

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 11 October 2023

**Public Authority:** Department for Transport  
**Address:** Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR

#### Decision (including any steps ordered)

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1. The complainant has requested information about taxi permits for Sevenoaks Station from SE Trains Limited (SETL). SETL is owned by the Department for Transport. However, for the purposes of this decision notice SETL will be referenced throughout.
2. The Commissioner's decision is that SETL was correct to rely on section 14(2) (repeat requests) of FOIA to refuse parts 4, 6, 8, 10, 11, 14 and 15 of the request. The Commissioner also finds that SETL was correct to rely on section 40(2) (third party personal information) of FOIA to refuse parts 12, 13 and 16 of the request. Finally, the Commissioner is satisfied that, on the balance of probabilities, SETL does not hold the remaining information sought by the request. However, SETL breached section 1(1)(a) of FOIA as it failed to communicate to the complainant that it did not hold the remaining information.
3. The Commissioner does not require SETL to take any further steps.

## Request and response

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4. On 12 April 2023, the complainant wrote to SETL and requested information in the following terms:

"1. The total number of taxi rank permits for Sevenoaks Station ("the permit system issued to new applicants (first time applicants or non-existing permit holders in 2021 and 2022 respectively.

2. The total number of taxi rank permits for Sevenoaks Station ("permit(s)") issued to existing permit holders (individuals and/or entities holding a permit in the preceding year) in 2022 and 2023 respectively.

3. Whether SE Trains Limited prioritises permit applications received from existing permit holders over permit applications received from new applicants.

4. Details of any and all hackney carriage rank access/permit arrangements applicable to any individual(s), entity(ies), hackney carriage vehicle feet operator(s) and/or private hire vehicle operator(s) outside of the permit system operated by APCOA Parking (UK) Limited online at: <https://sertaxi.apcoa.co.uk/>.

5. Confirmation as to whether holders of permits issued by APCOA Parking (UK) Limited by way of application at: <https://sertaxi.apcoa.co.uk/> are permitted to hoard and/or transfer issued permits by sale, rental or otherwise.

6. Confirmation as to whether holders of permits issued outside of the permit system operated by APCOA Parking (UK) Limited at: <https://sertaxi.apcoa.co.uk/> are permitted to hoard and /or transfer issued permits by sale, rental or otherwise.

7. Details of any and all measures taken by SE Trains Limited (and/or APCOA Parking (UK) Limited) to enforce any prohibition on the hoarding and/or transfer, rental and/or sale of permits issued to permit holders by APCOA Parking (UK) Limited by way of application at: <https://sertaxi.apcoa.co.uk/>.

8. Details of any and all measures taken by SE Trains Limited (and/or APCOA Parking (UK) Limited) to enforce any prohibition and/or restriction(s) on the hoarding and/or transfer, rental and/or sale of permits issued to permit holders outside of the permit system operated by APCOA Parking (UK) Limited at: <https://sertaxi.apcoa.co.uk/>.

9. Description of enforcement action taken by SE Trains and/or APCOA Parking (UK) Limited against any permit holder individual or entity found to have contravened any prohibition on the hoarding and/or transfer of permits by sale, rental or otherwise for permits: (a) issued by APCOA Parking (UK) Limited by way of application at: <https://sertaxi.apcoa.co.uk/>; (b) issued outside of the permit system operated by APCOA Parking (UK) Limited at: <https://sertaxi.apcoa.co.uk/>.
  10. Details of any and all hackney carriage vehicle and/or driver service(s) engaged and/or procured by SE Trains Limited for operation at Sevenoaks Station.
  11. Details of any/all assessments as to whether the operation of the permit system, including the cap on issuable permits, restricted access to submit permit applications to the month of July only annually, and/or the permit fee is compatible and/or compliant with the provisions of the Equality Act 2010. Particularly, any and all assessments as to whether the permit system and/or its operation complies with sections 15, 19, 20 and 21 of the Equality Act 2010, respectively prohibiting discrimination arising from disability, indirect discrimination based on age and/or disability, and failure of a duty to make adjustments.
  12. Name(s) and business address(es) of SE Trains Limited's Car Parking Managers.
  13. Name(s) and business addresses of the company decision maker(s) concerning the permit system and its operation.
  14. Confirmation as to whether any individual or entity may concurrently hold 2 or more permits issued outside of the permit system operated by APCOA Parking (UK) Limited at: <https://sertaxi.apcoa.co.uk/>.
  15. Confirmation of the maximum number of permits held concurrently by any individual and/or entity, issued outside of the permit system operated by APCOA Parking (UK) Limited at: <https://sertaxi.apcoa.co.uk/>
  16. A list of each of the licensed: (a) hackney carriage vehicle plate numbers currently holding a permit; and (b) hackney carriage driver badge numbers currently holding a permit."
5. SETL responded on 4 May 2023. It refused to comply with the request, citing section 14(2) and section 40(2) of FOIA as its basis for doing so.

6. Following an internal review SETL wrote to the complainant on 5 June 2023. It maintained its reliance on section 14(2) and section 40(2) to refuse to comply with the request.

## Reasons for decision

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### Section 14(2) – repeat requests

7. Section 14(2) of FOIA provides that where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.
8. The Commissioner's guidance<sup>1</sup> goes on to explain that a public authority may only apply section 14(2) if it has previously provided the same requester with the information, or if it has previously confirmed, to that requester, that it does not hold the information.
9. Parts 4, 6, 8, 10, 14 and 15 of the request are all seeking information relating to "permits issued outside of the permit system operated by APCOA Parking (UK) Limited". In a response of 24 January 2023 to a previous request from the same complainant, SETL confirmed that all permits are issued by APCOA. Therefore, it would clearly follow that SETL did not hold any information about permits issued outside of the system operated by APCOA.
10. The Commissioner notes that the interval between the previous request and the current request was relatively small, and there had been no changes in the system for issuing permits during that period which would have caused SETL to be in possession of any new or relevant information. Therefore the Commissioner does not consider that it would be reasonable for SETL to issue a fresh response to these parts of the request which would simply repeat the previous position. He is satisfied that the scope of these parts of the request is substantially similar to a previous request, and SETL was entitled to rely on section 14(2) of FOIA to refuse to comply with them.

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/dealing-with-repeat-requests/>

11. SETL also explained that it considered part 11 of the current request to be substantially similar to part 11 of the previous request which it responded to on 24 January 2023, and which asked for "Details of any impact assessments of, or investigations into the permit system's actual or potential impediment, restraint of and/or interference with the hackney carriage trade, and the business of hackney carriage drivers and proprietors in the Sevenoaks District". SETL confirmed in the previous response that it does not hold this information.
12. As above, the Commissioner notes the relatively small interval between requests, and that no circumstances have occurred during that period which would result in SETL coming into possession of any new or relevant information relating to any such assessments. Therefore the Commissioner does not consider that it would be reasonable for SETL to issue a fresh response to this part of the request which would simply repeat the previous position. The Commissioner is satisfied that the scope of this part of the request is substantially similar to a previous request, and SETL was entitled to rely on section 14(2) of FOIA to refuse to comply with it.
13. SETL had also sought to rely on section 14(2) of FOI to refuse parts 1, 2, 3, 5, 7 and 9 of the request. During his investigation, the Commissioner was not satisfied that SETL had either disclosed or confirmed that it did not hold the same or substantially similar information in its responses to the complainant's earlier request for information. The Commissioner concluded that SETL was not entitled to rely on section 14(2) to refuse to comply with these parts of the request. The Commissioner therefore went on to consider if the information at these parts of the request was in fact held by SETL.

### **Section 1 – general right of access**

14. Section 1(1) of FOIA provides that any person making a request for information to a public authority is entitled –
  - 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.
15. FOIA provides a right of access to recorded information which is held by a public authority at the time when it receives the request. This does not extend to the right to ask questions, or for explanations, clarification of information or to debate the contents of information, unless the answer to those questions, or requests for explanation or clarification is already held by the public authority in recorded form. Essentially, public

authorities are not obliged to 'create' new recorded information in order to comply with a request.

16. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (information Rights) decisions, applies the civil standard of the balance of probabilities.
17. With regard to parts 1 and 2 of the request, SETL explained that whilst it is able to provide information on the total number of permits issued, it is unable to determine which of these are issued to first time applicants or to applicants seeking renewal of their existing permits. This is because the online portal system does not retain data regarding permits from previous years. The portal system is very basic and automatically overrides old information when a new permit is issued.
18. With regard to part 3 of the request, SETL stated that it considered this to be a request for an explanation rather than recorded information. However, it went on to confirm to the Commissioner that it does not hold a written policy or other information which specifies how permit applications should be prioritised between new and existing permit holders.
19. Parts 5, 7 and 9 of the request all relate to hoarding or transferring of taxi permits via sale or rental. SETL explained to the Commissioner that it does not hold any recorded information which specifically addresses the matter of hoarding or transferring of permits via sale or rental. SETL considers that part 5 of the request is seeking clarification rather than recorded information, and as such it was not obliged to respond to it. However, by way of advice, SETL outlined that the Terms and Conditions of the permits state only one permit per account, and the name attached to the permit cannot be changed.
20. SETL advised that it does not hold any recorded information about the measures or enforcement action relating to hoarding or transferring of permits via sale or rental, as described by the complainant at parts 7 and 9 of the request. SETL went on to explain that APCOA is responsible for the general policing of the taxi ranks and checking that the driver is displaying the permit issued to their vehicle, however details of the specific measures taken by SETL or APCOA are not recorded anywhere. SETL further explained that no permit holders have been found to be in breach of the terms and conditions, therefore it does not hold details of any enforcement action taken against permit holders.
21. The Commissioner is satisfied that, on the balance of probabilities, SETL does not hold any recorded information within the scope of parts 1, 2, 3,

5, 7 and 9 of the request. However, as SETL did not fulfil its obligation to confirm this in writing to the complainant, it breached section 1(1)(a) of FOIA.

### **Section 40(2) – personal information**

22. 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.
23. In this case the relevant condition is contained in section 40(3A)(a)<sup>2</sup>. 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 UK General Data Protection Regulation ('UK GDPR').
24. 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.
25. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

### **Is the information personal data?**

26. Section 3(2) of the DPA defines personal data as:

“any information relating to an identified or identifiable living individual”.

27. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
28. 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.

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<sup>2</sup> As amended by Schedule 19 Paragraph 58(3) DPA

29. 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.
30. In the circumstances of this case, having considered the information sought by parts 12, 13 and 16 of the request, the Commissioner is satisfied that names, addresses, vehicle plate numbers and driver badge numbers all clearly relate to and could be used to identify those concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
31. 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.
32. The most relevant DP principle in this case is principle (a).

### **Would disclosure contravene principle (a)?**

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

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

34. In the case of a 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.
35. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

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

36. 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"<sup>3</sup>.

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<sup>3</sup> Article 6(1) goes on to state that:-



37. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under 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 legitimate interests override the interests or fundamental rights and freedoms of the data subject.
38. 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**

39. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.
40. Further, 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. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
41. Whilst neither SETL nor the complainant put forward any specific legitimate interests in the disclosure of the information at parts 12, 13 and 16 in this case, the Commissioner accepts that there may be a general, albeit narrow, interest in the processes surrounding the issuing and management of taxi rank permits.

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"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".

### **Is disclosure necessary?**

42. '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 FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
43. The Commissioner is satisfied that the narrow general interest in the processes surrounding the issuing and management of taxi rank permits has already been sufficiently met by the information provided by SETL in multiple correspondences to the complainant, along with information which is available within the Terms and Conditions on APCOA's website.
44. Therefore, the Commissioner does not consider it to be a necessary or proportionate step to disclose the personal information of either its staff or those individuals in possession of a taxi rank permit to the world at large. Those personal details will not further aid those seeking to understand the process by which one may be issued with their own permit. Nor will those personal details provide any further clarification or understanding of the management of existing permits.
45. As the test of necessity has not been met, the Commissioner does not need to go on to consider the balance between the legitimate interests and the interests or fundamental rights and freedoms of the data subject.
46. As disclosure is not necessary, there is no lawful basis for the disclosure of the requested information. Disclosure would be unlawful and would therefore breach the first DP principle. The Commissioner finds that the Council was entitled to rely on section 40(2) of FOIA to refuse to comply with parts 12, 13 and 16 of the request.

## **Right of appeal**

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47. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

48. 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.
49. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**