

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 November 2016

Public Authority: Transport for London
Address: 8th Floor, Windsor House
42-50 Victoria Street
London, SW1H 0TL

Decision (including any steps ordered)

1. The complainant requested information on the outcome of complaints against bus drivers. Transport for London confirmed that they did not hold any information. The Commissioner's decision is that TfL does not hold any further information in this case. The Commissioner does not require TfL to take any steps.

Request and response

2. On 30 April 2016, following a complaint about an incident concerning the use of the wheelchair space on a bus, the complainant sent two emails to request the following information:
 - a) *'so, pursuant to FOIA could I please request aggregate data of the outcomes of complaints against London bus drivers for, say, the past twelve months. As in, how many were deemed unsubstantiated or trivial, how many resulted in informal management action or retraining, how many resulted in formal disciplinary action, and how many (if any) resulted in dismissal (the exact data set will probably be broken up differently but you get the idea). The overall numbers will be instructive, and surely raise no issue of privacy for individual staff.'* (Summarised in the second email as *'the aggregate data'*.)
 - b) *'Any incident report, correspondence, investigation record or like document relating to the specific complaint in question (which arises from an incident on a route 436 or 36 bus on 29 March - see the email string below). If necessary then the personal data of individual staff may be redacted. If there is a large volume of documents or material then please indicate in the first instance the nature of the material - I am*

really only seeking a high level summary of the investigation and outcome.'

3. On 17 May 2016 TfL responded that it did not hold the information:

'The information you have requested may be held by the individual bus operators but TfL does not record or collate outcomes of complaints regarding bus drivers as these are investigated and concluded by the relevant private bus operating companies.'

4. The complainant requested an internal review on 20 May 2016. TfL sent the outcome of its internal review on 23 May 2016 which confirmed that the information requested was not held by TfL.

Scope of the case

5. On 27 May 2016 the complainant wrote to the Commissioner. He disputed that there was no further information and argued that: *'They say they have no information on their own internal complaint handling function - in other correspondence their MD has said he's satisfied with action taken.'*
6. During the course of the Commissioner's investigation, TfL reviewed the original requests. TfL recognised that it had incorrectly focused on the outcome of complaints (request a), while the second part of the request (b) referred only to the complaint itself. TfL believed that some information held on their system should have been identified in relation to the second part of the request as it refers to correspondence.
7. TfL considered this information to be exempt under section 40(1)(Personal data) of the FOI Act and the complainant should have been advised of his right to make a Subject Access Request for his own personal data.
8. TfL located the information and forwarded it to the complainant (and the Commissioner) outside of the FOI process, as if he had requested a Subject Access Request. The information is held on an electronic file under the complainant's name and consists of TfL correspondence with him, the intentions towards handling existing and future correspondence, the forwarding of the complaint to the Bus Operator and the response from the Bus operator that *'states that the driver has been interviewed and the cctv footage reviewed, but does not provide details of the outcome.'*
9. On 18 October, the Commissioner wrote to the complainant to seek an informal resolution as further information had been provided. However,

the complainant stated that the '*MD... professed himself satisfied with the action taken by the bus company. This is the nub of the complaint and prompted my FOI request. How can he be satisfied with the action taken when he does not know what that action was...*'

10. The Commissioner has considered that the scope of the case is whether section 1 of FOIA was applied correctly by TfL.

Reasons for decision

11. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
12. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.
13. 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).
14. As is the practice in a case such as this, the Commissioner asked TfL a number of questions to confirm/establish if further information is held.
15. The TfL has stated that it does not record or collate data about the outcomes of complaints regarding bus drivers. TfL explained to the Commissioner in some detail how TfL deals with complaints that are transferred to a particular bus company:

'Contact from the public is recorded by TfL on a Customer Relationship Management (CRM) system called SAP. A single customer may have several Service Tickets in their SAP account, each relating to a different enquiry or complaint. Each instance will contain the information created and received in relation to that matter (including e-mails) and each has a unique reference number. SAP is also used by bus operating companies. SAP allows a complaint to be transferred from TfL to a bus company under a process known as a "hand off". Transferring a complaint in this way creates a record of the handoff in SAP. Transferring complaints to bus companies in this way is necessary, because TfL does not deal itself with complaints against bus companies

about incidents that take place on their buses. It transfers the complaint to the bus company, which then manages the complaint itself.

On some occasions the bus operator will make a note on the Service Ticket advising what action they have taken, e.g. reviewed CCTV footage of incident or driver interviewed, however we do not receive any further information from the bus operator regarding the outcome of their investigation.'

16. In addition, TfL provided a background as to why the complainant had received emails from TfL stating that TfL was satisfied with the action taken by the Bus Operator:

- In stating that TfL was satisfied with the action taken, Leon Daniels, as Managing Director, Surface Transport (MD) sought to provide the complainant with further assurances about the handling of this complaint. MD personally raised this matter with (name redacted), GoAhead, Executive Support Officer, in order to bring this matter to the attention of their senior management.
- This is in addition to the complaint having already been passed to GoAhead by Customer Service agents previously. MD has confirmed that there was no further correspondence or discussion regarding this complaint. MD contacted the complainant directly on this occasion as the complaint was escalated to him. The intention of MD's response to the complainant was to reassure him that this matter had been taken seriously.
- MD is in regular contact with bus operators and is confident in their processes. MD's reiteration that appropriate action had been taken is additionally informed by the robust complaints and investigation processes that all Bus Operating Companies, contracted to run bus services on behalf of TfL, must adhere to.
- When a complaint is made to TfL Customer Experience about the conduct of a bus driver, an instruction via SAP Customer Relations Manager, is issued to the Bus Operator to investigate the issue. A response will then usually be sent to the person making the complaint advising them that their complaint has been forwarded to the relevant operator for their investigation.
- Under these circumstances, a staff/driving standards manager or equivalent, depending on the organisation of the garage, is responsible for carrying out the investigation. A 'fact-finding' process is initiated and a driver may be called in for an interview. Depending on the outcome and its severity, Bus Operating Companies have recourse to a number of corrective measures,

including 'buddying'/ pairing with other drivers, retraining the driver in question, and/or progressing disciplinary action in line with their own company policy.

- It is this process that gives TfL the confidence to assure customers that appropriate and proportionate action in respect to their complaint has been taken by the Bus Operator. However, irrespective of the outcome of the Operator's investigation, the appropriate action taken against an employee of the bus company cannot be divulged to either TfL or the customer as this is subject to confidentiality under the employee and employer relationship.
17. Having considered TfL's responses to the Commissioner's investigations, the Commissioner is satisfied that, on the balance of probabilities, TfL does not hold any further recorded information within the scope of the request. TfL does not investigate complaints about bus drivers. It transfers these complaints to the appropriate Bus Operator which then manages the complaint itself.
 18. The Commissioner understands the reasons why the complainant considers further information may be held, but the Commissioner can only consider what is held. It is outside the Commissioner's remit to determine if it should be held, and even if it should be, he cannot require a public authority to create the information under the FOIA.
 19. As the Commissioner's decision is that the information is not held, the Commissioner does not require TfL to take any steps.

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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

**Pamela Clements
Group Manager
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SK9 5AF**