

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 24 May 2024

**Public Authority:** North East Combined Authority  
**Address:** The Lumen  
St James' Boulevard  
Newcastle upon Tyne  
NE4 5BZ

#### **Decision (including any steps ordered)**

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1. The complainant requested from Sunderland County Council which is now part of a new combined authority - North East Combined Authority (the Council), information relating to Unpaid Toll Charge Notice (UTCN). The Council stated that to comply with the request would exceed the cost limit, and therefore applied section 12(1) (cost of compliance) of FOIA to the request.
2. The Commissioner's decision is that the Council was entitled to rely on section 12(1) of FOIA to refuse to comply with the request. He also finds that the Council complied with its obligations under section 16(1) of FOIA to offer advice and assistance. Therefore, the Commissioner does not require the Council to take any steps as a result of this decision.

## Background information

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3. Official information online<sup>1</sup> explains: "The North East Combined Authority (North East CA) was formed on 7 May 2024. We're led by an Elected Mayor and Cabinet and cover the seven local authority areas of County Durham, Gateshead, Newcastle, North Tyneside, Northumberland, South Tyneside and Sunderland."
4. On receipt of the Council's submissions on 29 April 2024, the Council informed the Commissioner that it "provides Information Governance support, including FOI advice, to the NECA under a service level agreement until 6 May 2024, at which point responsibility will transfer to the new North East *Mayoral* Combined Authority (NEMCA)."

## Request and response

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5. On 24 October 2023, the complainant wrote to the Council and requested information in the following terms:

"In your Tyne Pass Appraisal Report (copy in link below), reference is made to 'The Guidelines' that are agreed by yourselves, please provide me with a copy of this document

  - [Appendix-A-Tyne-Pass-Appraisal-report-for-TWSC-Sept-2022.pdf \(transportnortheast.gov.uk\)](https://transportnortheast.gov.uk/Appendix-A-Tyne-Pass-Appraisal-report-for-TWSC-Sept-2022.pdf)
  - Please also provide responses to the following questions:
  - How many UTCNs were issued for none payment between 1st Sep 22 - 31 Aug 23
  - Of the UTCNs that were issued for none payment between 1st Sep 22 - 31 Aug 23, how many of the vehicles had made payments for one or more journey/s through the tunnel either on the day the vehicle was observed using the tunnel without payment, or the day before or the day after.
  - How many appeals were received between 1st Sep 22 - 31 Aug 23 relating to UTCNs issues at any time.

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<sup>1</sup> [Homepage \(northeast-ca.gov.uk\)](https://northeast-ca.gov.uk/)

- Of the appeals received between 1st Sep 22 - 31 Aug 23 relating to UTCNs issues at any time, how many resulted in UTCNs being cancelled, how many resulted in UTCNs being upheld and how many remain being dealt with.
  - In the last 5 years, how many times have cases been registered with the small claims court against yourselves or your contractors in relation to UTCNs. How many of these claims did yourselves or your contractors agree to dispute when initially contacted by the Court. How many of these claims did yourselves or your contractors agree to pay when the claimant asked for a hearing. How many of these claims did yourselves or your contractors agree to defend at a hearing.”
6. On 8 November 2023 the Council responded. It provided the complainant with an explanation, and considered it would not be possible to collate the information requested and refused it under section 12 (cost of compliance) of FOIA. The Council informed the complainant he could refine and resubmit his request if he wished to.
  7. On the same day the complainant asked for an internal review.
  8. On 20 December 2023 the Council provided its review response and maintained its original position.

### **Reasons for decision**

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9. This reasoning covers why the Council was entitled to rely on section 12(1) of FOIA to refuse to comply with the request. It also covers why the Commissioner considered that the Council met its obligation to offer advice and assistance under section 16(1) of FOIA.

### **Section 12 – cost of compliance**

10. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates the cost of complying with the request would exceed the “appropriate limit”.
11. The appropriate limit for public authorities such as the Council is £450. As the cost of complying with a request must be calculated at the rate of £25 per hour, section 12(1) effectively imposes a time limit of 18 hours for the Council.
12. 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
13. 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/20017/00041*, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”. The task for the Commissioner in a section 12 matter, is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.

### **The Council’s position**

14. The Council informed the Commissioner that it had provided a comprehensive overview of the information held, and the mechanisms of the payment system within its original response to the complainant. The Council explained to the complainant the limitations in the Tunnels’ Operator’s automated reports. It also provided a step-by-step breakdown of the analytical work required. The response is replicated here:

“I would like to start with a brief explanation on how [Tyne Tunnel 2] TT2’s payment system works and how/when UTCNs are generated.

Tunnel users currently can pay for a journey in the following ways – via a prepaid account, where the system automatically withdraws the funds for the journey if there are sufficient funds, via purchasing an advanced journey or via paying for passage within the timescale (by midnight on the after the journey).

Where the toll due for a given journey is unpaid by the deadline, it moves from Pay for Passage / pay in advance and Pre-Pay account processes into the UTCN process as set out at: *How does Unpaid Toll Charge Notice (UTCN) work? - Tyne Tunnel 2 (tt2.co.uk)*.

At present, no business need has been identified to report on number of journeys of vehicles who have had a UTCN prior or after receiving payment and as such the information you seek in the third question of your request is not held by or on behalf of North East Combined Authority in a readily disclosable, at the time of your request.

The information may exist in part within the user profiles, however in order to collate said data from the Tolling, Payment and UTCN systems, the organisational separation between UTCN and Tolling & Payment systems and processes would require –

- The extraction and compilation of the date on each of the UTCNs issued for between 1st Sep 22 - 31 Aug 23, and
- The identification, extraction, and compilation of every VRN covering the UTCNs issued between 1st Sep 22 - 31 Aug 23, followed by - The examination of Payment systems records to determine –
- Whether any payment had been received in relation to a VRN linked to a UTCN (i.e. "payment made for the vehicle in question"), and - Whether such payments had been made the day before, during or the day after a vehicle was observed using the tunnel without paying the toll thus resulting in a UTCN for said journey.

The Tunnels operator has advised that there is no report that would allow the requirements above to be undertaken electronically / automatically by (for example) filtering and cross-referencing and, as such, the necessary tasks would require manual examination and cross-referencing of the datasets in question.

In order, for the tunnel operator/NECA to collate the data you are seeking, the following steps would need to be taken for each record matching the search criteria:

- Open UTCN Record – Each UTCN record needs to be checked for the related VRM information.
- Confirm account exists and Type – VRM's can then be validated as being part of a pre-paid or guest account.
- If pre-paid account – Check the system for account journeys the day before, the day of or the day after the date of journey that generated a UTCN.
- If guest account – Check transactions system for guest journeys the day before, the day of or the day after the date of journey that generated a UTCN.

The North East Combined Authority has calculated that performing all of the above steps would at an average take 6 or more minutes per case. At present, NECA has identified an estimated 508,341 UTCNs for the time period stated in your request. As such, it would require an estimated 50,834 hours of staff time to gather the information to answer question 3 of your request."

15. The Council said it believes it would not be possible to collate the information which the complainant is seeking, and therefore refused the request under section 12 of FOIA. However, the Council invited the complainant to refine and resubmit his request, and stated NECA would consider each case on its own merit.
16. The Council confirmed that its application of section 12 exemption covers the entirety of the request, including the first part of the request, which is the element seeking "The Guidelines".
17. The Council provided the complainant with a full calculation of required tasks versus fees limits, which is reproduced above in paragraph 14. With regard to a sampling exercise, the Council said one was not undertaken, as calculations were based on the tasks that would be required to derive the number requested from Tolling and UTCN systems' data. The Council confirmed the estimate had been based upon the quickest method of gathering the requested information, e.g. where possible databases would be used rather than searching manual files.

### **The complainant's position**

18. The complainant reiterated his request for a copy of "The Guidelines" which had not been provided. He argued that an appropriate exemption to FOI had not been referenced. He also said it is not acceptable to estimate the amount of time a request would take to fulfil, and then to refuse it entirely. The complainant questioned why the Council had not provided him with information regarding the number of UTCNs issued for none payment between 1 September 2022 and 31 August 2023.
19. The complainant does not believe it would take the Council 6 minutes per case to take the required steps in order to comply with his request. He argued "the different data sets all use the VRN which can easily be cross referenced in excel, so I can only assume the 6 minutes is based on doing each one manually, which isn't necessary in 2023."

### **The Commissioner's position**

20. Based on the explanation and breakdown of the work required to comply with this request, the Commissioner accepts that it would not be possible to collate the information within the appropriate cost limit. He considers the Council's estimation of 6 minutes to conduct the necessary steps to be reasonable. Even if the Council were to take only one minute per case, the cost of complying with the request would still significantly exceed the appropriate limit.

21. Under section 12 of FOIA, a public authority can refuse to comply with a request in its entirety if it estimates reasonably that the cost of complying with part of a request would exceed the cost limit, even if the request could be complied with in part within the cost limit. Therefore, whilst the Council has only applied section 12(1) to part of the request, as the cost of answering question 3 of the request exceeds the cost limit, the Commissioner considers that the Council is entitled to refuse to comply with the request in its entirety.
22. The Commissioner's decision is that the Council estimated reasonably the cost of complying with the request would exceed the appropriate limit. The Council is therefore entitled to apply section 12(1) of FOIA to the entirety of the request.

### **Section 16 – advice and assistance**

23. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice<sup>2</sup> in providing advice and assistance, it will have complied with section 16(1).
24. The Council advised the complainant in its initial response, that he could resubmit a request for the Guidelines. Within its review response, the Council accepted it could have been clearer in advising the complainant that he could refine his request to focus on the other elements of the request. The Council also accepted that it could have been clearer in stating the application of section 12 exemption covers the entirety of the request, including the element seeking the Guidelines. It said, while the application of the appropriate limit to point 1 is legitimate and compliant with the requirements of FOIA and Code of Practice <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice> it considers, it could have formatted its response to make it more explicit that it was relying on section 12 to also refuse provision of the Guidelines.
25. Therefore, whilst the Council does not uphold element 1 of the complainant's request for review, it advised the complainant, if he wishes to submit a new request for the Guidelines, that this would be considered by the Council.

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<sup>2</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

26. The Commissioner considers this was an appropriate response in the circumstances. He is satisfied the Council met its obligations under section 16(1) of FOIA.



## **Right of appeal**

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27. 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)

28. 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.
29. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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