

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 August 2014

Public Authority: Office of the Traffic Commissioner
Address: Jubilee House
Croydon Street
Bristol
BS5 0DA

Decision (including any steps ordered)

1. The complainant has requested various pieces of information and correspondence relating to several bus companies and individuals, all based in Scotland. The Office of the Traffic Commissioner (OTC) answered each part of the request stating that either information was not held, it would exceed the appropriate cost limit to respond or the information constituted third party personal data so was exempt from disclosure (section 40(2)). The Commissioner considers 5 of the 7 requests could be aggregated and that the appropriate cost limit would be exceeded by responding, therefore section 12 was correctly applied. For the remaining two requests, the Commissioner is satisfied the information is not held.

Request and response

2. On 21 November 2013, the complainant wrote to the Office of the Traffic Commissioner (OTC) and requested information in the following terms:

"(1) I would like to request all paper work submitted by mcgills buses or their owners which inform the Scottish traffic area or the office of the traffic commissioner of said liquidations in relation to material change within mcgills bus service ltd in july 2001.

(2) I would also like to request all information in relation to the liquidations and material change which have been submitted or requested by the Scottish traffic office and the office of the traffic

commissioner relating to mcgills bus service ltd or individuals or their companies since the change of ownership in 2001 and specifically if these liquidations contained within this e-mail were discussed at mcgills bus service ltd public inquiry. It should also include all letter, e-mails and other communications.

(3) I would also like to request all information obtained or held by the Scottish traffic area and the office of the traffic commissioner relating to a company called CLAYHUNT LTD, this should include all paper work, letters and other communications since 2004.

(4) I would also like to request all information held by the Scottish traffic area and the traffic commissioners office relating to arranglen ltd this should include all paper work, letters e-mails and other communications since 2001.

(5) I would also like to request all complaints made by employees of the Scottish traffic area and the office of the traffic commissioner as recently a foi request was attempted to be denied by yous the office of the traffic commissioner using section 14 and the term of vexious.

(6) I would like a copy of the complaint made to the Scottish traffic area and the office of the traffic commissioner which was used against me by yous to invoke section 14 and myself as being vexious and what term of vexious was to be used against me.

(7) I would also like to request all information held by both the Scottish traffic area and the traffic commissioners office relating to [information redacted] who in 1997 was jailed for 27 months for tax fraud. The public inquiry into mcgills bus service ltd stated that [information redacted] was the controlling force within mcgills buses, again the material change in 2001 did this man or the companies that own mcgills bus service ltd inform the Scottish traffic area or the traffic commissioners, if so I also request copies of all information held by yous.

I would also like to request all information, that was submitted to the Greenock and district omnibuses ltd public inquiry 15th Dec 2008, that was used at the mcgills bus service public inquiry, if so I would like copies, including any e-mails to transport Scotland or the spt regarding Greenock and district, mcgills bus service ltd, clayhunt ltd, kylemuir ltd and arranglen ltd including their employees, this should include all letters, e-mail and texts from 2006 till present."

3. The OTC responded on 19 December 2013, addressing each of the points of the request and numbering them for reference. For ease, the request had been numbered in the same way for the purposes of this notice.

4. For (1) the OTC explained the information was not held as it would have been held as part of the licence application and any of these pre-2007 have been destroyed. For (2) the OTC explained it was advised about the change of company ownership but reiterated it was unaware of the liquidation. With regards to any information from the public inquiry, the OTC explained this would be information held by the OTC as a Tribunal and therefore not subject to the FOIA.
5. For (3) and (4) OTC explained it would exceed the appropriate cost limit to determine if the information was held and it was therefore applying section 12 of the FOIA. For (5) and (6) the OTC stated the information was not held.
6. Finally, for (7) the OTC applied the section 40(2) exemption to the information relating to [information redacted]. It also considered some information was outside the FOIA as it was held as part of the OTCs tribunal functions. In response to the part of the request for information submitted to the public inquiry, in particular emails regarding a number of companies; the OTC confirmed that Kylemuir Limited had made a licence application in 2008.
7. Following an internal review the OTC wrote to the complainant on 21 March 2014. It upheld its response to the request but did provide some additional details of the licence application made by Kylemuir Limited as requested in part (7).

Scope of the case

8. The complainant contacted the Commissioner initially on 27 January 2014 to complain about the way her request for information had been handled. After the OTC had conducted the internal review on 21 March 2014 the complainant again complained about the outcome of this on 22 March 2014.
9. The complainant raised concerns about the way the OTC had responded; in particular that copies of letter, emails and communications confirming the change of ownership of McGill's Bus Service Ltd had not been provided and the lack of information provided in response to each part of the request.
10. The Commissioner considers the scope of his investigation is to firstly make a decision on whether the OTC was entitled to refuse any or all of the complainant's requests under section 12(1) of the FOIA rather than considering whether any of the information which continues to be withheld would fall under any other exemption.

Reasons for decision

Section 12

11. Section 12 of FOIA allows a public authority to refuse a request if it estimates that the cost of complying with it would exceed the appropriate limit, which is set at £450 for public authorities outside of central government. The costs that a public authority may take into account when producing its estimate are set out in the Freedom of Information and Data Protection (Appropriate Limit and fees) Regulations 2004 or "the fees regulations".
12. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the costs it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
13. A public authority should calculate any staff time spent on the permitted activities at the flat rate of £25 per person, per hour.
14. Under FOIA a public authority is also allowed to aggregate the costs of complying with requests where they relate "to any extent to the same or similar information" and are made by the same person or by different persons who appear to be acting in concert.
15. In this case the requests relate to information around the change of ownership of several bus companies and information held by the OTC about this. The exception being (5) and (6) which are for information on the use of the term 'vexatious' in relation to the complainant and her requests. Disregarding (5) and (6) the Commissioner is satisfied the other requests are sufficiently similar that the OTC is entitled to aggregate the costs of complying with the requests for the purposes of section 12(1). The effect of this is that the OTC would be entitled to refuse to respond to all of the requests if the cost of complying with just one of the requests, or a combination, would exceed the appropriate cost limit.
16. The OTC had specifically considered it would exceed the appropriate cost limit to respond to determine whether it held information, locate it and

extract the information from any relevant documents. This had been applied in relation to (3) and (4).

17. When responding initially the OTC explained to the complainant that it had searched its systems for details of an operator licence issued or applied for in relation to Clayhunt Ltd and no record had been found. However, in order to establish if any files or records held by the OTC contained any reference to this company the OTC considered this would exceed the cost limit. The OTC explained the estimated time to retrieve and extract information would be 80 minutes per file for the 7810 licence files held, exceeding the cost limit based on staff time being calculated at £25 per hour. The OTC also considered the same amount of time would need to be factored in to search for any records referencing Arranglen Limited, as set out in (4).

18. The Commissioner asked the OTC to provide further details to support the estimate it had provided when responding to the request. The OTC provide an estimate to the Commissioner as follows:

Time to determine if held – 20minutes x 7810 licences	= 2603 hours
Time to locate – 20minutes x 7810 licences	= 2603 hours
Time to retrieve – 40 minutes x 7810 licences	= 2603 hours
Total time	= 10412 hours
Total cost @ £25 per hour	= £260, 300

19. The OTC has explained it has a computer system (OLBS) which is used to record all licence application details since 2001 and is searchable by use of name of applicant, correspondence address and postcode. Files and information can be retained on this system, including emails and other documents where they contain information in respect of an operator's licence.
20. The OTC also has manual records which may contain relevant information. The OLBS was introduced in 2001 and at this time paper records were still routinely held. The licencing application function was centralised in 2007 leading to application forms being scanned onto the OLBS but this did not involve back-scanning of earlier applications. These remain as manual records and the OTC advises there are still a high number of manual licence applications which make up the 7180 operator licences currently in issue by the Traffic Commissioner for Scotland.
21. In order to establish if information is held which refers to the named companies, the OTC has explained it would need to search for relevant

information in all of the current operator licences, all 7180, which, as set out above are a mixture of manual and electronic records. If information is located it would then need to be retrieved and extracted from the documents it is contained within.

22. The time taken to check each of these files has been based on a sampling exercise conducted by the OTC in response to a previous request which required similar searches to be undertaken. The OLBS system only allows for searches to be conducted using the names of licence holders but cannot search for names of limited companies who have not held operator licences or for third parties who may have been mentioned in correspondence. For this reason, each electronic record in the OLBS system would have to be checked for references to the companies mentioned in requests (3) and (4). This has been estimated at a time of 20 minutes per licence for both manual and electronic records.
23. The Commissioner accepts that manually interrogating records to look for any reference to a company name would not be a quick task and that the volume of licences would make this extremely time intensive. He does however note that the OTC has not specifically explained why it would require 20 minutes to determine if the information is held and then an additional 20 minutes to locate the information. He argues that this would be part of the same process and should not be separately included in the cost estimate. That being said, the OTC has explained that factored into the time estimate is the fact that the paper records which would need to be interrogated are in several locations – some in the Central Archive, some in the central office in Leeds and others in the OTC's office in Edinburgh.
24. The Commissioner considers it is reasonable therefore that the time taken to determine if information is held and to locate the information can be estimated at 20 minutes and this activity alone would exceed the cost limit given that 7180 records would have to be searched. This would amount to 2603 hours of staff time at a cost of £25 per hour of staff time, totalling £65075.
25. For this reason the Commissioner accepts that the costs involved would safely exceed the appropriate cost limit. The Commissioner is satisfied that the OTC's estimated of its costs are reasonable and he has only taken into account the costs that are relevant. As the cost limit would be exceeded by complying with requests (3) and (4), the Commissioner also concludes that the OTC was able to aggregate requests (1),(2) and (7) and rely on section 12(1) to refuse these requests.

Section 1

26. The OTC refused requests (5) and (6) on the basis that the information was not held. As set out above, the Commissioner does not consider these requests to be on a similar enough subject to be aggregated under the costs exemption so he has gone on to consider whether the OTC was correct to state that the information was not held.
27. In scenarios where there is a dispute about the amount of, or lack of information held by a public authority, the Commissioner applies the civil standard of 'the balance of probabilities', following the lead of a number of Information Tribunal decisions.
28. In other words, in order to determine such complaints the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
29. To be clear, the information which the OTC has stated is not held is information on complaints made by employees of the Scottish Traffic Commissioner and a copy of the complaint made to the OTC which was used by the OTC to form a view the complainant was vexatious.
30. The OTC explained to the complainant that no information was held. It stated that it had sent letters to the complainant on 7 February and 13 May in which it set out how the volume and nature of the correspondence from the complainant could be viewed as vexatious.
31. The complainant has not specifically stated that she is unhappy with the response to this part of the request and the Commissioner considers the answer provided by the OTC to be reasonable in the circumstances as it is unlikely to hold details of complaints it has received which have resulted in consideration of whether the requests are vexatious, this would have been likely to have been built up over the course of the correspondence with the OTC and the history of the contact with the complainant on similar issues.
32. It is therefore the Commissioner's decision that the OTC has complied with section 1(1) of the FOIA and he finds that, on the balance of probabilities, the OTC does not hold the information requested in (5) and (6).

Right of appeal

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

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

Tel: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

34. 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.
35. 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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