

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 January 2013

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

Decision (including any steps ordered)

1. The complainant has requested information about communications regarding the location of a kebab kiosk in Hounslow. TfL refused to comply with the request relying on section 14(1) of the FOIA and later Regulation 12(4)(b) of the Environmental Information Regulations 2004 (EIR). The Commissioner's decision is that TfL has correctly applied both section 14(1) and Regulation 12(4)(b) to refuse the request.
2. The Commissioner requires the public authority take no steps.

Request and response

3. On 3 May 2012, the complainant wrote to TfL and requested the following information in relation to land at the junction of Bath Road and Great South West Road in Hounslow where *[name redacted]* has a kebab kiosk:

"(1) Please find attached the copy of the communications between various officers of TfL and [name redacted]. These communications refer to 'stopping up of the highway' and subsequent transfer (or proposed transfer) of the land to [name redacted] (or his limited company or relatives etc) either by sell or lease or a licence etc.

a) I want to get the copy of all communications including but not limited to your internal file notes etc, regarding the discussions TfL held with [name redacted] (or his representatives or his company etc); and internally among its own officers.

b) Please provide me all the documents including current status of this land which should include but not limit to the transfer (or proposed transfer) of this land to [name redacted]. It will help if you provide me all the related documents too in one go instead of me having to write to you again and again or make new FOI requests after receiving revelations from the previous requests. This must include all drawings and attachments, application for stopping up order and subsequent communications. These documents possibly are in possession of your [name redacted], [name redacted], [name redacted] and [name redacted] (Group Property) etc. Also that these persons of yours must be able to point out who else hold related information.

c) Has this part of Highway been stopped? Please provide documents you have in your possession.

d) Has this land been transferred to [name redacted], his relatives or his company either by way of sell, lease, a licence or some other means? Please provide copies of all the documents and contracts etc.

(2) Also that part of this land has been registered with Land Registry, by [name redacted] and his relatives in their name as a way of adverse possession. TfL's [name redacted] and [name redacted] had indicated to me that TfL is taking steps to cancel his registration. In this reference please provide the following:

a) Copy of any communications, TfL has had with [name redacted] and related parties.

b) Copy of communications, TfL has had with Land Registry and other related parties.

c) Copy of your internal file notes and communications among TfL's own officers.

d) Copy of any other related communications."

4. TfL responded on 29 May 2012. It stated that it considered this request was vexatious under section 14(1) of the FOIA. In making this decision, TfL explained it considered that this request was a repeat of information previously requested, such as requesting copies of communications between TfL and the owner of the other kebab kiosk. In addition TfL considered that responses it had provided to earlier requests on this subject had led to further requests based on the information given out. TfL also explained it considered the request could be characterised as obsessive and intended to cause disruption and annoyance.
5. Following an internal review TfL wrote to the complainant on 29 June 2012. It upheld its original position but explained that when reviewing

its earlier responses it considered that some of the information was actually environmental information and should have been considered under the EIR. TfL therefore considered that any information which constituted environmental information was exempt under regulation 12(4)(b) of the EIR.

Scope of the case

6. The complainant contacted the Commissioner on 2 July 2012 to complain about the way his request for information had been handled and the decision of TfL to declare his recent request vexatious and manifestly unreasonable.
7. The Commissioner will consider whether TfL was correct to apply section 14(1) of the FOIA and regulation 12(4)(b) of the EIR.

Background

8. TfL states it is currently engaged in an ongoing legal dispute with the complainant concerning an area of land on the junction of the A30 and A4 which forms part of the public highway for which TfL is the Highway Authority. The complaint relates to whether or not the complainant has any right to trade on this land and the complainant has submitted two judicial review applications against TfL. One of these applications related to the disputed land and the removal of the complainant's trailers from this land and was dismissed by the Courts. The second of the applications was allowed on the narrow point of law of whether the land constituted a highway. The complainant has also requested information from TfL on the subject of another trader [*name redacted*] who has sited kebab kiosks on this land.

Reasons for decision

9. Section 14(1) of FOIA states that, section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
10. The Commissioner considers that the key questions for public authorities to consider when determining if a request is vexatious are:
 - (i) whether compliance would create a significant burden in terms of expense and distraction;

- (ii) whether the request is designed to cause disruption or annoyance;
 - (iii) whether the request has the effect of harassing the public authority or its staff;
 - (iv) whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable;
 - (v) whether the request has any serious purpose or value.
11. In this case TfL has argued that compliance with the request would create a significant burden, the request can be characterised as obsessive and has no serious purpose or value. The Commissioner has therefore considered these points when making his decision.

Whether compliance would create a significant burden in terms of expense and distraction

12. The Commissioner recognises that this is a consideration of more than just costs. The number of previous requests and the demand they place on a public authority's time and resources can be a relevant factor if it can be sufficiently demonstrated.
13. TfL has demonstrated that this request is the fourth in a series of requests which started less than three months before this request was submitted. As well as these requests, TfL has explained that the complainant has submitted further queries often as a result of information received in response to these requests. In some cases TfL has evidenced that new requests were made before responses had been sent to previous requests. In each case, the requests contained multiple questions and often repeated or overlapped with information already requested.
14. TfL has explained that the only areas that are able to provide the necessary information to respond to these requests are the Planning and Legal departments of TfL. TfL argues that responding to these requests has already taken up a significant amount of time and resources. This is particularly the case for the Planning department who deal with thousands of planning applications a year. The case officer assigned to deal with these requests has already had to devote a disproportionate amount of time to responding to the requests to the detriment of his normal workload and ability to deal with planning applications.
15. The Commissioner does not necessarily consider that four requests in three months is a large volume of correspondence but, taking into the other queries submitted by the complainant and the two judicial review

proceedings brought by the complainant against TfL, he does accept that this has created a burden on TfL.

16. Another point considered by the Commissioner is that responding to this request in isolation would appear to require TfL to search through a lot of information due to the number of parts to the request. This is also the case for some of the previous requests where multiple questions were asked. Determining whether the information is held would require a considerable amount of time and resource and, as set out above, would draw staff away from their usual responsibilities for an unreasonable amount of time. Whilst this is an argument more often used when determining if the request would exceed the cost limit, the Commissioner accepts it has some weight here as it adds to the argument that responding to the request would be burdensome on the public authority.
17. The Commissioner, taking into account all of the above and the fact that responding to any individual request may lead to further requests being made in relation to the same subject matter in the future, does accept that the previous requests and correspondence and the most recent request has created a significant burden on TfL.

Whether the request is designed to cause disruption or annoyance

18. TfL has not argued that the complainant's request is designed to cause disruption or annoyance and the Commissioner has found no evidence of this.

Whether the request has the effect of harassing the public authority or its staff

19. TfL has not argued that the complainant's request is designed to cause disruption or annoyance and the Commissioner has found no evidence of this.

Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable

20. In the Commissioner's view, the test to apply here is one of reasonableness. In other words, would a reasonable person describe the requests as obsessive or manifestly unreasonable? The Commissioner's guidance suggests that;
21. "It will be easiest to identify an obsessive request where an individual continues with a lengthy series of linked requests even though they already have independent evidence on the issue."

22. TfL has explained that the complainant has brought two judicial review proceedings against TfL. One is still ongoing in relation to the narrow point of law about the whether the land in question actually constituted a highway. The second application related to the decision to remove the complainant's trucks from the highway and was dismissed by the Courts. The information requested is more likely to be of relevance to the more general matter of the disputed land, the removal of the complainant's trucks and the other trader using the land, all of which are linked to the second application for judicial review. The Commissioner therefore considers this adds weight to the argument that the request has the characteristics of an obsessive request as it is seeking to obtain information on a subject which has already been dismissed by the Courts.
23. The Commissioner's view is that there is a thin line between obsessiveness and persistence but that obsessive requests are often identified by requests which continue to be made even once other evidence on the same issue has already been provided. The request which was refused by TfL under section 14(1) (and regulation 12(4)(b)) was in relation to land at the junction of Bath Road and Great South West Road in Hounslow where *[name redacted]* has a kebab kiosk.
24. The Commissioner has considered the previous requests made to TfL in order to determine if this request could be characterised as obsessive as a result of containing overlapping or duplicated requests for information. The first request made to TfL was a 10 part request for information about the same land and whether the section of road is designated as a trunk road. The request was also for all communications on this issue. In response TfL provided the complainant with over 80 pages of information it considered to be within the scope of the request.
25. A second request for information was made to TfL before the response to the first request was sent. This second request was again in relation to the same land and asked for all documentation about the complaint and TfL's visit to the disputed land site. A third request was then made before the response to the second request was sent. This third request was for information on the same land and was for information on the other kebab kiosk owner's proposals. TfL provided over 40 pages of information in response to this request.
26. TfL has therefore argued that all of the requests are for information on the same subject – the occupation of the land on A30/A4 junction – and have overlap with the previous requests. TfL has also highlighted the fact that responses to one request lead to further requests and despite having provided the complainant with a substantial amount of information he still continues to make more requests. It has also been stated that the complainant has exhausted TfL's internal complaints

process and has brought judicial proceedings against TfL to challenge its view of the status of the land. TfL considers this all indicates a continuing pattern of obsessive behaviour.

27. The Commissioner acknowledges that the requests to TfL demonstrate his determination to access a large amount of information on the status of this land and the situation with the other trader operating in the area. However, the Commissioner also notes that TfL considers this request to be a 'fishing exercise' made with no knowledge of whether information exists but done with the hope that there will be information which TfL holds which may be of use to him in his judicial review application.
28. As stated above, the Commissioner's view is that there is a fine line between persistence and obsession and obsessive requests are more often identified when an applicant continues to make requests despite being in possession of substantial information on the subject already. The Commissioner has carefully considered the request in this case and the context in which it was made.
29. The request undoubtedly demonstrates persistence and tenacity on the part of the complainant when considered in the context of his previous correspondence with TfL. In addition to this TfL has highlighted comments made by the complainant when making one of his requests:

"It will help if you provide me all the related documents too in one go instead of me having to write to you again and again or make new FOI requests after receiving revelations from the previous requests".

The Commissioner accepts that this demonstrates that responding to this request is likely to generate further correspondence and requests and the complainant has made it clear he intends to continue making requests based on the information he is provided with.
30. In reaching his decision on this criteria the Commissioner has taken into account that the complainant appears to be making time consuming requests in order to pursue an issue which has already been considered and dismissed by the Court. The Commissioner has also been mindful of the complainant's comments to TfL that further requests will be likely to follow based on the response to this request.
31. Taking into account these factors the Commissioner accepts that the request can fairly be characterised as obsessive and manifestly unreasonable.

Whether the request has any serious purpose or value

32. The Tribunal has previously found that where requesters are driven by a genuine desire to obtain information on a particular subject then they

are not likely to be unreasonable requests. However, the Tribunal has also recognised there should be a point where a requester lets the matter drop. In this case the request does not appear to be exactly the same as previous requests although it is on a similar theme. The purpose of the request is to uncover further information held by TfL on the legal status of the land and the other trader operating on the land.

33. Although information on this subject has previously been provided in large volumes by TfL this exact information has not been previously requested. Whilst the complainant has submitted two judicial review applications and one has been dismissed, one is still ongoing with regards to the narrow point of whether the land in question actually constitutes a highway. In many cases the ongoing judicial review would support the argument that the request does have a serious purpose or value but in this case the Commissioner does not consider it to be straightforward as the judicial review is on a narrow point of law rather than the wider issues the requests are designed to illicit information on.
34. The Commissioner has therefore looked at the pattern of previous requests and the history of correspondence with the complainant to consider whether the latest request supports the presence of a serious purpose.
35. In this case, the number of requests received has not been particularly high but there has been other correspondence to TfL outside the FOIA. The Commissioner accepts, based on the evidence provided by TfL that the response to one request leads to further correspondence and further requests are made while TfL still continue to deal with previous requests. Although the requests are asking different questions it is TfL's contention that the most recent request is seeking to gain access to information that does not exist.
36. TfL has also stated that the most recent request is seeking information which either does not exist or if it does would be of no relevance to his case. This is because much of the information requested relates to the other trader operating on the former highway land. The complainant considers this is relevant to his complaint as he believes his situation is the same as the other trader. TfL has informed the complainant on several occasions that the two situations are not the same and TfL therefore considers that information relating to the other trader will not be of any assistance to the complainant's case.
37. With more specific reference to what was requested by the complainant, TfL considers the request to be vague in parts by asking for "*copies of any other related communications*" without identifying what information may be held. TfL also highlighted that in the same request the complainant asked for internal and external communications between

TfL, the other trader, the Land Registry and related parties with no evidence there are other related parties. TfL has stated that this demonstrates the lack of serious purpose or value to this request as the complainant has asked for information in a speculative manner in the hope that information will exist but is not specifically asking for information that may help him with his judicial review application.

38. However, TfL does accept that the complainant is trying to pursue an issue which is clearly of importance to him. The Commissioner does not therefore accept that the requests have no serious purpose or value. Having said that, he does accept that the value of the request in this case is diminished by the fact that some of the underlying issues have been investigated and dismissed and some of the information requested is likely to have already been provided or is not held.
39. The Commissioner has therefore concluded that the initial requests for information on this subject matter may have had serious purpose or value; and as the most recent request may result in the provision of further information that has not already been provided, the request does have some serious purpose or value but this is diminished for the reasons set out above.

Conclusion

40. The Commissioner considers that in this case the requests would cause a significant burden in terms of expense and distraction and could fairly be seen as obsessive or manifestly unreasonable. He considers the value of the requests to be limited and finds that the serious purpose behind them is not sufficient to outweigh his other findings. He therefore concludes that section 14(1) was correctly applied to the extent that the requests were not for environmental information.

Environmental Information Regulations

Regulation 12(4)(b) – Manifestly Unreasonable

41. During the course of the Commissioner's investigation, TfL accepted that some of the information requested was environmental information.
42. In relation to the parts of the request which were for environmental information TfL relied upon the same arguments made in relation to the application of section 14(1) of the FOIA. These arguments have been detailed above. The Commissioner is satisfied that the submissions put forward in support of the application of section 14(1) also demonstrate that the requests for environmental information are manifestly unreasonable under regulation 12(4)(b).

43. The Commissioner has therefore gone on to consider the public interest test in relation to the application of regulation 12(4)(b) to the environmental information.

Public interest arguments in favour of disclosing the requested information

44. The Commissioner recognises that there is a public interest in greater transparency as it makes public authorities more accountable and increases trust.
45. TfL has also identified there is a public interest in ensuring that litigants have access to information that is necessary to pursue their legal action and defend their legal rights. However, both TfL and the Commissioner consider the weight of this argument to be diminished due to the amount of information that has already been provided to the complainant in response to previous requests and to enquiries to other parts of TfL.

Public interest arguments in favour of maintaining the exemption

46. TfL has explained that to respond to the request would involve an excessive amount of time and diversion of resources which would not be in the public interest particularly given that the request is speculative and repetitive. It stated that this would be manifestly unreasonable and would not be in the public interest.

Balance of the public interest arguments

47. In the circumstances of the case the Commissioner considers that there is a strong public interest in openness, transparency and accountability but he considers that the requested information in this case would not add to the accountability of TfL. Whilst the Commissioner recognises it is important for litigants to gain access to information he has also taken into account the amount of information already provided to the complainant in this case and the fact that there are other established avenues for complainants to access information to defend their legal rights.
48. The Commissioner also considers however that there is a strong public interest in not putting an unreasonable burden upon TfL, which would have implications in terms of cost and diversion of resources, in pursuance of a matter that has for the most part been dismissed by the Court.
49. In this case the Commissioner considers that these requests would impose a burden upon TfL, which would not be proportionate in the circumstances of the case, and therefore the public interest in favour of maintaining the exception outweighs the public interest in disclosure.

Right of appeal

50. 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

51. 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.
52. 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

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