

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 October 2023

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

Decision (including any steps ordered)

1. The complainant made a five-part request for information relating to recovering the costs of removing damage caused by graffiti. Transport for London (TfL) refused to confirm or deny whether it held information falling within the scope of part 1 of the request, denied holding information falling within the scope of part 2 of the request, and refused to provide the information it held in relation to parts 3-5 of the request under sections 31, 38 and 43.
2. The Commissioner's decision is that TfL was entitled to rely on section 31(3) to refuse to confirm or deny whether it held the information requested in part 1 of the request, and section 31(1)(a) to withhold the information requested in parts 3-5 of the request.
3. The Commissioner does not require TfL to take further steps.

Request and response

4. On 5 November 2022, the complainant made the following request for information to TfL:

"1) Does TfL have any policies for recovering the costs of removing damage caused by graffiti from offenders, either through debt recovery action, civil court action, or by asking a criminal court for a compensation order? If so, please provide me with those policies.

2) How much money did TfL spend to remove damage caused by graffiti in 2020 and 2021? If an exact figure cannot be provided, please provide your best estimation.

3a) How much compensation did TfL ask to be awarded by criminal courts in respect of damage caused by graffiti in 2020 and 2021?

3b) How much compensation was TfL awarded by criminal courts in respect of damage caused by graffiti in 2020 and 2021?

3c) How much of this awarded compensation has been paid to TfL by offenders?

3d) What action is TfL taking to recover any such unpaid compensation that is overdue?

4a) Against how many people did TfL take debt recovery action (not including civil court action) in respect of damage caused by graffiti in 2020 and 2021?

4b) What was the total sum claimed by TfL in respect of all such debt recovery action?

4c) Out of the total sum claimed, what was the total sum paid to TfL in respect of all such debt recovery action?

4d) What action is TfL taking to recover any such unpaid sums?

5a) Against how many people did TfL take civil court action in respect of compensation for damage caused by graffiti in 2020 and 2021?

5b) What was the total sum claimed by TfL in respect of all such civil court action?

5c) What was the total sum awarded to TfL through civil court judgments (including default judgments & admissions) resulting from such civil court action?

5d) Out of the total sum awarded, what was the total sum paid to TfL in respect of such civil court judgments?

5e) What action is TfL taking to enforce any such unpaid sums awarded?"

5. TfL's final position is as follows:

- **In relation to part 1 of the request**, it has refused to confirm or deny whether it holds the requested information on the basis that it is exempt from doing so under sections 31 (law enforcement), section 38 (health and safety) and section 43 (commercial interests).
- **In relation to part 2 of the request**, it states that it does not hold the requested information as the removal work is covered within the broader costs of cleaning and maintenance overall.
- **In relation to parts 3-5 of the request**, it has confirmed that the information is held but has refused to provide it, again citing the exemptions under sections 31, 38, and 43 of FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 12 January 2023 to complain about TfL's response to parts 1 and 3-5 of the request.
7. The Commissioner considers that the scope of his investigation is to consider whether TfL can refuse to confirm or deny whether it holds the information requested in part 1 of the request under section 31(3), 38(2) or 43(3), and whether it can withhold the information requested in parts 3-5 under sections 31(1)(a), 38 or 43(2).

Reasons for decision

Section 31 – Law enforcement

8. Section 31 of FOIA creates an exemption from the right to know if disclosing the information would, or would be likely to, prejudice one or more of a range of law enforcement activities.
9. In this case, TfL is relying on section 31(1)(a) of FOIA in relation to all the withheld information (including refusing to confirm or deny whether it holds the information requested in part 1 of the request). This subsection states that information is exempt if its disclosure would, or would be likely to, prejudice:
 - (a) the prevention or detection of crime.
10. In order to engage a prejudice-based exemption such as section 31 there must be 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 (including the confirmation or denial of whether information is held) 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 – i.e., disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.
11. Section 31 is also a qualified exemption, meaning that it is subject to a public interest test. This means that even if the exemption is engaged, the information should still be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.
 12. Section 31(3) also provides that the duty to confirm or deny whether information is held under section 1(1)(a) does not arise if, or to the extent that, compliance with that duty would itself prejudice any of the interests listed under section 31(1). This means that a public authority does not have to confirm or deny whether it holds a specific piece of information if this in itself would prejudice the prevention or detection of crime.

Is the prejudice predicted by the public authority relevant to the prevention or detection of crime?

13. The first step in considering whether this exemption is engaged is to address whether the prejudice predicted by the public authority is relevant to the law enforcement activities mentioned in section 31(1)(a) – the prevention or detection of crime.
14. With respect to law enforcement activities, the Commissioner recognises in his published guidance that section 31(1)(a) will cover all aspects of the prevention and detection of crime. This includes information held by public authorities without any specific law enforcement responsibilities.

For example, it can be used to withhold information that would make anyone, including the public authority itself, more vulnerable to crime.

15. In this case, TfL has asserted that the information requested relates to TfL's policies and activities to prevent graffiti on its property and rolling stock, and that compliance with the request would prejudice those activities. As graffiti is normally considered to be a form of criminal damage, the Commissioner is satisfied that the prejudice predicted by TfL does relate to the prevention or detection of crime.

Is there a causal relationship between the disclosure of the requested information (including confirmation or denial that it is held) and the prejudice predicted by the public authority?

16. The Commissioner next considered whether TfL has demonstrated a causal relationship between the disclosure of the information at issue and the prejudice that section 31(1)(a) is designed to protect. In his view, disclosure (including confirming or denying whether certain information is held) must at least be capable of harming the interest in some way (i.e., have a damaging or detrimental effect on it).
17. TfL has argued that to confirm whether it holds a policy on recovering the costs of graffiti, and to disclose the amount of money it has recovered, would both prejudice the prevention of crime. It stated that:

"This is because putting information into the public domain on this subject would arm vandals with additional knowledge and insight into our priorities, processes and procedures when it comes to dealing with this criminal activity which would be likely to assist with the planning and preparation of future vandalism. More specifically, graffiti vandals are most commonly private individuals with limited personal assets and knowledge [of TfL's approach to] recovering costs associated with their criminal behaviour would be likely to embolden them to continue such practices and even increase both the frequency and extent of the damage they cause."

18. TfL has also stated that it has taken account of the "mosaic effect" when applying section 31(1)(a) to the requested information. As explained in the Commissioner's guidance on section 31, the mosaic effect refers to the fact that the prejudice test in section 31 is not limited to the harm that could be caused by the requested information on its own. Account can be taken of any harm likely to arise if the requested information (including confirmation or denial of whether specific information is held) were put together with other information. This usually means the prejudice that would be caused if the requested information was combined with information already in the public domain.

19. In this case, TfL has argued that releasing the requested information would:

"...enable individuals to build up a picture of past, current and potentially future enforcement activities, incorporating the broader risks of such criminal activity in an effort to predict (i) the 'value' of certain vandalism (ii) the potential outcome of their possible prosecution to assess 'worthiness' (iii) collate a database of enforcement functions across TfL, other transport authorities and indeed any other public authorities. With respect to (i), the vandalism community is both close knit and highly competitive with one-upmanship being a motivating factor in many instances. This can take the form of increased danger, increased visibility and, of course, competing for the most damage often by virtue of a combination of these.

With regards to (ii), vandals are very aware of the criminal aspect of their activity and the risk of prosecution and this does not always sufficiently work as an adequate deterrent in itself. Therefore it is critical that [TfL retains] strict prevention measures to deter any further vandalism, which includes avoiding the provision of information that would be of interest and use to vandals. Extensive experience in this field shows that the effect of commenting on graffiti criminal damage is in itself motivational for graffiti vandals as the notoriety is a source of pride. In our view it is clear that providing information into the public domain that informs a vandal [of the likelihood that] they would be pursued for costs of the damage they cause to [TfL's] network is prejudicial to the prevention of crime.

(iii) If a vandal is able to combine this information with other information that is available they could use this in an attempt to predict patterns of enforcement activity by law enforcement officers, the extent to which they are likely to be subject to such enforcement activity and what the likely outcome of that enforcement activity might be, in order to select what they consider to be an appropriate time and place to vandalise on the basis of lowest risk, even where this prediction may be misguided."

20. TfL acknowledged that the complainant's complaint largely focuses on the fact that the information requested relates to past graffiti activity and therefore, in the complainant's view, has no relation to future activity. However, TfL does not accept this to be the case and considers that the provision of information about past activities can have a prejudicial effect on its ability to effectively prevent graffiti in the future,

as well as it being a useful source of information that it considers will be valuable to individuals seeking to engage in future criminal activity.

21. In view of the above, the Commissioner is satisfied that compliance with the request could be capable of harming the prevention or detection of crime in some way, and that a causal link between compliance with the request and prejudice to the prevention or detection of crime has therefore been demonstrated.

Likelihood of prejudice

22. In a case such as this, it is not enough for the information to relate to an interest protected by sections 31(1)(a); the public authority must also be able to demonstrate that disclosure of the requested information (including confirming or denying whether it is held) either would, or would be likely to, prejudice those interests. The onus is on the public authority to explain how that prejudice would arise and why it would occur.
23. TfL's submissions to the Commissioner indicate that it is relying on the lower bar that compliance with the request "would be likely to prejudice" the prevention or detection of crime, as opposed to the higher bar that it "would prejudice" the prevention or detection of crime.
24. The Commissioner agrees that this is the appropriate test in this case, given the nature of TfL's argument and the fact that it would be difficult to prove that disclosure of the requested information (including confirmation of whether particular information is held) would definitely prejudice the prevention or detection of crime.
25. Having considered the arguments put forward by TfL, the Commissioner accepts that disclosure (including confirmation of whether particular information is held) would be useful to someone intent on establishing the likelihood that they would be pursued for costs if they were to vandalise TfL's network. Consequently, the Commissioner is satisfied that disclosure would be likely to represent a real and significant risk to law enforcement matters. He is therefore satisfied that the exemption provided by section 31(1)(a) is engaged.

Public interest test

26. As stated above, section 31 is a qualified exemption. The Commissioner must therefore consider whether, in all the circumstances of the case, the public interest in maintaining the exemption at section 31(1)(a) of FOIA outweighs the public interest in disclosing the information requested by the complainant.

27. As background, and in support of maintaining the exemption under section 31(1)(a), TfL explained the significance and costliness of graffiti and that the London Underground in particular has long been an attractive target for graffiti and vandalism, given its status as one of the iconic symbols of London and, by extension, the UK.
28. TfL explained that there remains an ever-growing culture, fuelled by social media, that encourages aspiring graffiti vandals to target TfL trains and post the results online.
29. Whilst the Commissioner will not repeat all the general background arguments made by TfL in this decision notice, he accepts that graffiti is a significant problem for TfL in terms of cost, and in terms of the safety of those who carry it out and those who attempt to prevent it.

Arguments in favour of disclosure

30. As it has itself pointed out as outlined above, graffiti and vandalism are a significant problem for TfL, particularly given the status of the London Underground as a well-known symbol of London and, by extension, the UK.
31. The Commissioner therefore considers that there is a significant public interest in understanding what measures TfL takes to prevent graffiti on its network and recoup any costs incurred as a result of it, particularly as those costs are ultimately made up of public money. Put more simply, if the problem is as bad as TfL has stated, there is a public interest in understanding what TfL is doing to prevent and mitigate it.
32. In its submissions to the Commissioner, TfL recognised that there is an inherent public interest in openness, in particular where this relates to the maintenance of public assets and the effective use of public funds. It also stated that, in this case, it may also be of interest in enabling the general public to understand the extent of this problem on TfL's network.
33. The complainant has argued that disclosure is in the public interest and, in support of this, pointed out that TfL itself published a press release on 10 February 2005 about a graffiti offender being ordered to pay compensation following civil court proceedings.
34. The complainant also pointed out that the justice system is already open to the public, and therefore journalists and members of the public can already obtain court documents of individual civil cases TfL has brought, pursuant to the Civil Procedure Rules. The complainant also stated that the British Transport Police have published numerous press releases about graffiti offenders, which included the offender's names and the value of damage.

35. Furthermore, the complainant argued Series 2 Episode 1 of the TV documentary "The Tube" followed London Underground staff and police investigating graffiti offenders.

Arguments in favour of maintaining the exemption

36. In its submissions to the Commissioner, TfL argued that:

"...there is a very strong public interest in ensuring TfL remains as robust as possible in preventing graffiti attacks across the network. Graffiti vandalism is a criminal activity that is not victimless.

Amongst other things:

- It can lead to individuals taking severe risks to their own wellbeing, as well as the wellbeing of others.
- It causes significant financial harm to TfL
- It can be grossly offensive or, at the very least, provide an uncomfortable and/or intimidating environment to our staff and customers
- It can cause severe disruption to the effective operation of the transport network, which is critical national infrastructure.

It is clearly in the public interest to ensure the ability to deter and prevent criminal activity is unhindered and one way of doing this is to restrict access to information which can be used to aid and assist with the consideration and preparation of such criminal activity."

Balance of the public interest arguments

37. In carrying out the statutory balancing exercise in this case, the Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption - that is, the public interest in avoiding likely prejudice to law enforcement matters. Clearly, it is not in the public interest to disclose information (including confirming or denying that specific information is held) where that may compromise TfL's ability to prevent criminal damage to its network or recoup the costs of that damage.
38. The Commissioner recognises the need to ensure transparency and accountability on the part of TfL, as an organisation that is responsible for running and maintaining a public asset using public money. He also

notes that, in this particular case, there is a public interest in understanding the measures that TfL takes to prevent graffiti on the network, given the seriousness of the issue as it itself has pointed out, and the fact that members of the public themselves are affected by it.

39. However, the Commissioner also recognises that putting information into the public domain that could assist offenders in carrying out vandalism would be detrimental to TfL's ability to prevent such activity. This would ultimately be of detriment to the public, both in terms of the direct effects of graffiti on public assets like the London Underground to the members of the public who use it, and in terms of the additional cost to the public purse. The Commissioner acknowledges that TfL has previously made statements regarding costs recovered from graffiti vandals as pointed out by the complainant; however, given the length of time that has elapsed since this statement was made, he is satisfied that the circumstances may be different now and TfL's approach is likely to have evolved in response (for example, the more prevalent role that social media now plays in graffiti culture).
40. In the Commissioner's view, full public knowledge of a public authority's capability to prevent crime, and its techniques to do so, can be detrimental to that capability. In this case, disclosure of the information requested would be to the detriment of the wider public, as those seeking to commit crime may be able to ascertain how best to do so, or better judge the risk that they will suffer consequences for doing so.
41. Therefore, having carefully considered the opposing factors involved in this case, the Commissioner finds that the balance of the public interest in maintaining the exemption at section 31 outweighs the public interest in disclosure (including confirming or denying that specific information exists) in this case.
42. He is therefore satisfied that TfL can rely on section 31(3) to refuse to confirm or deny whether it holds the information requested in part 1 of the request, and section 31(1)(a) to refuse to provide the information requested in parts 3-5 of the request.
43. As the Commissioner is satisfied that the requested information is exempt under section 31 of FOIA, he has not gone on to consider whether sections 38 or 43 also apply in this case.

Right of appeal

44. 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

45. 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.
46. 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

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