

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 20 November 2017

**Public Authority:** Transport for London  
**Address:** 42-50 Victoria Street  
London  
SW1H 0TL

#### **Decision (including any steps ordered)**

---

1. The complainant has requested information relating to the company Uber.
2. TfL refused to comply with the request as it said that it would exceed the cost limit under section 12 FOIA to do so.
3. The Commissioner's decision is that TfL was correct to apply section 12 FOIA and that it was not therefore obliged to comply with the request. It also complied with its duty under section 16 FOIA to provide the complainant with appropriate advice and assistance.
4. The Commissioner requires no steps to be taken.

#### **Request and response**

---

5. On 23 April 2017 the complainant made the following FOIA request to TfL:

"I would like to request the following information under the Freedom of Information Act.

Please note that the reference to Mike Brown and Leon Daniels should include the two individuals themselves as well as their private offices and or anyone acting specifically on their behalf.

Please note that the reference to David Cameron and George Osborne should include those two individuals as well as their private offices and

or anyone else acting on their behalf including but not limited to special advisers.

Please note that the reference to the Mayor should include the Mayor himself and or his private office and or anyone acting specifically on his behalf including but not limited to special advisers.

1...Between 1 May 2015 and 1 May 2016 did Mike Brown and or Leon Daniels exchange correspondence and or communications (including emails) with David Cameron and or George Osborne which in any way related to the company Uber and its operations in London and the UK and or the general provision of taxis in London and or proposed changes to the system of taxi provision and or regulation in London.

2...If the answer is yes can you please provide copies of this correspondence and communications including emails. Please also provide copies of any relevant telephone transcripts and or copies of any texts held. Please note that I am interested in receiving both sides of the correspondence and communication including emails, texts and transcripts.

3...During the aforementioned period did Mike Brown and or Leon Daniels exchange correspondence and communications with the Mayor which in any way related to the company Uber and its operations in London and the UK and or the general provision of taxis in London and or proposed changes to the system of taxi provision and regulation in London.

4...If the answer is yes can you please provide copies of this correspondence and communications including emails. Please also provide copies of any relevant telephone transcripts and or copies of any texts held. Please note that I am interested in receiving both sides of the correspondence and communications including copies of any relevant telephone transcripts and or texts.

5...As far as all the above questions are concerned. If the organisation has previously held but destroyed relevant information for the period stated can it please provide details of the information destroyed. In the case of each destroyed piece of information can you provide a description of the information previously held and the date when it was created. In the case of any correspondence and or communication can you please provide details of senders and recipients. In the case of all information destroyed can you please provide the date of destruction and a reason for its destruction."

6. TfL responded on 18 May 2017 and refused to comply with the request as it considers to do so would exceed the cost limit under section 12 FOIA.
7. TfL provided an internal review on 23 August 2017 in which it maintained its original position.

### **Scope of the case**

---

8. The complainant contacted the Commissioner on 2 August 2017 to complain about the way the request for information had been handled. At this point the complaint related to the delayed internal review response. Once the internal review was provided on 23 August 2017 the Commissioner agreed to investigate the substantive complaint.
9. The Commissioner has considered whether the TfL was correct to apply section 12 FOIA to the request.

### **Reasons for decision**

---

#### **Section 12 – cost exceeds appropriate limit**

10. Section 12 of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate cost limit to:
  - either comply with the request in its entirety, or
  - confirm or deny whether the requested information is held.
11. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request - 24 hours work for central government departments; 18 hours work for all other public authorities. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
  - (a) determine whether it holds the information
  - (b) locate the information, or a document which may contain the information

- (c) retrieve the information, or a document which may contain the information, and
- (d) extract the information from a document containing it.

12. The appropriate limit for TfL is £450 or the equivalent of 18 hours work.
13. TfL explained that when requests for email correspondence are received the FOI Case Management team may use a search tool called Discovery Accelerator. This allows it to conduct company-wide email searches using keywords, dates and email addresses. The more specific a requester can be as to what they are looking for, the more it can narrow the search and therefore stand a better chance of a more relevant or focused result. In this instance, it said that the complainant's request was broad in its scope so an initial search was run using the names included in the request, along with the names of some of the other TfL employees whose communications might be in scope, and keywords of 'Uber' and 'Taxi'. This returned 2151 'hits'. Each 'hit' is a single email, although that email will often consist of a chain of emails containing the search term at least once. It considers that the initial email search returned a volume of information that would require it to spend more than 18 hours retrieving and extracting the relevant information and so exceed the cost limit.
14. In addition it said that further searches would be necessary on top of those described at paragraph 13 to identify all information held by TfL which is within scope. The reasons that further searches would be necessary are:
  - a. It is unlikely that two keywords that were selected would have encompassed all the information caught by the request. Taxis and Private Hire Vehicles (PHV) are subject to different rules and regulations in London. A brief explanation of the main differences can be found on the TfL Website <https://tfl.gov.uk/modes/taxis-and-minicabs/what-to-expect-from-your-journey#on-this-page-0>. At the time of the request, Uber held a PHV Operators license, and the Regulations under review were the Private Hire Regulations <https://consultations.tfl.gov.uk/tph/private-hire-regulations-review/>. Therefore in addition to the two keywords used for the initial search, it considers that a comprehensive search would also need to include the review of emails containing one or more of the terms "PHV"; "Regulations"; "Regs"; "Private Hire" or "ULL" (Uber London Limited). However, since over 2000 'hits' had been found from the initial search using only the keywords "Taxi" and "Uber", it was not considered necessary to carry out additional searches because it was already apparent that the cost limit would be exceeded.

- b. The question of whether someone is "acting on behalf of" a senior employee or a politician on a range of topics over a 12 month period is also difficult to resolve via an email search. The search did not include the mailboxes of senior managers at TfL such as the Chief Operating Officer for Surface Transport, The Director of Surface Operations or senior managers in the Taxi and Private Hire department, however, it does consider it likely that they may at times have been considered to be acting specifically on behalf of the TfL Commissioner or Surface Managing Director.
15. TfL explained that as the requester did not define who might be acting on behalf of the former Prime Minister or Chancellor of the Exchequer, it used departmental email suffixes. Likewise the @london.gov.uk suffix was used to cover emails on the Mayor's behalf. The search also captured emails containing the search terms sent by another party to both one of the specified TfL email accounts and an account with one of the three specified suffixes.

This initial search was limited to the following people, search terms and email suffixes

Mike Brown – TfL Commissioner  
[named individual] – PA to Commissioner's Office  
[named individual] - PA to Commissioner's Office  
[named individual] - PA to Commissioner's Office  
Leon Daniels – Managing Director Surface Transport  
[named individual] – Executive Officer MD Surface Transport  
[named individual] – Executive Assistant MD Surface Transport  
[named individual] - Interim Chief of Staff MD Surface Transport

The search was for keywords "Uber" and/or "Taxi" for emails between 1/5/15 and 1/5/16 to/from the following:

"@london.gov.uk" "@no10.x.gsi.gov.uk" "@hmtreasury.gsi.gov.uk"

16. TfL went on that the hits could not be presumed to automatically fall within the scope of the request, as it would need to determine whether every single email that contained the word 'taxi' or 'Uber' was caught by the request for emails, the scope being defined as: "*which in any way related to the company Uber and its operations in London and the UK and or the general provision of taxis in London and or proposed changes to the system of taxi provision and regulation in London.*" It said that a further review would also be required to determine whether the sender or recipients fell within the category of "*anyone acting on their behalf*". It concluded that without reading through every single

email and email chain there would be no other way of determining what was within the scope of the request. However, it did confirm that it did notice emails in the search results that it considers would be out of scope of the request, for instance an email contained reference to a "taxi demo", but the focus of the email was about a delay to services on a bus route. Another 50 page email chain has bus noise as its focus, but contains a single reference to taking a "taxi" to a meeting.

17. In summary, TfL explained that the scope of the request was very wide and the number of emails that would need to be reviewed would increase further if it added the keyword search terms of "PHV"; "Regulations"; "Regs"; "Private Hire" or "ULL", or included the email accounts of senior managers with direct responsibility for taxi and private hire.
18. The Commissioner considers that given the wide scope of the request in this case and the number of emails that were returned just by TfL running a preliminary search, it is likely to be costly and time consuming to comply with. Even if a number of the search results could be quickly eliminated, as described at the end of paragraph 16, even allocating a time of 1 minute to scan through each email/email chain this would equate to over 35 hours work given the 2151 hits that were located within the preliminary search. Even if TfL were to carry out this work it does not consider that using the search terms used in its preliminary search was a comprehensive search that would locate all information held falling within the scope of the request. It has explained at paragraph 14 above why further search terms would need to be used to conduct a more comprehensive search on top of the preliminary search it conducted. There would therefore likely to be more than 2151 relevant emails to sift through to determine whether or not they contained information falling within the scope of the request.
19. The Commissioner is therefore satisfied in this case that section 12 FOIA was appropriately engaged and TfL was not obliged to comply with this request for information.

## **Section 16 – advice and assistance**

20. Under section 16 FOIA TfL is obliged to provide the complainant with advice and assistance to help the complainant refine the request to fall within the cost limit or explain why this would not be possible.
21. TfL explained that in its response of 18 May 2017 it advised that to help reduce the cost of responding to this request, the complainant could consider narrowing its scope to perhaps a search of the TfL

Commissioner's and Surface Managing Director's email accounts (excluding support staff) over the specified time period for any emails to/from mailboxes with the suffix "@london.gov.uk", "@no10.x.gsi.gov.uk" and/or "@hmtreasury.gsi.gov.uk" containing the keyword "Uber". A preliminary search conducted by the FOI Case Management team had returned a result of 278 email hits using these search terms, making the reviewing of the results a far more manageable task.

22. It said that the complainant chose not to narrow his request and exercised his right to an internal review which was processed in accordance with its Internal Review Procedure and this was provided on 23 August 2017 upholding the application of section 12 FOIA.
23. The Commissioner considers that TfL provided the complainant with detailed advice and assistance as to how this request could be refined to fall within the cost limit. It did therefore comply with its obligations under section 16 FOIA in this case.

## Right of appeal

---

24. 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)

25. 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.
26. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**