

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 August 2012

Public Authority: Department for Transport
Address: Great Minster House
33 Horseferry Road
London
SW1P 4DR

Decision (including any steps ordered)

1. The complainant has requested information from the Department for Transport (DfT) relating to the use of airport security scanners (scanners). The Commissioner considers that these requests relate to similar matters dealt with in a previous decision notice¹ and therefore the analysis and conclusions reached in that previous notice are applicable in this instance. The Commissioner's decision is that the DfT was correct to deem the requests considered here as vexatious for the purposes of section 14(1) of the FOIA.
2. Furthermore, the Commissioner has concluded that under section 17(6) of the FOIA (further refusal notice not required) the DfT was entitled not to issue refusal notices in respect of the requests.
3. In view of the above, he does not require the DfT to take any further action.

Request and response

4. On 30 December 2011, the complainant wrote to the DfT and requested information in the following terms:

"The UK did not support an opt-out when this was presented to the EU Aviation Security Committee".

¹ Reference FS50411835 on the ICO website:
http://www.ico.gov.uk/tools_and_resources/decision_notices.aspx

(1) What date did this occur?

(2) Did the DfT also inform the EU Commission, or make it clear to the Commission, that the UK did not and would not support an opt-out?

(3) If so, what date did this occur?

(4) When the EU Commission gave the DfT permission to extend, for a further year, its trial of x-ray body scanners at Manchester Airport did the DfT inform the EU Commission, or make it clear to the Commission, that it would not allow an opt-out for passengers (i.e. that it intended to defy the new EU Commission implementing Regulations on security scanners which are legally binding in their entirety on all member states)?

(5) If the answer to question 4 is yes, then what briefly was the EU Commission's response to the DfT? Was the Commission in agreement with, or accepting of, the DfT's decision that the UK could ignore the fundamental rights of passengers to request an opt-out if they so wished?'

5. The DfT did not respond to the request.

6. On 6 March 2012 the complainant wrote to the DfT and requested information in the following terms:

'The DfT recently published an Equality Impact Assessment (EIA) on the use of security scanners at UK airports.

(1) Has the DfT produced a similar (post consultation) Privacy Impact Assessment (PIA) on the use of security scanners at UK airports?

(2) If so, does the DfT intend to publish this PIA?

(3) If the DfT does not intend to publish it, could it please explain why it will not do so?

(4) If no post consultation PIA has been produced, could the DfT please explain why this is?'

7. The DfT did not respond to the request.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his requests for information had been handled. Specifically, he complained that the DfT had not replied to his requests.
9. The DfT informed the Commissioner that it had not responded to the requests as it was relying upon sections 14(1) and 17(6) of the FOIA. The Commissioner's investigation therefore focussed on whether the DfT had correctly applied these parts of the FOIA to the requests.

Reasons for decision

10. Section 14(1) of the FOIA provides that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."
11. As stated in paragraph 1, the Commissioner issued a decision notice relating to a request on similar subject matter as the requests in this decision notice. That previous decision notice found that the DfT had correctly relied on section 14(1) in that instance.
12. The complainant has been in correspondence with the DfT in relation to the issue of scanners. Specifically, he has raised concerns over privacy implications and an 'opt out' alternative to those scanners. The scanners were deployed at airports around the UK with the aim of addressing perceived gaps in airport security following an attempted attack on Northwest airlines flight 253 to Detroit on Christmas Day 2009. The UK brought in the scanners via the issuing of Directions under the Aviation Security Act 1982.
13. The Commissioner considers that as the two requests featured above represent a continuation of the complainant's previous correspondence with and requests to the DfT about similar matters, the analysis and conclusions set out in the previous decision notice are also applicable in this instance. For brevity, the Commissioner will not reproduce the content of that decision notice here but he has adopted the analysis and concluded that the DfT correctly applied section 14(1) to these requests.
14. The Commissioner understands that the complainant disagrees with that previous decision notice and he has taken his arguments into account. However, he is of the view that the analysis continues to hold for the requests that are the subject of this notice.

Section 17

15. Section 17(5) of the FOIA provides that:

"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."

16. Section 17(6) of the FOIA states that a public authority is not required to provide a refusal notice 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."

17. In this case, the DfT did not respond to the requests and it is relying on section 14(1) in regard to those requests. On 31 August 2011 it provided a refusal notice to the complainant in respect of the request which was the subject of the decision notice in FS50411835. That refusal notice stated that the DfT would not provide any further responses to the complainant on the subject of the request.

18. The DfT has informed the Commissioner that in accordance with section 17(6), it considers that it would be unreasonable to expect the DfT to continue to give further notices of the application of section 14(1) of the FOIA for subsequent related requests.

19. The Commissioner is of the view that, in all the circumstances, it would be unreasonable to expect the DfT to issue separate notices regarding the two requests. He considers that this is the case because he has already determined that a previous request about the underlying subject matter was vexatious, which renders the issuing of a further notice unreasonable. He has therefore concluded that section 17(6) has been appropriately applied to these requests.

Right of appeal

20. 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

21. 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.
22. 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

Rachael Cragg
Group Manager
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Wilmslow
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SK9 5AF