

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 June 2021

Public Authority: Transport for London
Address: 4th Floor
14 Pier Walk
London
SE10 0ES

Decision (including any steps ordered)

1. The complainant has requested information relating to bus lane convictions.
2. Transport for London (TfL) provided some of the requested information but withheld the remainder, citing section 31(1)(b) and 31(1)(g) (law enforcement) of the FOIA.
3. The Commissioner's decision is that the subsections are properly engaged and the public interest favours maintaining the exemption. No steps are required.

Request and response

4. On 14 July 2020, the complainant wrote to TfL and requested information in the following terms:

"(1) The total number of PCNs issued by Transport for London for code 34J contraventions (bus lane) each year, from 2015 to 2020 so far,

(2) For each of the full years (2015-2019), the location and number of PCNs issued by the five fixed position traffic enforcement cameras generating the most PCNs."

5. TfL responded on 4 August 2020 and disclosed information in response to part (1) of the complainant's request. TfL refused to disclose information in response to part (2), citing section 31(1)(b) (disclosure would, or would be likely to, prejudice the apprehension or prosecution of offenders) and

section 31(1)(g) (disclosure would, or would be likely to, prejudice the exercise by any public authority for any of the purposes specified in subsection (2)).

6. Following an internal review TfL wrote to the complainant on 25 September 2020 and upheld its original position.

Background information

7. TfL has explained that responsibility for public roads within London is divided between TfL and the various borough councils. TfL is responsible for the management of the TfL Road Network (TLRN) which is a 580km network of the most significant roads in London. The TLRN makes up only 5% of the roads in London but carries over 30% of the capital's traffic.
8. TfL has confirmed to the Commissioner that it has a statutory duty to maintain operational functionality of London's public transport systems and main roads. This duty is outlined within section 16 of the Traffic Management Act 2004 (TMA 2004).¹
9. Furthermore, section 5 of the Road Traffic Regulation Act 1984² gives TfL the power (as a traffic authority) to make traffic orders for controlling or regulating vehicular and other traffic.
10. TfL has explained to the Commissioner that it would be imprudent and impractical to have enforcement monitoring capabilities operating across the TLRN in its entirety at all times. Therefore TfL relies on an overall deterrent effect, as all traffic authorities do, to encourage and obtain compliance with traffic regulations across the TLRN.

Scope of the case

11. The complainant contacted the Commissioner on 9 November 2020 to complain about the way their request for information had been handled. The complainant argued that disclosure of the remaining information is within the public interest.

¹ [Traffic Management Act 2004 \(legislation.gov.uk\)](https://legislation.gov.uk)

² [Road Traffic Regulation Act 1984 \(legislation.gov.uk\)](https://legislation.gov.uk)

12. The Commissioner therefore considers the scope of her investigation to be to determine if TfL has properly engaged section 31 and if the public interest lies in maintaining the exemption or in disclosure.

Reasons for decision

Section 31 – Law enforcement

13. Section 31 of the FOIA states that:

- (1) "Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-
- (b) the apprehension or prosecution of offenders,
- (g) the exercise by any public authority of its functions for any of the purposes specific in subsection (2)."

14. The relevant subsection of section 31(2) that TfL have cited in this instance is:

- (a) "the purpose of ascertaining whether any person has failed to comply with the law."

In order for this subsection to be engaged, a public authority must:

- identify the public authority that has been entrusted with a function to fulfil one of the purposes listed in subsection (2);
- confirm that the function has been specifically designed to fulfil that purpose.

The functions in question must be imposed by statute or, in the case of government departments, authorised by the Crown. The Commissioner is unlikely to accept that subsection 31(1)(g) is engaged unless legislation which specifically imposes a positive duty on the relevant public authority to fulfil that purpose can be identified. In light of TfL's statutory duties as laid out in paragraphs 8 and 9, the Commissioner is satisfied that 31(1)(g) has been properly engaged.

15. Furthermore, in order for a public authority to properly engage a prejudice based exemption such as section 31, in this instance both 31(1)(b) and 31(1)(g), there must be a likelihood that disclosure would, or would be likely to, cause prejudice to the interest that the exemption protects. In the Commissioner's view, three criteria must be met in order to engage a prejudice based exemption:

- Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and,
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.

16. Consideration of the section 31 exemption is a two-stage process. Firstly the exemption must be properly engaged and meet the three criteria listed above. Even if this is the case the information should still be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.
17. In its submission to the Commissioner, rather than differentiate between the subsections of the exemption, TfL has presented one set of arguments. The Commissioner recognises that there is clearly significant overlap between subsections 31(1)(b) and 31(1)(g) and therefore she has considered TfL's arguments in support of these subsections together.

The applicable interests

18. The complainant has challenged the use of the section 31 exemption on the basis that the enforcement of traffic regulations is a civil rather than a criminal matter. However, the Commissioner notes the Upper Tribunal's stance in the case of *William Thomas Stevenson v the Information Commissioner and North Lancashire Teaching Primary Care Trust* [2013] UKUT 0181 (AAC). The Upper Tribunal commented that that the activities referred to within section 31 are not limited to criminal proceedings and encompasses law enforcement more widely, including civil matters and regulatory proceedings.
19. The Commissioner is satisfied that the arguments presented by TfL outline how disclosure of the requested information would prejudice the applicable interests within the relevant exemption. Section 73 of the TMA 2004 outlines the contraventions under the act which are subject to civil enforcement, including bus lane contraventions. As previously discussed, TfL has a statutory duty to both ascertain if an individual has broken traffic regulations and apprehend and prosecute said offenders.

The nature of the prejudice

20. The Commissioner must now consider if there is a causal link between the requested information and the prejudice that sections 31(1)(b) and 31(1)(g) are designed to protect. Although a public authority will not necessarily be able to provide evidence in support of this causal link, the Commissioner must be satisfied that disclosure is practically and logically capable of harming the interest in some way.
21. TfL has explained to the Commissioner that if this information were added to information already in the public domain, individuals would be able to build up a database of enforcement camera functionality in an effort to predict when cameras may or may not be operational or are operational only sporadically. This is what is commonly known as the 'mosaic effect'. TfL has explained disclosure of this narrowed information into the public domain would be likely to lead to further continued requests concerning other specific camera enforcement locations in an effort to enhance this database.
22. TfL has explained to the Commissioner that to disclose the requested information would be to confirm the locations which TfL prioritises for enforcement activity. This would allow individuals to circumvent bus lane restrictions in specific areas in the knowledge that doing so is less likely to result in a PCN comparative to the five locations which generate the most PCNs.
23. TfL has explained to the Commissioner that, in turn, this would allow motorists to use bus lanes to circumnavigate high traffic routes and TfL would be left without any practical ways to regain the punitive deterrent lost by disclosure.

Likelihood of the prejudice

24. TfL has explained to the Commissioner that it has applied the exemption on the basis of the higher threshold of prejudice, that disclosure would result in prejudice. TfL has cited the well-established network of information available online which deliberately seeks to undermine public authorities' enforcement of traffic regulations, including those surrounding bus lanes.

Is the exemption engaged?

25. The Commissioner is of the opinion that most individuals will be aware that not all traffic enforcement cameras are operational at all times for a number of reasons. The Commissioner therefore believes it is an individual's choice whether they adhere to traffic regulations. However, the Commissioner accepts that this individual choice is significantly influenced by the deterrent effect discussed previously.

26. The Commissioner accepts TfL's explanation that disclosure of the requested information, added to similar information already in the public domain, would allow motorists to determine where there is the least risk of receiving a PCN for failing to comply with bus lane controls. In turn, this would compromise the deterrent effect upon which TfL relies and increase the likelihood of such offences occurring, thus making it harder for TfL to carry out its statutory functions as outlined in section 16 of the TMA 2004. In its submission to the Commissioner, TfL has emphasised that expeditious movement of traffic throughout London relies on motorists obeying traffic regulations irrespective of whether a camera is present or operational.
27. Ultimately, the Commissioner concurs with TfL that it cannot afford to compromise the deterrent effect upon which it relies and which is sustained by the ignorance of motorists as to where enforcement action is less likely to take place. This deterrent effect maintains the expeditious movement of London's traffic in place of the need for enforcement monitoring across the TLRN in its entirety at all times.
28. Since the Commissioner is satisfied that the three criteria required to engage a prejudice based exemption have been met, she considers the exemption properly engaged. She has therefore gone on to consider the public interest test. Even though the section 31 exemption is engaged, the Commissioner may still require TfL to release the requested information if the public interest in doing so outweighs the public interest in maintaining the exemption.

Public interest test

Public interest in disclosing the information

29. TfL has explained to the Commissioner that it considers there is very limited public interest in disclosure other than general public interest in transparency surrounding public authorities and their processes. TfL considers the requested information is only likely to be of interest to those who wish to avoid restrictions which have been put in place to ensure the free flow of traffic and the safety of the travelling public. TfL does recognise that disclosure of the requested information would provide transparency relating to the extent of which motorists are flouting current bus lane restrictions but the Commissioner notes this information has been disclosed in response to part (1) of the complainant's request.
30. At the time of raising their concern with the Commissioner, the complainant put forward several arguments in support of disclosure. The complainant argues that disclosure would help to measure the effectiveness of TfL's enforcement action and may be indicative of problems within the top five locations such as insufficient road signage,

road markings or other layout features. The complainant believes these problems may lead to motorists being presented with fines for traffic violations that are not entirely the driver's fault.

Public interest in maintaining the exemption

31. TfL has explained to the Commissioner that it considers the public interest is best served in maximising the ability of traffic to flow through the TLRN safely and efficiently. TfL has argued that it considers the successful maintenance of its network management duties, continued compliance amongst motorists and the smooth operation of TfL's substantial bus fleet which is responsible for 2 billion bus passenger journeys annually is clearly in the public interest.
32. TfL has also argued that disclosure of the requested information would likely require TfL to divert resources, both in terms of staff and funding, to incorporate more enforcement infrastructure across the TLRN to cover the areas which have been left vulnerable to motorists wishing to circumnavigate the restrictions that are in place. Again, TfL have argued that it is not within the public interest to incur avoidable costs and strain at a time when the coronavirus pandemic has impacted TfL's staffing and incoming revenue due to an unprecedented decline in passenger numbers.

Balance of the public interest

33. Having considered the competing public interest arguments, the Commissioner has decided that the public interest favours maintaining this exemption. The Commissioner acknowledges that the complainant is concerned with the efficiency of TfL's enforcement action rather than individual circumstances. However, the Commissioner cannot identify any compelling reason for disclosure in this case and is mindful that there is an established appeals process if an individual wishes to challenge a PCN.
34. The Commissioner also notes that TfL have published extensive information³ relating to vehicle types that may use bus lanes and the bus lanes that fall within TfL's jurisdiction. Coupled with the fact that most bus lanes on the TLRN now operate 24 hours a day, 7 days a week to support a sustainable recovery from the coronavirus pandemic, there is no ambiguity surrounding when bus lanes may be used. Therefore, the Commissioner does not consider that the disclosure of the requested information would inform the public further on this matter.

³ [Bus lanes - Transport for London \(tfl.gov.uk\)](https://www.tfl.gov.uk)

35. In the Commissioner's view it is very strongly in the public interest that TfL remain able, to the best of its ability, to perform its statutory functions as outlined by the TMA 2004 and enforce proper use of bus lanes and manage the road network effectively. This is of benefit to all road users, including motorists, cyclists, pedestrians and those travelling via bus. It would not be in the public interest if there was an increase in dangerous and illegal driving practices caused by motorists seeking to take advantage of the disclosed information by circumventing restrictions in areas where enforcement is less likely. In balancing the public interest the Commissioner considers that these arguments carry significant weight.
36. The Commissioner also considers that there is a very strong public interest in protecting the overall deterrent effect in relation to bus lane contraventions. As TfL has previously explained, disclosure would result in the diversion of additional resources to its enforcement activities which obviously bears a cost and compromises TfL's ability to sustain service levels in other areas.

The Commissioner's view

37. The Commissioner considers that all requirements outlined in paragraph 15 have been met and therefore section 31 is properly engaged. The Commissioner is also satisfied that TfL has demonstrated a causal link between the disclosed information and any prejudice that may occur.
38. The Commissioner considers that there is a very limited public interest in disclosure which is strongly outweighed by the public interest in maintaining the exemption. Therefore, the Commissioner's decision is that TfL is correct in engaging section 31(1)(b) and 31(1)(g) and withholding the requested information.

Right of appeal

39. 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

40. 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.
41. 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

Alice Gradwell
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