

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 June 2017

Public Authority: Transport for London
Address: 50 Victoria Street
Floor 7, Windsor House
London
SW1H 0TL

Decision (including any steps ordered)

1. The complainant has requested information relating to the Finchley Road changes. TfL withheld the requested information under section 22 FOIA.
2. The Commissioner considers that TfL was correct to apply section 22 FOIA.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 4 September 2016 the complainant made the following request for information under the FOIA for:

"I appreciate that you are busy, but the two month consultation period on the proposed Finchley Road changes is already half way through, and I would appreciate the information on the use of the link to the West End that bus 13 currently provides against the use of the link to Victoria that bus 82 currently provides. I was also interested why the link through the West End provided by Bus 13 today is being proposed for the axe as opposed to the link provided bus 139. Finally could you also kindly send me the Business Case or equivalent for these proposed changes and also the Business Case for the original proposals back in 2015."

5. TfL responded on 3 October 2016 and refused to provide the requested information under section 22 FOIA.

6. The complainant requested an internal review on 5 October 2016.
7. TfL provided an internal review on 23 December 2016 in which it maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 29 November 2016 to complain about the way his request for information had been handled.
9. During the course of the Commissioner's investigation TfL disclosed the information it had withheld under section 22 FOIA as part of its planned publication process.
10. The complainant explained to the Commissioner that he considers that there is further information he believes TfL may hold that he considers would fall within the definition of a 'business case'. The Commissioner advised the complainant that TfL has confirmed that it does not hold a 'business case' however he should contact TfL directly to request any specific information he considers would be held (even if not within a formal business case) which has not now been published and TfL can then confirm directly with him whether or not this specific information is held and if held whether or not it can be disclosed.
11. In relation to the application of section 22 FOIA (to the information that has now been disclosed), the complainant has asked the ICO to issue a Decision Notice confirming whether or not TfL was correct to apply section 22 FOIA at the time of the request.
12. The Commissioner confirmed with the complainant that her investigation would therefore look at whether TfL was correct to apply section 22 FOIA to the information which has subsequently been published in line with TfL's planned publication process.

Reasons for decision

Section 22

13. Section 22 FOIA states that information is exempt information if—
 - (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),

(b) the information was already held with a view to such publication at the time when the request for information was made, and

(c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).

14. TfL argued that it has always been its intention to make information available to the public, whilst taking into account the requirements of the consultation process. The buses team planned the consultation and intended to provide further information about this scheme, which would also show how the scheme differs from the original proposals, as part of TfL's response to the consultation after it had closed. This is consistent with the approach followed in a consultation it carried out about a similar scheme in New Addington, and is typical of the approach followed for most of its consultations.
15. It went on that the complainant wrote to TfL on 27 September 2016 chasing up the response to his request submitted on 4 September 2016, as the consultation was due to end and he was concerned he had not received TfL's response prior to the end of the consultation period. The buses team advised that the information already published on the TfL website was accurate and made the reasons behind the proposals clear. This information was published alongside the consultation providing all consultees with the same information. Further background information was available through publication of a link to the previous consultation, which included a response to the issues raised during that earlier consultation. The requester was advised of this in the original response.
16. It is TfL's usual practice when conducting larger bus consultations (impacting a number of routes or a wide area) to publish supporting planning documents. Consultations affecting central London include this information, and the forthcoming consultation on proposals for bus services connecting to outer London Elizabeth line stations will also include supporting information. It considers that releasing relevant information alongside the consultation documents is pertinent and useful. It tries where possible to provide this additional information at the launch of the consultation. It argued that releasing further information once the consultation is open and some responses have been received could be detrimental to the fair and open approach it endeavours to take in holding a consultation
17. Based upon TfL's submissions above, the Commissioner is satisfied that the information to which section 22 had been applied was held by TfL at the time of the request with a plan to publish once the consultation period had closed to inform the public how the final scheme differed from the original proposals. She is also satisfied that it was reasonable to withhold the information prior to the planned publication date given

that TfL considers that releasing further information at the time of the request could be detrimental to the fair and open approach it tries to achieve. The Commissioner does therefore consider that section 22 is engaged in this case, however as this is a qualified exemption, she has gone on to consider the public interest test.

Public interest arguments in favour of disclosing the requested information

18. TfL acknowledged that there is a strong public interest in accessing sufficient information to make an informed response to the consultation, however it considers that the information published on the website, including the reasons behind the changes, met this need.

Public interest arguments in favour of maintaining the exemption

19. TfL argued that there is a strong public interest in the application of controls on the release of information during consultation periods, as part of a wider programme of proactive publication both before and after consultation with the public to ensure a fair process. It did however say that it continues to review the publication of supporting information alongside the consultation documentation. It also publishes its long term planning documents identifying proposals, which if taken forward, will be the subject of future consultation.

Balance of the public interest arguments

20. The Commissioner considers that there is a strong public interest in disclosure of information relevant to a consultation process, such as the one relevant to this request, to inform the public with as much detail as possible to enable them to participate in the consultation process. This is particularly pertinent for those likely to be affected by any proposed changes. However in this case TfL did publish on its website, alongside the consultation, the clear reasons/thinking behind the proposals. It did not consider that releasing further information during the consultation period, at a time when many responses had already been received, would make for a fair and open process. It therefore planned to release the withheld information, which would show how the final scheme differed from the original proposals, at the end of the process. The Commissioner does consider that there is a strong public interest in the consultation process being fair and not being skewed by ad hoc disclosure of information to individual respondents.
21. On balance the Commissioner considers that TfL did furnish the public with sufficient information to enable them to respond to the consultation and therefore the balance of the public interest lies with allowing TfL to release further information in line with its planned publication process.

Right of appeal

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

23. 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.
24. 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

Gemma Garvey
Senior Case Officer

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