

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 12 September 2011

Public Authority: Transport for London
Address: 6th Floor
Windsor House
42-50 Victoria Street
London
SW1H 0TL

Summary

The complainant made a request to Transport for London (TfL) for information about underground station closures and staffing levels during four particular strike days. TfL provided the complainant with some of the information he requested but explained that to comply with part of the request would exceed the £450 cost limit and therefore section 12 was applicable. The Commissioner considers that section 12 was correctly applied in this case. However the Commissioner considers that TfL breached section 1(1)(b), section 10(1) and section 17(5) in its handling of this request.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant made a request to TfL on 16 December 2010 for the following information:

"Strikes resulted in disruptions to services on London Underground on four recent dates; September 6th, October 3rd, November 2nd, and November 28th 2010.

Under the Freedom of Information Act 2000, please could you advise me for each date separately; how many stations were closed (either for part or the whole of the strike day)? And how many stations were left unstaffed but open, (either for part or the whole of the strike day)?

Please name and list the affected stations per Line sequentially (i.e. as a train would pass through from one end to the other) for each date."

3. Following the exchange of various correspondence, and in particular the request for internal review on 28 February 2011, on 21 March 2011 TfL provided the complainant with a spreadsheet with six tabs showing the stations that were closed for all or part of the day on 6 September 2010, 03 October 2010, 02 November 2010, 03 November 2010, 28 November 2010, 29 November 2010. TfL has explained that this answers the first part of the request in full however it is not presented in the way in which the complainant requested. It has explained that it does not collate the information in the way in which the complainant requested and therefore it provided it to him in the way in which it is held.
4. In relation to the second part of the request, on 15 March 2011 TfL explained that it was unable to provide detail as to which stations were left unstaffed for either part or the whole of the strike day as this would exceed the cost limit under section 12 of the Act. It has explained that this is because, *"The information requested is not held centrally and is only contained in the manual weekly reports. In order to provide these details, we would need to check the individual station records for the days that your request covers. This would require us to retrieve the records for each station and extract the details of when the station was closed or unstaffed due to the strike action."*

The Investigation

Scope of the case

5. On 6 April 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether it would exceed the cost limit under section 12 of the Act to comply with the second part of the request.

Chronology

6. On 26 July 2011 the Commissioner wrote to TfL to obtain further submissions in support of its application of section 12 in this case.

7. On 19 August 2011 TfL provided the Commissioner with submissions in support of its application of section 12 in this case.

Analysis

Substantive Procedural Matters

Section 12

8. Section 12(1) of the Act states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

9. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Regulations") sets the appropriate limit at £450 for the public authority in question. A public authority can charge a maximum of £25 per hour for work undertaken to comply with a request which amounts to 18 hours work in accordance with the appropriate limit set out above. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken in:

(a) determining whether it holds the information,

(b) locating the information, or a document which may contain the information,

(c) retrieving the information, or a document which may contain the information, and

(d) extracting the information from a document containing it.

10. To determine whether TfL applied section 12 of the Act correctly the Commissioner has considered the submissions provided by TfL to the complainant as well as the submissions it provided as part of this investigation on 19 August 2011.
11. TfL has explained to the Commissioner that the information about staffing levels at stations is not held in electronic form. It explained that some of the information is held at group level however this would not answer the question relating to staffing levels at each station and so would not assist in responding to the request for information as to which stations were left unstaffed for all or part of a day. It confirmed that the individual station log books are the only way to retrieve the

information which are manual documents, it reiterated that this specific information is not held electronically.

12. TfL clarified that it had already provided the complainant with details of which stations were open and which stations were closed. It said that in order to provide details of which stations, if any, were left unstaffed during the day, it would need to retrieve this information from the station log books and use the log books to determine for each station whether there were unstaffed periods.
13. TfL went on to explain that there are over 260 stations which are split into 37 station groups. It reiterated that it would be necessary to retrieve all station log books (where the station was open for all or part of the day) for each of the four days covered by the request. It explained that the London Underground customer relations team estimate that it would take two hours to retrieve the log books for each of the 37 station groups. In addition they estimated that it would take a further two hours to examine each group's log books, identify the dates in question, check for times when the station was unstaffed and then extract that information for collation into a single response. TfL explained that these estimates, which were calculated at the time the request was made, were based on station groups as there are fewer of these and this made the calculations easier to follow.
14. TfL confirmed that it had not carried out a separate sampling exercise in this case, but that London Underground did have significant experience of retrieving these log books and extracting information as this is what already takes place in the event of personal injury claims following incidents on the London Underground network. It explained that the estimates are based on the significant experience that has been gained in such cases. It said that in those situations it is likely that it is extracting information for a single day at a single location, so the cost implications are limited. It reiterated that in this case the request would require it to check the data for the stations that were open for all or part of the four days relevant to the request out of over 260 locations in order to be sure that it had provided information on all stations that had unstaffed periods.
15. In this case the Commissioner is satisfied that to comply with this request TfL would be required to inspect the manual records of a significant number of stations. TfL has provided an estimate of the likely time implications of conducting these manual searches in relation to the 37 station groups which cover over 260 individual stations. The estimate provided by TfL equates to 148 hours. TfL has explained that this estimate was based upon its experience in locating the log books for individual stations for different purposes. Whilst the Commissioner considers that TfL may not need to obtain some of the individual log

books, for example if a particular station was closed for the whole day for any of the four days in question, this would not sufficiently reduce the time implications estimated by TfL so as to fall within the cost limit. This is because TfL has explained that:

"...during the September strike more than a third of services operated. We continued to plan for the further strikes that were announced whilst continuing mediation with the unions involved. During the October strike most stations in central London remained open. All key transport hubs operated including Liverpool Street, London Bridge, Victoria, Euston, Stratford, Waterloo, Holborn, Heathrow, Kings Cross, Finsbury Park, Paddington, Earl's Court and Whitechapel. Trains ran on ten of the eleven lines, and 40 per cent of services operated. Further planning for the November strikes meant that three quarters of stations were open at key parts of the day. Up to 40 per cent of trains ran during evening peak and Oyster data showed that the Tube carried half the usual number of passengers. I can also confirm that services ran on ten of the eleven lines."

16. TfL has further explained that it is likely that it would have to review the logs for all stations, except possibly if they were closed for the whole of the days in question. If a station was only closed for part of the day, it would still have to review the log book to determine if it was unstaffed for any of the time that it was open. Furthermore the Commissioner is aware that the request covers four separate strike days and therefore there is potentially more than one log book per station to retrieve, locate and extract the information from. Taking into account the level of service operation during the strike days in question, and the significant number of stations manual records which would need to be retrieved, the Commissioner is satisfied in this case that it would exceed the £450 cost limit to comply with this part of the request and therefore section 12 was correctly engaged in this case.

Procedural Requirements

Section 1(1)

17. Section 1(1) of the Act provides that: -

"Any person making a request for information to a public authority is entitled –

- i. to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- ii. if that is the case, to have that information communicated to him."

18. As TfL did not provide the information which it disclosed to the complainant within the statutory time for compliance it breached section 1(1)(b) in its handling of this request.

Section 10

19. Section 10(1) of the Act provides that: -

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

20. TfL failed to comply with section 1(1)(b) within the statutory time for compliance, therefore it breached section 10(1) of the Act in its handling of this request.

Section 17

21. Section 17(5) provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

22. As TfL did not notify the complainant that it was relying upon section 12 in relation to part of the request, within the statutory time for compliance, it breached section 17(5) in its handling of this request.

The Decision

23. The Commissioner’s decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- It correctly applied section 12

24. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- It breached section 1(1)(b), section 10(1) and section 17(5)

Steps Required

25. The Commissioner requires no steps to be taken.

Right of Appeal

26. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

27. 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.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 12th day of September 2011

Signed

**Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) 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."

Section 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
 - (i) subsection (1), and
 - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
 - (iii) section 41, and
 - (iv) section 44"

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

(c) prescribe different days in relation to different cases, and

(d) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

(a) the day on which the public authority receives the request for information, or

(b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

Section 12(2) provides that –

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

Section 12(3) provides that –

“In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.”

Section 12(4) provides that –

“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

Section 12(5) – provides that

“The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.”

Refusal of Request

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 17(2) states –

“Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
 1. that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 2. that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached."

Section 17(3) provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
- (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."

Section 17(4) provides that -

"A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

Section 17(5) provides that –

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."

Section 17(6) provides that –

"Subsection (5) does not apply where –

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request."

Section 17(7) provides that –

“A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.”