

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 August 2018

Public Authority: Office of Rail and Road
Address: One Kemble Street
WC2B 4AN

Decision (including any steps ordered)

1. The complainant has requested information relating to rail replacement buses and coaches. The Office of Rail and Road (ORR) responded by confirming that it did not hold the requested information. However that response was not provided promptly or within the twenty working day period specified in section 10 of the FOIA.
2. The Commissioner's decision is that the ORR has breached section 10 of the FOIA.
3. However as the ORR has now provided a response the Commissioner does not require the public authority to take any further action in this matter.

Request and response

4. On 9 June 2018 the complainant contacted the ORR via the WhatDoTheyKnow website. His query concerned the Public Service Vehicle Accessibility Regulations and their application to rail replacement buses. He went on to make the following request for information under the FOIA for:

"So what I would like to know is: are rail replacement buses and coaches subject to the PSVAR or are they exempt in some manner?

If you can answer that under "Business as Usual" that would be great. If, however, you can't then please consider this as a Freedom of Information request for recorded information that indicates whether or not rail replacement buses are subject to the Public Service Vehicles Accessibility Regulations."

5. Section 10 of the FOIA provides that a public authority should respond to a request within twenty working days at the latest. That twenty working days period came to an end on 6 July 2018. By the time the ORR responded to the request on 9 July 2018 the complainant had already contacted the Commissioner to complain that he had not received a response.
6. The ORR's response of 9 July 2018 advised the complainant that it did not hold any information on rail replacement buses or coaches being subject to the regulations referred to. The complainant has not challenged the substance of that response; his concern is with the time the ORR took to provide it.
7. The ORR has an internal review process. However given the nature of the complaint, it advised the Commissioner that it was happy for her to look at this issue without expecting the complainant to first exhaust its internal review process. The Commissioner does have the discretion to accept complaint before an internal review has been completed, but nevertheless she welcomes the pragmatic approach taken by the ORR.

Scope of the case

8. The complainant contacted the Commissioner on 7 July 2018 to complain about the way his request for information had been handled. At that time his concern was with the ORR's failure to provide any response. The complainant had already received a response by the time the Commissioner contacted him. The complainant now advised the Commissioner that he wanted a decision notice served on the issue of whether the ORR had complied with its obligations under section 10 of the FOIA. Section 10 requires a public authority to respond to a request 'promptly' and within twenty working days at the latest. He informed the Commissioner that he wanted a decision in respect of both these requirements of section 10, i.e. whether the ORR failed to respond promptly and whether it failed to respond within the twenty working days.
9. The Commissioner considers that the matter to be decided is whether the public authority complied with its obligations under section 10 of the FOIA.

Reasons for decision

Section 10 – time for compliance

10. So far as is relevant, section 1(1) of FOIA states that upon receipt of a request a public authority must confirm whether it holds the requested information.
11. Section 10 provides that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following receipt of the request.
12. The Commissioner considers this places two separate obligations on a public authority. The first is to respond to a request promptly, the second to provide a response within the twenty working days. Therefore, as explained in her guidance [Time limits for compliance under the FOIA](#), it is possible for a public authority to comply with a request within twenty working days of its receipt and still breach section 10 because it failed to comply with the request promptly.
13. However the reverse is not true, i.e. a public authority cannot fail to provide a response within twenty working days but still be said to have dealt with the request promptly. In other words, where a public authority fails to deal with a request within twenty working days it is inevitable that it will also have failed to deal with the request promptly.
14. The request was made on Saturday 9 June 2018. It was sent electronically via the Whatdotheyknow website and therefore would have been received the same day. This is confirmed by the ORR's acknowledgment of the request which refers to the request having been received on 9 June. The first working day after receipt of the request would therefore be Monday 11 June, which makes the twentieth working day the 6 July 2018.
15. Although this response is only one working day late, it was outside the twenty working days set as a back stop for dealing with requests. The ORR breached section 10 by failing to provide its response within twenty working days. It is inevitable therefore that the ORR also failed to respond to the request promptly.

Right of appeal

16. 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

17. 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.
18. 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

Rob Mechan
Senior Case Officer
Information Commissioner's Office
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SK9 5AF