department during the material time, and under your direct managerial control.*
- 2. HR agreed to him leaving without the required notice period [whether on your recommendation or nor [sic]], or that he was fired, or that he simply '....walked off the job...'.  
.*
- 3. If either DF or EO was/is mistaken or confused about 'AB' then, assuming you were his immediate line manager, please clarify for the ICO what is/was the correct situation concerning 'AB'.'*

*Request ten*

17. On 22 July 2010 the complainant also wrote to another individual and requested the following for a 'legitimate legal purpose/action':

*'1. Documents of parts thereof giving:*

- 1.1 The correct identity in terms of surname and Badge Number, and of the [rank redacted] known as – and variously – [sic] [Individual D redacted].*
- 1.2 The verified handwriting of [Individual D redacted] in view of a forensic opinion by a certified handwriting expert.*

1.3 *An explanation why, in the context of the attached documents dated 28 Apr 09 (from the British Transport Police) and 07 July 2008 (from TfL Legal) your department failed to send the same information to me either before or after those dates.*

2. *Those local procedural manuals or training manuals or written authority or similar documents within or outside LUL, or any other mandatory legal reading material for prosecuting staff which permit(ed) [sic] or authorise(d) or recommend(ed) or provided other relevant information that LUL in general and your department in particular, is (was) entitled to do any or all of the following:*

2.1 *Present written evidence such as the WS of the RCI without corroborative photographic [sic] of Liverpool Street Station crime scene;*

2.2 *Refuse to provide corroborative evidence of the RCI's report even when discrepancies in the physicalities when [sic] were challenged by my own [the complainant's] report;*

2.3 *To deviate from the RRA 1889 by substituting the term 'avoid' in Sectin [sic] 5(3)(a) for 'evade' in your REPP for the purposes of prosecuting the non-payment of a fare.*

2.3[sic] *Enabled [Individual Q redacted] to pronounce that:*

*'..intent is a matter of fact and doesn't have to be proved'.*

2.4 *Enabled [Individual Q redacted] to produce the enclosed 'not-fit-for-purpose' document for review by SI;*

2.4[sic] *Enabled SI subsequently to review and then pass 2.4 as fit for the purpose of presenting it in court for the purpose of securing a conviction.*

3. *In respect to LUL's Approved Prosecutors.*

3.1 *Lays down the Approval Procedures;*

3.2 *Gives the contents of the Approval Procedure;*

3.3 *Names the Approving body whether internal or external to LUL.'*

*Request eleven*



18. On 21 June 2010 the complainant also wrote to another individual. His letter contained three appendices that asked for further information. The requests for information are outlined below:

***'Appendix 1 - In order to make a cogent complaint I needed answers to the following specific questions about the persons below, but which LUL never answered:***

1. *[Individual D redacted]*

1.1 *Why has LUL refused to allow me since May 2008 to take fotos [sic] of the Liverpool Street Station 'crime scene' in order to prove the falsity of statements made by this RCI in her report of Thursday 21 June 2007.*

1.2 *Why have LUL managers knowingly refused to order or prevail upon this person to clarify her identity, and what is her true identity.*

1.3 *For the purposes of formulating the complaint and directing it to the right person, who was her immediate line manager(s) from Sunday 12 June 2007 to the present time.*

1.4 *Why did she knowingly present false information to the Prosecutions Department and then knowingly permit its use in the preparation of legal purposes for the purpose of securing a conviction....*

2. *[Individual I redacted]*

2.1 *This person was a co-signatory to 1.4 above/*

2.1.1 *On Friday 25<sup>th</sup> September 2009 TfL Legal wrote to me:*

*'...her reports to [Individual C redacted]'*

2.1.2 *On Friday 02 October 2009 in the Bow County Court the TfL Legal representatives told the Court in the presence of [Individual R redacted]: 'he left the company for reasons unconnected to this case'.*

2.1.3 *Therefore which of 2.1.1 or 2.1.2 is true given LUL's normal terms of employment? I still have not received a reply, but the matter has been sent for the attention of 'The General Manager TfL Group HR Department' for his action.*

2.1.4 *Why did the incumbent HR Manager not reply to the Questions in my letter of 7 June 2010.*

2.2 *Given this conflicting information in 2.1, I wrote to [Individual G redacted] on 7 June in order to clarify the situation for the purposes of the pending complaint regarding perceived irregularities between his signature and that of [Individual D redacted], as well as her signature and normal script. On the basis of that prima fact [sic \*facie] evidence a report was commissioned from a forensic handwriting expert, which further prompted cause for a complaint.*

2.2.1 *Why have other LUL managers, who have known about 2.2. since 11 July 2007 failed to answer my questions regarding this in order that I might formulate my complaint.*

3. *[Individual U redacted]*

3.1 *Why did he send forward for approval by [Individual R redacted] (below) the enclosed statement of facts when it did not coincide with the RCI's report in all respects and on the face of it was otherwise obviously unfit for purpose;*

3.2 *Why did he ignore the relevant provisions of the LUL document Revenue Enforcement and Prosecution Policy (REPP) when drafting the papers;*

3.3 *Why did he ignore representations made to him when the flaws as per 3.1 and 3.2 were brought to his attention on 11 July 2007 before the papers were sent to [Individual R redacted] (see below).*

4. *[Individual R redacted]*

4.1 *Why did he sign off the papers in breach of his obligations under the provisions of the REPP of which he has ownership.*

4.2 *Further to 4.1 why did he therefore concur in all of 3.1 – 3.3.*

5. *Why did [Individual C redacted] in his supervisory capacity, not take action to ensure that the proper implementation of the prosecution functions and in accordance with the REPP.*

6. *[Individual J redacted] / [Individual K redacted]*

*Why did these two managers not answer my questions as raised by the events related to the enclosed 'Rolling Log' of events.*

7. *Why did 1. , 2. and 5. above not deal with letters sent to them directly*

6.1 [sic] *If they discussed the letters with their immediate line managers then why were they advised to withhold [sic] or refuse to give information on a straightforward personnel matter.*

**Appendix 2.** *I addressed a letter directly to [person redacted] on 07 June 2010 asking for the information.*

*Therefore:*

- (a) *Why did the incumbent manager not reply to that letter.*
- (b) *Why did the incumbent manager not respond to the reminder letter sent on 17 June.*
- (c) *Why at the time of writing is there still no reply from the Department.*
- (d) *Why haven't any reasons been given for this refusal to supply information.*

**Appendix 3** *Miscellaneous: mis/dis-information: No information*

5.1 *Why did [Individual S redacted]*

5.1.1 *Direct me to complain to the Local Government Ombudsman on two separate occasions when the LGO never ever had jurisdiction over the internal personnel matters of the LUL;*

5.1.2 *Cite "[ongoing] technicalities' as late 31 March 2010 as a basis for refusing to give information when in fact the legalities had already been concluded by TfL Legal on 04 December 2009.*

5.2 *Why did [Individual T redacted]*

5.2.1 *Also incorrectly cite legalities on 16 December 2009 for the same purpose as 5.1.2.*

5.2.2 *Delay from 18 December 2009 until 20 January 2010 to reply to a further query only to an [sic] answer in the same vein as in 5.1.2 and 5.2.1.*

5.3 *Why has [Individual U redacted] refused to supply*

- 5.3.1 *A written account of the Decision by the review which is duly signed, dated with the information on Panel Members and giving reasons for their decision.*
- 5.3.2 *As for 5.3.1. but in relation to re-consideration of the original Decision.*
6. *Do [Individual J redacted] and [Individual K redacted] intend to give reasons why they have not replied to my letter of August 2008 asking for relevant information. If not, then why not.'*
19. After the Commissioner's intervention, the public authority issued a response on 26 November 2010 to requests six to eleven. It explained that in its view the six requests were vexatious and it was excluded from its obligations under the Act, by virtue of section 14(1). It provided similar reasons as above. It explained that it may not be required to respond to future requests on the same matter and put the complainant on notice that it may rely on section 17(6).

*Request twelve*

20. On 14 December 2009 the complainant requested considerable information about the qualifications required to undertake set posts. The nature of those requests is not relevant for the purposes of this Notice.
21. On 26 February 2010 the public authority issued its response. The date of the response is the only issue that is relevant to this investigation.

*Request thirteen*

22. On 27 January 2010 the complainant requested further information about the public authority's complaint procedures against middle managers. The public authority said they received it on 3 February 2010.
23. On 30 March 2010 the public authority communicated its response. The date of the response is the only thing that is relevant to this investigation.

## **Legal Annex – A list of relevant statutory provisions**

### **Section 1 - General Right of Access**

Section 1 of the Act provides that:

- (1) Any person making a request for information to a public authority is entitled –
  - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
  - (b) if that is the case, to have that information communicated to him.
- (2) Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”
- (3) Where a public authority –
  - (a) reasonably requires further information in order to identify and locate the information requested, and
  - (b) has informed the applicant of that requirement,the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”
- (4) The information –
  - (a) in respect of which the applicant is to be informed under subsection (1)(a), or
  - (b) which is to be communicated under subsection (1)(b),is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”
- (5) A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”
- (6) In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

## Section 10 - Time for Compliance

Section 10 of the Act provides that:

(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

(2) Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt."

(3) If, and to the extent that –

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given."

(4) The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations."

(5) Regulations under subsection (4) may –

(a) prescribe different days in relation to different cases, and

(b) confer a discretion on the Commissioner."

(6) In this section –

"the date of receipt" means –

(a) the day on which the public authority receives the request for information, or

- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

## **Section 14 – Vexatious or repeated requests**

Section 14 of the Act provides that:

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

## **Section 17 - Refusal of request**

Section 17 of the Act provides that:

(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.

(2) Where—

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—

(i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or

(4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

(7) A notice under subsection (1), (3) or (5) must—

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50.