

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 May 2015

**Public Authority:** Transport for Greater Manchester  
**Address:** 2 Piccadilly Place  
Manchester  
M1 3BG

### Decision (including any steps ordered)

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1. The complainant made a request to Transport for Greater Manchester (TfGM) for information regarding the purchase of land for a guided busway. TfGM refused the request under the section 40(2) (Personal information) and section 43(2) (Commercial interests) exemptions.
2. The Commissioner's decision is that section 40(2) is engaged but that section 43(2) is not.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - TfGM shall disclose to the complainant the information falling within the scope of request 2 – the price paid for plots purchased on the route of the guided busway.
4. 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 (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

### Request and response

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5. On 18 November 2014 the complainant made a request to TfGM which asked for information regarding the "guided busway" and which read as follows:

- 1) What land has been purchased in the route of the Guided Busway?
  - 2) The price for these plots of land?
  - 3) The names of the previous owners of the land who have received payment?
6. TFGM responded to the request on 18 December 2014. It disclosed the information it held in response to the first part of the request but withheld the information in the second and third parts of the request under the section 43(2) (commercial interests) and section 40(2) (personal information) exemptions.
7. Mr Bradbury subsequently asked that TFGM carry out an internal review of its handling of the request and it presented its findings on 14 January 2015. The review upheld the initial decision to refuse to disclose the information in parts 2 and 3 of the request.

### **Scope of the case**

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8. On 20 January 2015 the complainant contacted the Commissioner to complain about TfGM's handling of his request for information. In particular he complained about the decision to apply the section 40(2) and section 43(2) exemptions to withhold the information he requested.

### **Reasons for decision**

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#### **Section 43(2) – Commercial interests**

9. TfGM has withheld the prices paid for the plots of land purchased for the guided busway under section 43(2) of FOIA. Section 43(2) provides that information is exempt if disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
10. In this case TfGM has said that disclosure would prejudice its own commercial interests because it would prejudice its negotiating position in terms of being able to negotiate with other land owners for the compulsory purchase of land for the next phase of its Metrolink extension programmes. It explained that it would substantially weaken its position because disclosure would allow third parties to use the information to demand higher sums for any land transactions/compensation payments.

11. Section 43(2) is a prejudice based exemption. For such an exemption to apply a public authority must be able to meet the requirement of the prejudice test which involves a number of steps.
  - Identify the "*applicable interests*" within the relevant exemption
  - Identify the "*nature of the prejudice*". This means:
    - Show that the prejudice claimed is "*real, actual or of substance*";
    - Show that there is a "*causal link*" between the disclosure and the prejudice claimed.
  - Decide on the "*likelihood of the occurrence of prejudice*".
12. Identifying the applicable interests within an exemption means that a public authority must be able to show that the prejudice it envisages affects the interest which the exemption is designed to protect. Clearly, if the Council were to find that disclosure meant that it had to make higher payments when negotiating compulsory purchases in future, its commercial interests would be affected. Therefore, this part of the test is met.
13. As regards the nature of the prejudice, the Commissioner would also accept that the prejudice envisaged by TfGM is of substance. That is to say, were the prejudice envisaged by TfGM to occur it would have a not insignificant effect on its commercial interests. However, it must also be able to show that there is a 'causal link' between disclosure and the prejudice claimed which means that it must be able to show how disclosure of the information would or would be likely to lead to the prejudice claimed.
14. The Commissioner has considered the arguments put forward by TfGM but is not satisfied on the basis of what he has been told that the exemption is engaged. In his view there is no reason why disclosure of prices paid in relation to one scheme in one particular area would influence what TfGM might have to pay in relation to a different scheme in future in a completely different area. The prices paid for land are based on multiple factors including the use of the land, any property on the land, its location, the state of the property market etc, all of which can change over time. The Commissioner has not seen anything to suggest that the prices paid for land in this particular case would be comparable to any land purchases TfGM may have to make at some undetermined point in the future. TfGM must be able to show a logical connection between disclosure and the prejudice occurring. Without any evidence to support its claims, its arguments amount to little more than a belief or an assertion.

15. The Commissioner's view is that TfGM has failed to demonstrate a causal link between disclosure of the information and the prejudice it envisages. Consequently the Commissioner finds that section 43(2) is not engaged.

### **Section 40(2) – Personal information**

16. TfGM has withheld the names of those individuals who sold land on the route of the guided busway under the section 40(2) exemption. Section 40(2) provides that information is exempt if it is the personal data of someone other than the applicant and disclosure would contravene one of the data protection principles. In this case, TfGM has said that in its view disclosure would contravene the first principle which requires that personal data be processed fairly and lawfully.
17. In deciding whether the exemption is engaged the first thing to consider is whether the requested information is personal data. Personal data is defined in the Data Protection Act 1998 as,
- "personal data" means data which relate to a living individual who can be identified—*
- (a) from those data, or*  
*(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,*
- and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;*
18. The withheld information is the names of individuals which can also be linked with the land they sold.
19. As the Commissioner is satisfied that the information is personal data he has gone on to consider whether disclosure would contravene the first data protection principle. In assessing whether disclosure would be unfair, and thus contravene the first principle, the ICO takes into account a number of factors such as:
- What reasonable expectations does the individual have about what will happen to their personal data?

- Does the information relate to the individual's public life (i.e. their work as a public official or employee) or their private life (i.e. their home, family, social life)?
  - Has the individual named been asked whether they are willing to consent to the disclosure of their personal data?
  - What are the consequences of disclosure?
20. TfGM argued that disclosure would not be fair because the individuals concerned would have a reasonable expectation that their personal data would not be disclosed. It explained that their personal data was provided for the purposes a legal agreement for the purchase of land and for the purpose of the payment agreed as part of that transaction. There was no expectation, it said, that information might be disclosed to other third parties save for statutory bodies such as the land registry.
21. TfGM also made the point that the information relates to the various individuals private lives as this constitutes their respective names paired with their residential addresses. In addition, the release of financial information relating to the purchase price of individual plots may also prejudice the private individuals through disclosure of their private financial information. It confirmed that it had not obtained the consent of the individuals to disclose their data.
22. The Commissioner is satisfied that the sellers of the land, as private individuals, would have a reasonable expectation that information would not be disclosed. He is also concerned that disclosure may cause distress to the individuals concerned given, what he understands to be, the high profile and controversial nature of the guided busway scheme and the attention that disclosure would be likely to bring.
23. However, the Commissioner's approach to cases like this is that, notwithstanding the data subjects' reasonable expectations or any damage or distress caused to him or her by disclosure, it may still be fair to disclose requested information if it can be argued that there is a more compelling public interest in releasing the information. Therefore the Commissioner will carry out a balancing exercise, balancing the rights and freedoms of the data subject against the public interest in disclosure.
24. The Commissioner would stress that this is a different balancing exercise than the normal public interest test carried out in relation to exemptions listed under section 2(3) of the FOIA. Given the importance of protecting an individual's personal data the Commissioner's 'default position' is in favour of protecting the privacy of the individual. Therefore, in order to

find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure; that is to say any public interest in disclosure must outweigh the public interest in protecting the rights and freedoms of the data subject.

25. In this case the Commissioner is not satisfied that disclosure would add a great deal to the information already disclosed. In his view there is no compelling public interest for releasing the names of the people who sold their land as TfGM has already released details of the locations where land has been purchased. In his view the public interest is best served by protecting the personal details of individuals but releasing the prices paid for the different plots of land, as indicated above.
26. For all these reasons the Commissioner finds that disclosure would contravene the first data protection principle and therefore the section 40(2) exemption is engaged.

## Right of appeal

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27. 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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

28. 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.
29. 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 .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**