

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 July 2021

Public Authority: Transport for London
Address: 5 Endeavour Square
London
E20 1JN

Decision (including any steps ordered)

1. In a multi-part request, the complainant has requested information associated with a penalty charge notice he received. Transport for London (TfL) addressed each of the complainant's questions, withholding the information requested in three of them under section 40(2) of the FOIA as it considered this to be the personal data of third persons. The complainant disputes TfL's reliance on section 40(2) to withhold some of the information he has requested.
2. The Commissioner's decision is as follows:
 - TfL is entitled to rely on section 40(2) of the FOIA to withhold the information the complainant has requested in parts 4, 8 and 9 of his request. This information can be categorised as the personal data of third persons and disclosing it would not be lawful.
 - TfL's response breached section 10(1) and section 17(1) of the FOIA as it did not comply with section 1(1) or provide the complainant with a refusal notice within 20 working days of the request.
3. The Commissioner does not require TfL to take any remedial steps.

Request and response

4. On 13 August 2020 the complainant wrote to TfL and requested information in the following terms:
 1. please confirm the date of service of the said cameras, which allegedly took pictures of my car, allegedly entering and stopping in a box junction when prohibited;
 2. please provide the evidence in support;
 3. please provide the full name and address of the company who serviced the said camera(s);
 4. please provide full name and address of the person who carried out the said service;
 5. please confirm the relationship of the person who serviced the said camera(s) with the said company who carried out the service on the said camera(s);
 6. please confirm if the said cameras are compliant with the Act;
 7. please forward the evidence in support;
 8. please forward the full name and address of the person who prepared the CD and first obtained the evidence;
 9. please forward the full name and address of the person who developed the said evidence;
 10. please forward the full name and address of the company who developed the evidence;
 11. please confirm the date when these road markings were painted;
 12. please confirm the name of the company who painted these road markings;
 13. please confirm if these road markings comply with the Act as allowed;
 14. please supply the evidence in support of item 13 and 14 above; and
 15. please note these requests are not exhaustive list of requests and, upon the receipt of the evidence mentioned above which you are bound to forward within 20 working days from the receipt of the this letter, I may request Further and Better particulars as the Act allows and in order to protect my interest.
5. TfL responded on 14 September 2020. It broadly addressed the complainant's questions.
6. Following an internal review TfL wrote to the complainant on 13 November 2020. It addressed each of the questions individually. With regard to questions 4, 8 and 9, TfL withheld this information under section 40(2) of the FOIA as it considered it to be the personal data of third persons – an engineer and TfL employees.

Scope of the case

7. The complainant contacted the Commissioner on 17 September 2020 to complain about the way his request for information had been handled.
8. The Commissioner advised the complainant that, in her view, the information that TfL is withholding is the personal data of third persons and that TfL is entitled to withhold that information. The complainant

did not accept the Commissioner's assessment and so the matter will conclude formally through a decision notice.

9. The Commissioner's investigation has focussed on whether TfL is entitled to withhold the information requested in parts 4, 8 and 9 of the complainant's request under section 40(2) of the FOIA. The Commissioner will also consider the timeliness of TfL's response.
10. Given the nature of the information requested in the above parts and the circumstances of the request, it has not been necessary on this occasion for the Commissioner to view the withheld information or to request a separate submission from TfL, justifying its position.

Reasons for decision

Section 40 personal information

11. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
12. In this case the relevant condition is contained in section 40(3A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
13. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data, then section 40 of the FOIA cannot apply.
14. Second, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

15. Section 3(2) of the DPA defines personal data as:
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¹ As amended by Schedule 19 Paragraph 58(3) DPA.

"any information relating to an identified or identifiable living individual".

16. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
17. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
18. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
19. In this case, the information in question is the name and home address of a particular engineer and the names and home addresses of TfL employees.
20. The Commissioner is satisfied that this information both relates to and identifies the individuals concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
21. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
22. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

23. Article 5(1)(a) of the GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

24. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
25. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

26. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that “*processing shall be lawful only if and to the extent that at least one of the*” lawful bases for processing listed in the Article applies.
27. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:
- “processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”².
28. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:
- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information
 - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question
 - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject

² Article 6(1) goes on to state that:-

“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.

29. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

30. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
31. The Commissioner accepts that the complainant has an interest in the circumstances associated with a penalty charge notice he received from TfL and that that is a legitimate interest for him to have. The Commissioner does not consider that the withheld information has any wider societal interest; the matter of the penalty charge notice is a purely private concern for the complainant.

Necessity test

32. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
33. The Commissioner does not accept that disclosing to the world at large the names and home addresses of a specific engineer and certain TfL employees is necessary to meet the complainant's legitimate interest in the penalty charge notice he received from TfL. The route through which an individual in receipt of a penalty charge notice can challenge that notice is published on TfL's website. It does not involve contacting specific engineers or employees at their homes.
34. As the Commissioner has decided in this case that disclosure is not necessary to meet the legitimate interest in disclosure, she has not gone on to conduct the balancing test. As disclosure is not necessary, there is no lawful basis for this processing, and it is unlawful. It therefore does not meet the requirements of principle (a).

35. The Commissioner has taken account of the complainant's points in his correspondence to her of 21 June 2021. However, she remains satisfied that TfL was entitled to withhold the information requested in parts 4, 8 and 9 of the request under section 40(2) of the FOIA, by way of section 40(3A)(a).

Section 10 – time for compliance / Section 17 – refusal of request

36. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
37. Under section 10(1) of the FOIA a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
38. Under section 17(1) a public authority that is relying on a claim that requested information is exempt information must provide the applicant with an appropriate refusal notice within the time for complying with section 1(1) ie within 20 working days.
39. The complainant submitted his request on 13 August 2020. In the Commissioner's view TfL did not provide an appropriate FOIA response to the request until the point of its internal review on 13 November 2020. At that point it advised the complainant that it was withholding some information under section 40(2). The Commissioner finds that TfL's response to the request therefore breached sections 10(1) and 17(1) of the FOIA.

Right of appeal

40. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

41. 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.
42. 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

Cressida Woodall
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Wycliffe House
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