

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 May 2012

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

Decision

1. The complainant made a freedom of information request to Transport for London (TfL) for details of the speed limits on London Underground's Victoria Line. TfL refused the request under the health and safety exemption and the national security exemption. The Commissioner has investigated the complaint and found that neither exemption is engaged and that the information should be disclosed. The Commissioner also found that the TfL breached FOIA due to the considerable delay in responding to the complainant's request.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - TfL shall disclose the requested information to the complainant.
3. The public authority must take these steps within 35 calendar days of the date of this Decision Notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 4 April 2011 the complainant made a freedom of information request to TfL for details of the speed limits for the London Underground Victoria Line. The request read as follow:

"I write to request the following information on the Victoria Line.

Please provide me with details of the line speed limits on the Victoria Line between stations and permanent speed restrictions imposed by track circuit name.

If I can give an example of what I'm looking for:

Walthamstow to Blackhorse Road, Xmph with the exception of Track WV and 475B where it is Ymph.

Or if the line speed is the same along a longer stretch then that would be fine too- e.g. Walthamstow to Finsbury Park with a list of exceptions.

I would also like to know the speed limits of the various sidings, crossovers and the Northumberland Park depot approaches (Signal VN9/VN11 to Seven Sisters)."

5. TfL failed to respond to the request within 20 working days and a substantive response was not issued until 13 August 2011. At this point TfL confirmed that it held information falling within the scope of the request but that it was being withheld under the exemption in section 38 of the Act as disclosure would or would be likely to endanger the staff and users of the London Underground. TfL concluded that the public interest in maintaining the exemption outweighed the public interest in disclosure and outlined the reasons for reaching this view.
6. The complainant subsequently asked TfL to carry out an internal review of its handling of his request and it presented its findings on 19 October 2011. The internal review upheld the decision to refuse the request under section 38(1)(b) but also said that the information was believed to be additionally exempt under section 24, the national security exemption.

Scope of the case

7. On 21 October 2011 the complainant contacted the Commissioner to complain about TfL's decision to withhold the information he requested and the time taken to respond to his request.

Reasons for decision

8. TfL explained that it was refusing the request because disclosure of the information could encourage a terrorist attack on the London Underground or else allow an attacker to maximise the effectiveness of such an attack. As such the information was refused under the exemptions in section 38(1)(b) (Health and Safety) and section 24 (National Security). The Commissioner has first considered the TfL's application of section 38(1)(b).

Section 38(1)(b) – Health and Safety

9. Section 38 provides that:

(1) Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual

10. TfL had said to the complainant that in its view disclosure would be likely to endanger the safety of users of the London Underground because it could be used by those who wish to disrupt its services. It explained that the information would allow individuals to identify locations to disrupt services or commit malicious acts.
11. In considering whether section 38 applies the Commissioner takes the approach that the term 'endanger' should be interpreted in the same way as the term 'prejudice' in other exemptions in FOIA. Therefore the Commissioner will follow the prejudice test when deciding if the exemption is engaged.
12. The prejudice test is not a weak test, and in order to engage an exemption a public authority must be able to point to prejudice which is "real, actual or of substance" and to show some causal link between the potential disclosure and the prejudice. The test has been described by the Information Tribunal as having three separate steps:

"First, there is a need to identify the applicable interest(s) within the relevant exemption.....Second, the nature of 'prejudice' being claimed

must be consideredA third step for the decision-maker concerns the likelihood of occurrence of prejudice.”¹

13. As regards the first step, the Commissioner is satisfied that the relevant exemption has been applied to the prejudice claimed by TfL. Clearly, were disclosure to encourage an attack on the London Underground then the safety of individuals would be endangered.
14. The second part of the test involves considering the nature of the prejudice claimed and how this will arise. The Information Tribunal has described this in the following terms:

“An evidential burden rests with the decision maker to be able to show that some causal relationship exists between the potential disclosure and the prejudice and the prejudice is, as Lord Falconer of Thoronton has stated ‘real, actual or of substance’...If the public authority is unable to discharge this burden satisfactorily, reliance on ‘prejudice’ should be rejected.”²

15. In justifying its reliance on the exemption TfL acknowledged that when taken in isolation the information “might be viewed as presenting a very low risk”. However it said that when aggregated with other information it could be of “material use to those with malicious intent who might want to plan an attack on the Underground”. In particular it suggested that the requested information could be combined with other information already in the public domain such as Working Time Tables and junction diagrams to determine points of particular vulnerability where damage or disruption might be maximised. It went on to say that health and safety risks were particularly heightened on the London Underground as there were particular problems associated with evacuating passengers, access of emergency services and the need to move trains out of danger areas and prevent them backing up which it said were exacerbated on the Victoria Line which was the subject of the complainant’s request.
16. TfL also took into account the fact that the complainant had indicated that he wanted to use the information in order to build a simulator of the Victoria Line signalling system. It suggested that the requested information, when combined with information already in the public domain or information which could yet be released, could allow a

¹ Hogan v Information Commissioner and Oxford City Council [EA/2005/0026 & EA/2005/0030], paras. 28 – 34.

² Hogan, para. 30.

simulator to be developed which “accurately reflects the operational characteristics of the Victoria Line”. It argued that the exemption was engaged because such a simulator would be able to gather together information from a variety of sources which would provide a picture of the locations of the trains and the characteristics of their movements which would allow for a better understanding of its ability to respond to a terrorist attack. It said that in its view such a scenario would allow for terrorists to maximise the effectiveness of an attack on the London Underground.

17. TfL has argued that a terrorist attack on the Underground is not a hypothetical or remote possibility. It used the example of the 7th July attacks to demonstrate that there was a real, significant and ongoing risk of a terrorist attack on the London Underground.
18. On the other hand, the complainant presented a set of informative arguments as to why disclosure of the information he requested would be unlikely to increase the risk of an attack on the Underground or increase the effectiveness of such an attack. In particular the complainant made the following arguments which the Commissioner found useful in making his decision.
 - TfL had already released the Working Timetable for London Underground as well as some track and signalling diagrams.
 - Cab ride DVD's of the London Underground are available including the Victoria Line.
 - It is possible to get a reasonable idea of the speeds of running lines by use of a stopwatch and sitting on a train.
 - Other Underground lines have speed signs visible to the public.
 - Members of the public are permitted to visit control centres for other Underground lines.
 - London Underground already publishes technical details of its rolling stock.
 - The complainant claimed that much of the “operational and indeed technical control information for the Victoria Line (and other lines) is already in the public domain”.
19. In particular, the complainant referred the Commissioner to the <http://traintimes.org.uk/map/tube/> website which plots the current location of London Underground trains in real time. The website is based on live data feeds from TfL. The Commissioner is aware of other publicly available resources which provide information on the location of Underground trains. For instance, one website provides updated departure information for trains operating on the Victoria line, including details of which track circuit a train is occupying allowing for its location to be identified.

<http://www.transporthacker.com/tubehorus/?line=V&mode=advanced>

20. The Commissioner has considered the arguments put forward by TfL and accepts that the possibility of an attack on the London Underground is far from hypothetical. The terrorist attacks in July 2005 clearly demonstrate that the London Underground is a high profile target for those who might wish to attack the UK and its infrastructure. However, the Commissioner is of the view that TfL has failed to demonstrate why disclosure of the particular information requested by the complainant would make an attack more likely or increase the effectiveness of such an attack.
21. It is apparent that there is already a great deal of information in the public domain about train movements, and the speed of trains operating on various parts of the Underground. It is difficult to see how disclosure would increase the risk of an attack on the Underground beyond the information already in the public domain. There already seems to be information available, some of it apparently provided by TfL itself, which would allow someone to gain an understanding of where trains may be at a particular point in time. Furthermore, the concerns identified by TfL in relation to the Victoria Line do not seem to be shared by other lines on the Underground where, as the complainant himself pointed out, speed limits signs are visible. This leads the Commissioner to question whether disclosure really would have the effect suggested by TfL. Indeed, in its response to the Commissioner TfL explained that whilst it may be possible to estimate train speeds this was not the same as the requested information because the speed being travelled in practice will not necessarily equate to the speed limit that is in place. This would seem to undermine the argument that disclosure of speed limits would allow someone to plot the location of trains or identify areas to maximise the effectiveness of an attack.
22. TfL acknowledged that the information on its own may be seen as fairly innocuous but that the risk of endangerment arose when the information was combined with information already in the public domain or information which could yet be disclosed. The Commissioner will consider so called 'mosaic arguments' like this but such arguments cannot be speculative and need to specifically explain:
 - what information is already available and to whom,
 - the likelihood of the various types of information being combined in the way suggested, and
 - why the combination of this specific information would or would be likely to cause any prejudice

23. In this case the Commissioner is not satisfied by TfL's generalised and vague assertions that the requested information could be combined with other unspecified information to possibly encourage attacks on London Underground. TfL has not specified exactly what other information is available and how this could be combined to have this effect.
24. The Commissioner should also note that during the course of his investigation TfL provided him with a copy of a letter from the British Transport Police in support of its position that the information should be withheld. Whilst this was informative in helping to illustrate the severity of the threat posed to the London Underground this similarly failed to adequately demonstrate why disclosure of the information requested by the complainant would be of assistance to a person or persons who would wish to mount an attack on the Underground.
25. In the Commissioner's view TfL has failed to sufficiently demonstrate a causal link between disclosure of the requested information, either on its own or when combined with other information, and the prejudice, or endangerment it has identified. Therefore the Commissioner has decided that section 38(1)(b) is not engaged.

Section 24 – National Security

26. At the internal review stage TfL indicated that it also wished to rely on the section 24 exemption. Section 24 provides that information is exempt if the exemption from section 1(1)(b) is required for the purpose of safeguarding national security.
27. The approach of the Commissioner is that *required* in this context means *reasonably necessary*. It is not sufficient for the information sought to simply relate to national security, there must be a clear basis for arguing that disclosure would have an adverse effect on national security before the exemption can be engaged.
28. The term national security is not defined by FOIA or indeed any statute, however, in its submission to the Commissioner TfL argued that the London Underground should be seen as being central to national security because it is part of the nation's critical infrastructure by virtue of its importance to the functioning of London and its economy. The Commissioner was referred to the website of the Centre for Protection of National Infrastructure which defines critical elements of the national infrastructure as those where:

*"the loss or compromise of which would have a major detrimental impact on the availability or integrity of essential services, leading to severe economic or social consequences or to loss of life."*³

29. TfL said that it considered this to be true of London Underground because if it was attacked or unable to function not only could there be a loss of life but that it would be unlikely that the rest of the transport network in the capital would be able to provide the level of service required. It also suggested that there would be economic consequences as evidenced by the estimated economic effects when the Underground is unable to function due to industrial action.
30. The Commissioner accepts the importance of the London Underground to the national infrastructure. Were disclosure to encourage an attack on the Underground or increase the effectiveness of such an attack then an argument could reasonably be made that the exemption is required for the purpose of safeguarding national security. However, the Commissioner has already said in relation to the application of section 38(1)(b) that on the evidence available to him he does not accept that disclosure would have this effect. TfL's argument for engaging section 24 is essentially the same as for applying section 38 and therefore the Commissioner also finds that section 24 is not engaged.

Other matters

31. The Commissioner also notes that the complainant submitted his request to TfL on 4 April 2011 but did not receive a substantive response until 13 August 2011. Section 17(1) of FOIA provides that where a public authority is refusing a request it must provide an applicant with a notice stating why the information is exempt within 20 working days. In this case TfL significantly exceeded this deadline and therefore the Commissioner has recorded a breach of section 17(1) of FOIA.

³ <http://www.cpni.gov.uk/about/cni/>

Right of appeal

32. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

33. If you wish to appeal against a Decision Notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Signed

Graham Smith
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