

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 June 2020

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information relating to penalty charges associated with a specified toll bridge. During the course of the Commissioner's investigation, the Ministry of Justice (the 'MOJ') said that it had responded to the request as 'business as usual' rather than under FOIA. Ultimately, it provided more details to the complainant during the investigation, although he remained dissatisfied with some of the information provided. The Commissioner cannot consider the accuracy of the information supplied, but has investigated the FOIA aspects, namely whether the request under consideration was valid for the purposes of section 8 (request for information) and whether the MOJ has provided the information it holds in accordance with section 1 of FOIA.
2. The Commissioner's decision is that the request was valid for the purposes of section 8 of FOIA. She also finds, on the balance of probabilities, that the MOJ has provided the information it holds in relation to this request.
3. The Commissioner does not requires the MOJ to take any steps to ensure compliance with the legislation.

Background

4. The Commissioner understands that the Traffic Enforcement Centre ('TEC') is part of Northampton County Court and was set up solely to register all unpaid Penalty Charge Notices ('PCNs') including bus lane contraventions, TfL (Transport for London) congestion charges, Dart Charges (Dartford Crossing charges) and Merseyflow (official toll operator for Mersey Gateway and Silver Jubilee bridges).
5. The Commissioner also understands that the 'Mersey Gateway' (cited in the request below) is a tolled crossing of the Mersey that opened in October 2017. Halton Borough Council is responsible for the scheme, but the tolls and penalties are enforced by Merseyflow. The main group opposing the tolls is 'Scrap Mersey Tolls' ('SMT').
6. The complainant advised that since the Mersey Gateway bridge opened over 1.5 million PCNs have been issued as at November 2019. If they are neither paid nor successfully challenged, then Merseyflow applies to the TEC at Northampton for a Recovery Order.
7. There are three 'TE' forms which are 'TE3' a Recovery Order, 'TE7' an Out of Time application and 'TE9' a Witness Statement.
8. The Commissioner has previously issued two related decision notices¹ on this topic, where this complainant's two requests were refused by the MOJ on cost grounds (section 12 of FOIA). Following investigation, the Commissioner upheld the MOJ's reliance on section 12(1); both decisions have now been appealed by the complainant, but have not yet been heard.
9. The Commissioner has referenced the previous two decision notices as the request below was made shortly after the two previous requests (9 May 2019 and 20 June 2019).
10. The complainant also made a further request on the same subject on 17 June 2019 which the Commissioner has considered under *FS50892242*. She issued a decision notice in that case which found that the MOJ had complied with the requirements of section 1 and section 8 of FOIA.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617203/fs50896164.pdf> and <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617231/fs50876139.pdf>

Request and response

11. On 28 June 2019, the complainant wrote to the MOJ and requested information in the following terms:

"As you know we believe that the TEC have been allowing Merseyflow to use the TEC facilities while claiming that it is the 'local authority' who are using the facilities.

As you also know the applicant name that appeared on the TE forms for the Mersey Gateway was shown as Mersey Gateway Crossing'. You may or may not (as the TEC do not send out the forms) be aware that recently the applicant name has been changed to 'Halton Borough Council'.

We would like some information related to this change.

- 1. Did the TEC approve the change of the applicant name on the TE3 and TE9?*

If so then who exactly requested for the name to be changed? When was the request made and when was the change approved? By 'who' we want the full details of who the request for a change came from and we hope that you are not going to use the excuse of data protection to try and avoid revealing who the request came from.

- 2. The warrants of control also give or gave the applicant name as 'Merseyflow'. It seems to be rare for the people being chased by the enforcement agents to be shown these warrants and even rarer for someone to take a picture of one. So we do not know whether the applicant name has also been changed on the warrants. Has it been changed? If so then we want the same information as at (1)- Who exactly requested for the name to be changed? When was the request made and when was the change approved?"*

12. The MOJ responded on 19 July 2019 as follows:

"TEC processes applications for Halton Borough Council as provided for under the terms of the Civil Procedure Rules.

Any questions relating to the administration of applications to TEC or the issue of warrants should be addressed to Halton Borough Council."

13. The complainant wrote to the MOJ on 2 August 2019, raising a number of points arising from its substantive response which included the following:

"Refusal to supply the requested information

Whoever it is that the TEC have been working with our information request of 28th June was directed at the TEC and was after information on what the TEC had done or should know. It is not reasonable that you should refer us to some other organisation. That you refer us to Halton Borough Council is bizarre.

It seems to us that the TEC and the Ministry are trying to shore up the fiction that the TEC is working for Halton Borough Council and not for the company.

I also refer you to our message to [name redacted] last night when we quoted the replies that people got from the Council when they asked for a copy of the response as per the TEC refusal letters which say- 'The response from the local authority with regards to your out of time application should already have been served to you.'

The standard response from the Council is – 'Thank you for your enquiry. Unfortunately, Halton Borough Council do not deal with the Mersey gateway Bridge and any complaints or queries need to be directed to Merseyflow. You can contact them on [telephone number redacted] or by emailing them at [email address redacted].'

Will the TEC and the Ministry please act properly and provide the information that we asked for on the 28th June?

In any case as with last night's message we will be adding this to the complaint that we already have on Resolver.

Lastly, as the 28th June message was a request for information, we ask that the TEC, and or Ministry, review the refusal to give the requested information."

14. The MOJ did not respond.
15. On 22 September 2019 the complainant contacted the MOJ reminding it of the need to respond to his email of 2 August 2019.
16. The MOJ replied on 10 October 2019 stating:

"Thank you for your email.

You may file another FOI request if you feel you have more information to request or you may contact the ICO if you remain unhappy with our last response:

You can contact the ICO at the following address: ..."

17. The Commissioner has commented on the MOJ's failure to respond to the complainant's concerns in the 'Other matters' section of this notice.

Scope of the case

18. The complainant contacted the Commissioner on 21 November 2019 to complain about the way his request for information had been handled. His grounds of complaint were summarised as follows:

"The complaint is that the TEC did not supply the requested information. Neither did they send a proper response to our request for a review of what was in effect a refusal by them.

I appreciate that our requests were in the form of various questions, but it was clear that they were information requests and the 'Knowledge Information Liaison Officer' never suggested that they were not information requests. I also appreciate that normally an authority can only supply information that has been recorded, but we believe that they must have recorded information relating to our requests. If they do not then they could have said so."

19. On 10 February 2020, the Commissioner wrote to the complainant to ask him to clarify specifically the information he considered the MOJ had not provided in response to his request. She stated that she would not consider any alleged 'cover up' by the TEC and the MOJ because this falls outside her remit.
20. Following the complainant's reply, which included requesting the Commissioner to "*form an opinion*" as to whether it was reasonable for the MOJ to refer him to Halton Borough Council, the Commissioner wrote to the complainant further on 24 February 2020, including the following:

"In terms of requiring 'specifics' in relation to your request of 28 June 2019, currently I do not appear to have anything valid to investigate in line with section 50 of FOIA. The Commissioner can only consider whether a public authority has complied with the statutory 20 working days' deadline in responding to a request, whether or not on the balance of probabilities it holds some or all of the requested information or whether any exemption(s) relied

on have been properly cited.

From the correspondence provided, it is not clear to me that any of the above apply. Please clarify if my understanding is incorrect. Please also state what information specifically you feel the MOJ has not provided.

I note that you do not agree that the MOJ should have referred you to another organisation (ie Halton Borough Council). However, in line with its section 16 FOIA advice and assistance obligations, I cannot on the face of it, see anything wrong in this course of action. Further details about advice and assistance can be found here²:

I would ask that you contact me by 2 March 2020 with the requested clarification."

21. The complainant responded later that day; he objected to the Commissioner's section 16 view and reiterated the points he had made previously, emphasising that he was seeking any recorded information held by the MOJ/TEC as opposed to by Halton Borough Council.
22. On 25 February 2020, the Commissioner wrote to the complainant as follows:

"The focus of my investigation will be to determine whether the MOJ handled your request in accordance with the FOIA. Following your reply, together with a further review of all the case correspondence, I note that you consider that the MOJ has not provided a substantive response to your request. I will ask it do so, and as part of that, I will ask the MOJ to confirm whether it holds some or all of the requested information. If it does, I will ask the MOJ to provide it to you or to cite a relevant exemption to withhold some or all of that information. Dependent on the MOJ's investigation response, I may need to make further enquiries."

23. The Commissioner also wrote to the MOJ and included the following:

"As a starting point, I would ask you to consider the FOIA request and provide a substantive response to each question

² <https://ico.org.uk/media/for-organisations/documents/1624140/duty-to-provide-advice-and-assistance-foia-section-16.pdf>

asked. If the MOJ does not hold some or all of the requested information, it will need to confirm this to him. If any exemption applies, you will also need to confirm this.

Please also clarify why you referred [the complainant] to Halton Borough Council.

Please either respond to [the complainant] directly copied to me, or reply to me and I will forward your reply onto him.

Once I have your response, I may need to investigate further, dependent on that response."

24. The MOJ responded on 11 March 2020. It explained that it had not carried out any internal review because it had handled this request as "business as usual". It said:

"[The complainant's] email was not handled as an FOIA request. It was processed as general correspondence under 'Business as Usual'".

25. In addition, the MOJ provided a further response which is set out under the 'Reasons for decision' section 1 of FOIA analysis.
26. The Commissioner has considered whether the request was valid in accordance with section 8 of FOIA and whether the MOJ should have handled it as such. She has also considered whether the MOJ has now provided a response and all the information it holds in relation to this request in accordance with section 1 of FOIA.

Reasons for decision

Section 8 - Request for information

27. Section 8 of FOIA states:

"(1) In this Act any reference to a "request for information" is a reference to such a request which-
(a) is in writing,
(b) states the name of the applicant and an address for correspondence, and
(c) describes the information requested".

28. In this case, the complainant made his request in writing, stated his name and gave an address for correspondence. Therefore the requirements of section 8(1)(a) and (b) were satisfied.

29. The Commissioner considers that a request will meet the requirements of section 8(1)(c) as long as it contains a sufficient description of the information required. Each request has to be judged on its individual merits as to whether there were sufficient indicators provided to enable the information requested to be adequately described for the purposes of section 8. As long as a request attempts to describe the information it is likely to meet the requirements of section 8(1)(c) as it is always open to the public authority to seek further clarification to identify the information.

The Commissioner's view

30. In her guidance³ for organisations on what they should do when they receive a request, the Commissioner states:

"Any genuine attempt to describe the information will be enough to trigger the Act, even if the description is unclear, or you think it is too broad or unreasonable in some way...."

"This is not a hard test to satisfy. Almost anything in writing which asks for information will count as a request under the Act. The Act contains other provisions to deal with requests which are too broad, unclear or unreasonable".

31. The Commissioner has considered the wording of the request under consideration in this case.
32. The Commissioner considers that, although phrased as questions, the wording of the request was sufficiently descriptive to allow the MOJ to identify the information sought.

Conclusion

33. It follows that the Commissioner is satisfied that the request is a request for information as per section 8 of FOIA, and that the complainant was entitled to request and receive an internal review in this case.

Section 1 – general right of access

34. Section 1(1) of FOIA states that:

"Any person making a request for information to a public authority is entitled –

³ <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/receiving-a-request/>

- (a) *to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) *if that is the case, to have that information communicated to him."*

35. During the Commissioner's investigation, the MOJ provided the following further response to the request under consideration here:

"The applicant is Halton Borough Council and there is a private public partnership between them and the delegated authority Mersey Gateway. This was approved under the Department for Transport's regulations. I can confirm that the TE3 and TE9 forms are produced by the 'local authority' or Halton Borough Council / Mersey Gateway.

The TEC has not approved a name change on TE3 or TE9 forms, Halton Borough Council continue to issue through the TEC in their current name. The TEC has never been advised of a name change to Merseyflow.

Halton Borough Council entered into a public private partnership with the Merseylink consortium, as confirmed on the Mersey Gateway website. You can find the webpage by going to⁴-

There is a private public partnership between Halton Borough Council and the delegated authority Mersey Gateway. This was approved under the Department for Transport's regulations. [The complainant] may wish to contact the Department for Transport for further information.

The TEC is governed by Civil Procedure Rule (CPR) 75. Halton Borough Council register unpaid debts with the TEC, in accordance with CPR 75. The TEC is unable to answer questions surrounding any other legislation."

36. The Commissioner relayed the above information to the complainant on 24 March 2020, advising him:

⁴ www.merseygateway.co.uk/about-the-mersey-gateway-project/funding-of-the-mersey-gateway-project/

"It appears that the MOJ has now provided a more detailed response. No exemptions have been cited and, unless you have cause to believe that the MOJ holds some of the requested information, for which you will need to provide supporting evidence, there is nothing for me to investigate from an FOI perspective. I would therefore, propose that, unless you have any remaining FOI concerns relating to this request, this case can be closed.

Please contact me within ten working days, ie by 7 April 2020 with any remaining FOI concerns."

37. Having considered the MOJ's further response set out above, the complainant wrote to the Commissioner with his view on 31 March 2020. He said:

"There is no such authority or legal entity as 'Mersey Gateway'.

There is what might be referred to as a 'private public partnership', but it is between the Council and a PF2 consortium called 'Merseylink'. This is a different company from Emovis Operations (Mersey) Ltd using the name Merseyflow. Merseylink designed, built and financed the Mersey Gateway but they have not the slightest involvement with the tolls, penalties, enforcement of penalties or the TEC.

I would add to that-

It is a fiction that 'The applicant is Halton Borough Council'.

The TE forms are not 'produced by the 'local authority' or Halton Borough Council / Mersey Gateway'. In any case the MOJ does not seem to be able to make up its mind as it gives three alternatives - an unspecified local authority or Halton Borough Council or Mersey Gateway.

As Halton Borough Council have no involvement they can not [sic] continue to issue through the TEC in their current name".

38. He also said:

"There is however one piece of information which the MOJ is supplying after nine months. The MOJ now say 'The TEC has not approved a name change on TE3 or TE9 forms'. That was our very first question and it seems that it could have been simply answered. So why did the MOJ not answer it? Has it taken nine months for the MOJ to come up with the nonsense that the forms are being issued by Halton Borough Council and that they have been issuing them all the time in their own name? Do the MOJ

not understand that we have copies of the forms that show the applicant name as 'Mersey Gateway Crossing'?

I notice that confusingly the MOJ also say 'The TEC has never been advised of a name change to Merseyflow.' The first part of our request about the name change on the TE3 and TE9 was not about a name being changed to 'Merseyflow'. It was about the applicant name being changed from 'Mersey Gateway Crossing' to 'Halton Borough Council'.

*...I would point out that the MOJ have **not provided any sort of answer to the second part of our request which was about the applicant name on the warrants of control**".*

39. On 14 April 2020, the Commissioner wrote to the complainant summarising her understanding of his remaining concerns, and explained the Commissioner's role is not to challenge the accuracy of the information given in response to any part of a request. Rather, her role is to determine whether any recorded information is held relevant to the request and, if so, to decide whether that has been provided on the balance of probabilities, or whether any FOIA exemptions may apply to some or all of that recorded information.

40. The complainant responded further on 15 April 2020. He said:

"It is not clear from what you say in your email that you appreciate that I do not accept that the MOJ has made a proper response to the first part (item 1) of our request. As I have said in reply to your other email about your Case Reference Number FS50892242- "It can not [sic] be reasonable that the MOJ can reply to a request with nonsense and that by doing so they need not give a proper answer". That I regard the MOJ reply as nonsense should I hope be clear from paragraphs 10 to 13 of my letter of 31st March.

You say 'I'm not entirely clear whether your comments on page 3 of your letter on the various names used have any bearing on your remaining issues, or are included for information. Please can you clarify this for me.'

My comments on the various names do have a bearing on this issue, that is why I mentioned them. I realise that the ICO may not be in a position to follow all of this, but I hope that it would be clear that what the MOJ says is little different to almost random words put on paper either by an organisation that has no idea of what it is doing or an organisation that has tied itself in knots as it tries to avoid admitting the true facts by not giving a proper answer to information requests. The ICO may not be sure

what the true facts are but the ICO could at least ask the MOJ to comment on my claims."

41. With the complainant's consent, the Commissioner sent the MOJ copies of his recent correspondence, together with her intervening replies, for the MOJ to review and provide any further response/clarification. Specifically, this included:
 - The Commissioner's update letter of 24 March 2020 to the complainant relaying the MOJ's response as set out above.
 - The complainant's reply letter of 31 March 2020.
 - The Commissioner's email of 14 April 2020 seeking clarification about the complainant's specific FOIA concerns.
 - The complainant's further reply letter and consent of 15 April 2020.
42. On 29 April 2020, the MOJ wrote to the Commissioner confirming it had no further comment to make in relation to any part of the above correspondence.
43. In this case, no exemptions have been cited, so the Commissioner must decide whether the MOJ has responded to the request and provided any recorded information it holds.
44. For the first part of the request, the MOJ has now confirmed that the TEC had not approved a name change on the TE3 or TE9 forms. The Commissioner considers it reasonable that the MOJ is not, therefore, in a position to answer the associated supplementary questions on this topic raised in part one of the request.
45. In relation to the second part of the request, the MOJ has explained that any issues about warrants should be raised with Halton Borough Council; the complainant disagrees with this statement.
46. It is clear that there is a dispute between the MOJ and the complainant regarding the terminology and names used, and the processes in place. The Commissioner is not in a position to make a finding on these disputes, rather to consider whether the complainant's request for information has been complied with.
47. In the context of supplying information that a public authority holds, it appears to the Commissioner that the MOJ has responded to both parts of the request and that there are no FOIA issues remaining for her to consider.

Conclusion

48. The Commissioner cannot determine whether a public authority's response is accurate or whether it is compliant with regulations/laws

which she does not regulate. She considers that the MOJ has now provided responses to both parts of the request, albeit the complainant is not satisfied that those responses are correct.

49. The Commissioner must therefore conclude that the MOJ has complied with section 1 of FOIA as it has supplied the relevant information it holds in respect of the information request of 28 June 2019.

Other matters

50. In this case, because the MOJ did not handle the request under FOIA, it failed to carry out an internal review. The Commissioner would remind the MOJ that any expression of dissatisfaction with a response should be replied to, and that it should ensure that where a request is valid in accordance with section 8 of FOIA, it carries out an internal review.
51. The Commissioner also considers that if the request had been considered under FOIA from the outset, then some of the subsequent confusion and dissatisfaction may have been avoided.

Right of appeal

52. 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@justice.gov.uk

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

53. 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.

54. 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

Laura Tomkinson
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