

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 July 2023

Public Authority: Transport for Wales Rail Ltd

Address: 3 Llys Cadwyn
Pontypridd
Rhondda Cynon Taf
CF37 4TH

Decision (including any steps ordered)

1. The complainant submitted an information request to Transport for Wales Rail Ltd ("TfW") for copies of station announcements.
2. The Commissioner's decision is that TfW was entitled to refuse to comply with the request in accordance with section 12(1) of FOIA. However, the Commissioner finds that TfW did not comply with its obligations under section 16 of FOIA to offer advice and assistance.
3. The Commissioner requires TfW to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with advice and assistance to help them submit a request falling within the appropriate limit or explain why this is not possible.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 1 December 2022, the complainant wrote to TfW and requested information in the following terms:

“I am writing to request a copy of on-station announcement clips in use at National Rail stations managed by Transport for Wales Rail limited in both English and Welsh.”
6. A response was provided on 5 December 2022 in which TfW applied sections 22 and 43(1) of FOIA to the withheld information.
7. Upon receiving this response, the complainant requested an internal review on 5 December 2022. On 13 January 2023, TfW stated that it would give the complainant access to the recordings, if they sent their personal email address. In its internal review, on 18 January 2023, TfW upheld its original response.

Scope of the case

8. The complainant contacted the Commissioner on 2 February 2023 to complain about the way their request for information had been handled.
9. After contact from the Commissioner, TfW provided a revised internal review response on 17 February 2023, in which it stated that it was no longer relying on section 43(1) of FOIA but was applying section 12(1) to the request.
10. The Commissioner’s investigation has therefore focused on TfW’s application of section 12(1) of FOIA. He has also considered whether TfW breached section 17(5) by failing to issue a refusal notice within 20 working days, and whether it complied with its obligations under section 16(1) of FOIA.

Reasons for decision

Section 12 – cost of compliance

11. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit.

12. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can make a notional charge of a maximum of £25 per hour to undertake work to comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to TfW.
13. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it;
 - and extracting the information from a document containing it.
14. A public authority does not have to make a precise calculation of the costs of complying with a request; instead, only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/20017/0004*, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence."
15. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
16. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the complainant.

The Complainant's position

17. The complainant states that TfW's estimation of one minute per file "may make sense if each file had to be extracted manually and uploaded manually," however, they believe that TfW could find a way to automate this process which would take "under 18 hours to complete provided they liaised appropriately with their IT department".
18. The complainant also highlights other train operators and public transit authorities who have "all been able to extract and publish similar data for their services online within the limits provided by the FOI act."

TfW's position

19. In its revised internal review response, TfW states that there are 7,612 individual audio files in the English female voice and 8,234 individual audio files in the Welsh male voice (15,846 files in total) and that these total around 1,892 MB in size.
20. TfW explains that at a minimum, the extraction would take at least one minute per file, and that this work would take in excess of 264 hours.
21. TfW confirmed that its Rail facing Local Information Control Centre system does not have the capability to download the requested audio files, therefore the only route to do this was to approach Wordline, as it holds the requested information on behalf of TfW.
22. TfW further explained that Wordline's staff have "the knowledge and expertise to retrieve the information in the fastest way."
23. In explaining the nature of the work involved, Wordline explained that it would have to "determine the possible announcements, compile them using the announcement engine and format the subsequent output."

The Commissioner's decision

24. The Commissioner considers that, from the evidence provided, TfW has estimated reasonably and cogently that to comply with the complainant's request would exceed the cost limit of 18 hours.
25. By its own admissions, TfW was unsure on "how long it would take for them to extract and upload the files." However, even if it took TfW half the time estimated to upload each individual file, it would still easily exceed the cost limit to comply with the request.
26. The Commissioner notes that the complainant has advised that other train operators have been able to provide "similar information" to them. Whilst this may be the case, not all the rail operators will use the same systems, and/or they may have different ways of storing such information.
27. The Commissioner's decision is that TfW was correct to apply section 12(1) of FOIA to the request.

Section 16-Advice and assistance

28. Section 16(1) of FOIA provides that a public authority should give advice and assistance to a person making an information request.

29. The Commissioner notes that TfW provided a log into the portal for the Ruth announcements, and that even with a reduced scope, the public authority may still not be able to provide a response within the appropriate limit. However, TfW did not advise the complainant on how they could refine their request to bring it within the cost limit, if possible.
30. The Commissioner is therefore satisfied that TfW did not meet its obligations under section 16(1) of FOIA. The public authority must now provide appropriate advice and assistance to the complainant.

Other matters

31. In submissions to the Commissioner, TfW confirms that one of the reasons for not being able to provide the information is that Wordline would charge TfW £450, as it is "outside of our usual service agreement". Here the Commissioner would remind TfW that even if information is outsourced and being held by a third party, TfW is still obliged to fulfil its obligations under FOIA¹, and that the contract, between the two parties, should confirm whether there are any conditions on that access.
32. Finally, whilst a public authority is entitled to change the exemptions it is relying on, the Commissioner would encourage TfW to be clear at the beginning of the process, which exemptions it is relying on and the reasons why.

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/outsourcing-foia-and-eir-obligations/>

Right of appeal

33. 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

34. 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.
35. 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

Joanna Marshall
Group Manager

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