

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 January 2013

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

Decision (including any steps ordered)

1. The complainant has requested information about monitoring data of racial groupings and monitoring data of racial grievance reports made by TfL employees. TfL provided the complainant with information in response to part of the request, but explained that to comply with the remainder of the request would exceed the appropriate cost limit of £450 under section 12 of the Freedom of Information Act (FOIA).
2. The Commissioner's decision is that Transport for London (TfL) has correctly applied section 12 of the FOIA in this case.
3. The Commissioner requires no further steps to be taken.

Request and response

4. On 4 May 2012, the complainant wrote to TfL and requested information in the following terms:

"Monitoring data of Racial Groupings in TfL. I would like to have the data of:

- *Transport Planning Department - London Underground Limited*
- *Strategy and Commercials Directorate*
- *Operations Directorate - This is where you have Station Staff and Train Operators.*
- *London Underground Limited*
- *Transport for London*

*Monitoring Data for Racial Grievances raised for the following as well:
Transport Planning Department - London Underground Limited
- Strategy and Commercials Directorate*

- *Operations Directorate - This is where you have Station Staff and Train Operators.*
- *London Underground Limited*
- *Transport for London*

I would appreciate your quick response. I am only interested in data collected for 2009/2010 and for data collected for 2010/2011."

5. TfL responded on 9 May 2012 asking for further clarification of the request.
6. The complainant clarified the request on 9 May 2012 in the following terms:

"I wanted to know the numbers and/or percentage proportions of each of the racial groupings in the classification I have identified."
7. The complainant provided further clarification on the same day in the following terms:
 1. *"Numbers and/or proportions of employees of racial groupings. I am more interested on racial groups which shows Black African as a separate racial groups.*
 2. *The numbers and proportions of those who raised racial related grievances in the classification requested.*
 3. *I need to make comparison with the data of Black African employees racial group in proportion with other ethnic groups from the identified classification in my first message."*
8. TfL advised that a response would be provided by 6 June 2012.
9. On 21 May 2012 TfL wrote to the complainant again advising that it was unable to identify the information requested, and asked for further clarification.
10. The complainant replied on the same day and provided the names of the people he believed had been the head of each team during the time period requested.
11. On 31 May 2012 TfL wrote to the complainant advising it was still not clear about the information requested.
12. The complainant responded the same day and provided an organisation chart from September 2010.
13. On 18 July 2012 TfL provided a response to the complainant. TfL provided some information in response to the request.

14. On 20 July 2012 the complainant requested an internal review. TfL wrote to the complainant on 21 September 2012 with the outcome of this internal review. It provided some additional information in response to the first part of the request, and redacted parts of this information citing section 40(2) of the FOIA, explaining that the redacted information constituted the personal data of TfL staff. These redactions were minor and were done by anonymising the data by removing exact figures and replacing these with '5 or fewer' where appropriate. In the internal review TfL also refused the second part of the request, citing section 12 of the FOIA and arguing that to respond to this part of the request would exceed the appropriate cost limit of £450.

Scope of the case

15. The complainant contacted the Commissioner on 29 May 2012 to complain about the way his request for information had been handled. The complainant received information in response to part of his request, of which parts were redacted under section 40(2) of the FOIA. TfL refused to respond to the remainder of the request citing section 12 of the FOIA, explaining that to respond to this part of the request would exceed the appropriate cost limit of £450.
16. The Commissioner considers that the scope of this case is to consider TfL's application of section 12 in response to the request.
17. The Commissioner notes TfL's application of section 40(2). However, the Commissioner further notes that if section 12 has correctly been applied to part of the request, this would encompass the entire request so far as it covers the same or similar information, and TfL would not be obliged to respond to any part of the request. Therefore, it is the Commissioner's view that the scope of this case is to consider whether or not TfL has correctly applied section 12 and if it has to consider whether the rest of the request was for the same or similar information. The Commissioner would only consider TfL's application of section 40(2) if he finds that section 12 has not been correctly applied or if the other part of the request was not for the same or similar information.

Reasons for decision

18. Section 12 of the FOIA provides that a public authority is not obliged to comply with a request if the cost of doing so would exceed the appropriate cost limit. This limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees regulations) at £600 for central government bodies. The fees regulations

also state that the cost of a request must be calculated at the rate of £25 per hour, meaning that section 12 effectively provides a time limit of 24 hours.

19. The tasks that can be taken into account when calculating a fees estimate are specified in the fees regulations as follows.

- Determining whether the requested information is held.
- Locating that information.
- Retrieving the information.
- Extracting the information

20. The relevant part of the request read as follows:

*"Monitoring Data for Racial Grievances raised for the following as well:
Transport Planning Department - London Underground Limited*

- Strategy and Commercials Directorate

- Operations Directorate - This is where you have Station Staff and Train Operators.

- London Underground Limited

- Transport for London

I would appreciate your quick response. I am only interested in data collected for 2009/2010 and for data collected for 2010/2011."

21. TfL explained to the Commissioner that it had sought clarification of the request, and that the complainant had clarified this part of the request in the following terms

"...numbers and proportions of staff who raised racial related grievances in the classification requested."

22. TfL explained to the Commissioner that it based its estimate on this clarification.

23. TfL explained that, at the internal review stage, it had refused to respond to this part of the request citing section 12 of the FOIA. TfL confirmed that it holds information that falls within the scope of this part of the request, but that to locate, extract and retrieve this information would exceed the appropriate cost limit for responding to a request as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations).

TfL's estimate:

24. Section 12 makes it clear that a public authority does not have to make a precise calculation of the costs of complying with a request. Only an estimate is required.
25. To determine whether TfL applied section 12 of the FOIA correctly the Commissioner has considered the submissions TfL provided during his investigation.
26. TfL confirmed that it holds the details of all grievances raised, which means that it would be able to establish the number of grievances brought where race or complaints of racial discrimination was a factor.
27. TfL confirmed that it also holds some monitoring data which identifies: the number of grievances brought; the unit where the employee bringing the grievance works; and the ethnicity of the employee. However, this monitoring data does not include details of whether racial discrimination was a factor in bringing the grievance. Therefore, each grievance file would have to be checked individually in order to ascertain whether or not it would be relevant to the request.
28. TfL also explained that grievance files are not held centrally. To check which are relevant, each would have to be located and then read over. This would first involve contacting local managers and requesting them to check their grievance report files for those which involved racially related grievances.
29. TfL explained that identifying, retrieving and extracting the relevant information would therefore involve the following actions for each individual grievance file. First, all grievance records held in TfL's Sap database would have to be checked in order to identify which managers carried out investigations. Second, each manager would have to be contacted and asked to identify grievances they investigated where racial discrimination was a factor.
30. TfL also argued that, as the request covered two financial years (2009-10 and 2010-11), it is reasonable to expect that the managers in question would have to check their records in order to confirm which cases would be of interest, rather than being able to remember this information.
31. On the basis of the above, TfL estimated that it would take 5 minutes per grievance file.
32. The Commissioner agrees that it is reasonable and realistic to estimate that to identify and locate the investigating manager, then to contact the relevant managers and have them check the basis of the grievance

and confirm back to the FOI team the number of grievances falling within the scope of the request, would take at least five minutes.

33. TfL further argued that it considers this to be a conservative estimate of the time this would take. TfL stated that it has intentionally underestimated this time, in order to be sure that its estimate is a reasonable one. TfL explained this by stating that it is likely that some investigating managers have left TfL, and therefore additional time would be required to identify who now holds the relevant records.
34. On this basis, the Commissioner accepts TfL's estimate of five minutes per grievance file as its basis for calculating its estimate.
35. TfL explained that there were 600 grievances in 2009-10, and 313 grievances in 2010-11. With this estimate of 5 minutes per file outlined above, this equates to $600 \times 5 = 3000$ minutes (50 hours) for the 2009-10 grievances, and $313 \times 5 = 1565$ minutes (26 hours) for the 2010-11 grievances. This gives an overall time of 76 hours, or a cost of £1900.
36. It is therefore the Commissioner's view that TfL is correct when it says that to respond to the request would exceed the appropriate cost limit of £450. It is the Commissioner's view that the estimate given by TfL is reasonable, realistic, and is based on cogent evidence.

The request as a whole:

37. Regulation 5(2) of the Fees Regulations requires that requests which are to be aggregated relate "to any extent" to the same or similar information.
38. The Information Commissioner's Office offers guidance on section 12 of the FOIA which can be found here:
http://www.ico.gov.uk/for_organisations/freedom_of_information/guide/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/costs_of_compliance_exceeds_appropriate_limit.ashx
39. This guidance states that requests are likely to relate to the same or similar information where, for example, the requestor has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested.
40. It is the Commissioner's view that there is a common thread running through the two questions contained within this request, in that both relate to monitoring data about race and/or ethnicity.

41. The Commissioner therefore finds that the two questions within the request are for the same or similar information.
42. As the Commissioner's decision is that TfL has correctly applied section 12 of the FOIA to part of the request, he therefore also finds that section 12 applies to the request as a whole, and requires no further steps to be taken.

Other matters

43. As previously noted, the Commissioner would only fully consider TfL's application of section 40(2) if he found that TfL had not correctly applied section 12 of the FOIA to this request or if the part of the request to which section 40(2) was applied was not for the same or similar information as the part of the request to which section 12 was applied.
44. The Commissioner does however note that, having briefly reviewed TfL's arguments in regards to this, it is highly likely he would find that TfL had correctly applied section 40(2) of the FOIA when redacting the information it disclosed.
45. In any event, as section 12 of the FOIA does apply to part of this request, and the remaining part of the request is for the same or similar information, it is the Commissioner's view that TfL is under no obligation to disclose any information in response to the request. Therefore, whether or not section 40(2) is applicable in this case falls outside the scope of this case.

Right of appeal

46. 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: 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

47. 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.
48. 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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