

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 January 2016

Public Authority: Transport for London

Address: 8th Floor, Windsor House, 42-50 Victoria House
London SW1H 0TL

Decision (including any steps ordered)

1. The complainant has requested information from Transport for London about a Low Emission Zone exemption – the Showman’s Discount – for which some travelling showpeople are eligible. Transport for London was able to release some related information but says that it is not obliged to comply with the specific request under the provision at section 12 of the FOIA (cost exceeds appropriate limit).
2. The Commissioner’s decision is that Transport for London has correctly applied section 12 to the request and complied with the obligation under section 16 to offer advice and assistance. He does not require Transport for London to take any steps.

Request and response

3. On 12 June 2015, the complainant wrote to Transport for London (TfL) and requested information in the following terms:

"Under the Freedom of Information Act, please register this email, as a formal request for the following information:

- *In the last two years, how many applications have been made by showman, belonging to the showman's guild ?*
- *In the last two years, how many exemptions have been allowed by LEZ [Low Emission Zone] to travelling showman belonging, to the showman's guild ?*
- *In the last two years, how many applications have been made by showman NOT belonging to the showman's guild ?*

- *In the last two years, how many exemptions have been allowed by LEZ to travelling showman, NOT belonging to the showman's guild ?”*
4. TfL responded on 29 June 2015. It said that it did not hold the requested information.
 5. Following an internal review TfL wrote to the complainant on 3 August. It revised its position and released some related information that it had identified that it held (the number of applications for the Showman's Discount that it had received – 416 – in the period of the request). It said that it is not obliged to comply with the submitted request, under the provision at section 12 of the FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 14 August to complain about the way his request for information had been handled. He is of the view that TfL has an agreement with the Showmen's Guild that exempts members of the Guild from the Low Emission Zone charge. He considers that this discriminates against showmen who are not members of the Guild. The complainant is not satisfied with TfL's application of section 12 and also considers that TfL should be in the higher of the charge brackets provided under section 12.
7. In its submission, TfL has told the Commissioner that although it is satisfied that section 12 applies to the request, it considers that the request has several features of vexatiousness that would release TfL from its duty to comply with it, under section 14(1).
8. The Commissioner has focussed his investigation on TfL's application of section 12 to the request and whether it has met its obligation under section 16. He has been prepared, if necessary, to consider whether the request is vexatious under section 14(1).

Reasons for decision

Background

9. TfL says that in January 2015, the complainant's client applied for his vehicle to be awarded a 100% Showman's Discount against the Low Emission Zone charge. The LEZ covers most of Greater London and operates 24 hours a day, every day of the year. It was introduced in 2008 to encourage the most polluting heavy diesel vehicles driving in the Capital to become cleaner.

10. TfL refused the application on the basis that it did not consider that the vehicle of the complainant's client met the criteria for the Discount, when looking at all the evidence as set out on the application form for the Discount.
11. Having refused the application, TfL says its Road User Charging (RUC) team corresponded with the complainant and his client numerous times over several months to gather further information and supporting evidence for the application in order to review its decision, at the complainant's request. TfL says it did this to make sure it had arrived at a decision based on all the available facts, which the complainant's client may not have considered relevant or important. This approach also enabled TfL to explore if and how the vehicle in question may have met the criteria for the Discount. TfL says it finally provided the complainant with a full written decision that set out why his client's vehicle did not meet the criteria for the Discount to be awarded.
12. TfL confirmed that the complainant appears to believe that membership of the Showmen's Guild automatically exempts its members and their vehicles from the LEZ charge and he has expressed the view that TfL has discriminated against his client. TfL has told the Commissioner that, whilst the name of the discount in question is the Showman's Discount, the qualification criteria does not require membership or an affiliation to any recognised trade body, such as the Showmen's Guild. The name of its discount merely reflects the generic term for people who live and make their living around circuses and fairs ie a showman. TfL says its discount is not titled to reflect that applicants are required to be registered under any trade association or organisation, or specifically to be a member of the Showmen's Guild.
13. This matter is central to the complaint. The complainant's request appears to seek evidence that a higher proportion of successful applications for the Discount have been submitted by showmen who are members of the Showmen's Guild than by showmen who are not members of the Guild.
14. He considers that TfL must therefore have a record of successful and unsuccessful applications from members of the Showmen's Guild and from showmen who are not members of the Guild. He considers that it would therefore take well under the 18 hour appropriate limit to collate the information he has requested.
15. The Commissioner notes the complainant's correspondence with TfL on 3 August 2015. In this correspondence, the complainant refers to TfL having identified that it had received 416 applications for the Showmen's Discount. The complainant goes on to say that his request was for the number of showman's applications that have been allowed

against the number of businesses that did not belong to the Showman's Guild (or other showman's affiliated organisations) that have been allowed.

16. The complainant says that he now has the number of showman's applications – ie applications for the Showman's Discount - and needs to know the number of applications that did not belong to the Showmen's Guild, which the complainant categorises as "the total [number] of relevant applications". He suggests that once this figure is known (ie the number of applications from individuals who did not belong to the Showmen's Guild), it would be possible to take the 416 applications from the total number of relevant applications. The remaining figure would be the number of non-showman applications.
17. The complainant says that it would take a few seconds to divide the 416 showman's applications into two piles: one for successful applications, another for non-successful applications. He suggests that the same process could be undertaken for the non-showman applications: one pile for successful applications, another for non-successful applications. The complainant suggests this process would take a maximum of two hours.
18. In the Commissioner's view, the complainant's correspondence to TfL above is somewhat unclear. He considers that some of the confusion may have been caused through unclear use of the term 'showman' and 'showman's application'. In his early correspondence with the Commissioner during his investigation, the complainant appeared to use the term 'showmen'/'showman' to refer to members of the Showmen's Guild when it is possible that someone can be a showman without being a member of that Guild. (This is discussed further at paragraph 28.)
19. In the first instance therefore, the Commissioner has first investigated whether the complainant's belief that members of the Showmen's Guild are automatically exempt from the LEZ charge through the Showman's Discount is correct.
20. This belief appears to have been generated by an article on the Showmen's Guild's website¹. The Commissioner referred TfL to this article. TfL confirmed to the Commissioner that it does not have an arrangement with the Showmen's Guild that automatically exempts its members from the LEZ charge. However, as previously explained, TfL

¹ <http://www.showmensguild.co.uk/index25.html>

does now have a policy whereby showmen (that is showmen generally, and not showmen who are members of the Showmen's Guild) can apply for an exemption to this charge ie the Showman's Discount.

21. On this basis the Commissioner therefore considers, and TfL agrees, that the Showmen's Guild's article is (unintentionally) misleading. This is because it does seem to suggest that showmen who are members of the Showmen's Guild are automatically exempt from the LEZ charge, when this is not the case. What is the case is that some showmen (generally) will now be eligible for the exemption. The Commissioner notes that the article has been written by the Showmen's Guild; it is not, for example, a press release by TfL and TfL does not appear to have contributed to it (although the article does quote a TfL report). TfL has told the Commissioner that it intends to contact the Showmen's Guild and to discuss the content of its article with them.
22. The Commissioner has considered the complainant's arguments on this matter – that the article remains evidence of a formal arrangement between TfL and the Showmen's Guild – but, having also considered TfL's position, he is prepared to accept that no such arrangement exists. The Commissioner has gone on to consider whether TfL correctly applied section 12 to the complainant's request.

Section 12 – cost exceeds appropriate limit

23. Section 12 of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate cost limit to:
 - either comply with the request in its entirety, or
 - confirm or deny whether the requested information is held.
24. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request - 24 hours work for central government departments; 18 hours work for all other public authorities. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
 - (a) determine whether it holds the information
 - (b) locate the information, or a document which may contain the information
 - (c) retrieve the information, or a document which may contain the information, and
 - (d) extract the information from a document containing it.

25. Where a public authority claims that section 12 is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit – in line with section 16 of the FOIA.
26. The complainant has argued that Transport for London is part of the Greater London Authority and as such can be categorised as a central government department. This would put it within the higher cost limit of £600. The Commissioner notes that the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Regulations”) sets the appropriate limit at £450 for Transport for London and therefore he is satisfied that this is the correct bracket for this authority.
27. It appears to the Commissioner that the complainant may have misunderstood TfL’s internal review. TfL identified that it had received 416 applications for the Showman’s Discount. It had not identified that it had received 416 applications from showmen who are members of the Showmen’s Guild. As TfL has explained to the complainant and the Commissioner, the LEZ application form (which includes the Showman’s Discount) does not require applicants to state whether they are members of the Showmen’s Guild.
28. As discussed previously, the Commissioner finds the complainant’s correspondence of 3 August 2015 somewhat unclear. The complainant appears to the Commissioner to be suggesting that his request concerns applications for the LEZ exemption (ie the Showman’s Discount) from showmen as opposed to applications from non-showmen ie the wider public. The Commissioner has reviewed the complainant’s request. It is specifically for the number of LEZ exemption applications received from showmen *who are members of the Showmen’s Guild*, the number of these applications that have been allowed, the number of applications received from showmen *who are not members of the Showmen’s Guild* and the number of these applications that have been allowed. The focus of the request is clearly applications from showmen who are members of the Showmen’s Guild as opposed to applications from showmen who are not members of the Showmen’s Guild. The request does not concern applications received from showmen verses applications received from non-showmen ie the wider public.
29. In his complaint to the Commissioner of 14 August 2015, the complainant confirmed that the request concerns applicants who are and who are not members of the Showmen’s Guild. He said that the application form has a box for recording whether the applicant is a member of the Showmen’s Guild and that it would take TfL a matter of seconds per application to record this. He suggests that it would then take no more than one minute per application to put the 416

applications into two piles: one for members of the Showmen's Guild and one for applicants who are not members of the Guild. The complainant is of the opinion that this process would take approximately seven hours in total.

30. The Commissioner has seen an example of the Low Emission Zone Vehicle Registration application form. It includes a section on exemptions and discounts, including discounts for showmen's vehicles. Part 1 of the form asks for the applicant's job title and, if appropriate, an applicant would enter 'Showman' here. He has been unable to find any part of the form that requires applicants to state whether or not they are members of the Showmen's Guild.
31. However, the form does require applicants for the 100% Showman's Discount to provide relevant proofs. The Commissioner can appreciate that some applicants who are showmen may choose to volunteer the fact that they are a member of the Showmen's Guild, and to submit relevant documentation, as proof of their eligibility for this Discount. As explained previously, TfL has confirmed to him that it is not a requirement that applicants for the Showman's Discount *must* be members of the Showmen's Guild, or any other affiliated trade body, to be eligible for the Showman's Discount.
32. The Commissioner is satisfied that Transport for London does not routinely collect information on whether or not applicants for the Showman's Discount are members of the Showmen's Guild. He notes that TfL nevertheless acknowledges that it may hold some information relevant to the request, for the reasons given at paragraphs 15 and 30.
33. TfL has told the Commissioner that as part of the review that it undertook, it gathered evidence from the RUC team regarding: the qualifying criteria for the LEZ discount for showman vehicles; the criteria concerning members of the Showmen's Guild or other affiliating organisation/group; whether this information is specifically requested from applicants and, if it is recorded, some samples of LEZ vehicle registration application forms from applicants.
34. The RUC team confirmed that for the time period requested, it had identified that 416 applications for the Showman's Discount had been submitted. However, as it had previously explained to the complainant, and as evidenced on the sample application forms, it is not compulsory for an applicant to advise specifically whether they are a member of the Showmen's Guild when making an application. TfL says that it is therefore unlikely that the information it holds could be used to provide definitive evidence of whether a particular applicant was a member of the Showmen's Guild. Nor does the Showmen's Guild publish a list of members that TfL could cross reference against applicants' names.

35. TfL says that some applicants may decide to volunteer the information that they are a member of the Showmen's Guild, either on the application form or as part of any additional evidential documentation they may supply. TfL's reviewing panel agreed that this would constitute held information but noted that this would not necessarily be a complete list of members, nor would it be contained in a format that is easily accessible. To establish whether an applicant had disclosed that they are a member of the Showmen's Guild, TfL would need to manually review all 416 applications that it had received in the time period requested. It would also have to review any supporting documentation as well as any correspondence relating to the application and any subsequent appeal or complaint from the applicant.
36. TfL has told the Commissioner that this information is not held on one central file as different teams deal with different aspects of the process. TfL would have to gather all this information using a manual search of each one of the 416 applications, including supporting documents, appeals and correspondence – all held in multiple locations. TfL has confirmed that none of these information systems contain a searchable field recording membership of the Showmen's Guild.
37. TfL confirmed to the Commissioner that it undertook a sampling exercise using some application forms that the RUC team had provided to the reviewing panel as it considered that these forms are the quickest documents to locate. TfL considered that a standard form contained, on average, 20 pages. To review 416 forms would therefore involve reviewing 8,320 pages. As described above, this would only cover the initial application forms. TfL considers that the whole application process would, in many cases, involve additional evidence being requested and submitted, correspondence between the RUC team and the applicant, and any subsequent appeals or complaints. These would all need to be manually identified, retrieved and reviewed.
38. TfL estimated that it would take between three and 15 minutes to review all the correspondence held in connection with a single application (once located and retrieved). It considers this to be a conservative estimate. TfL says that in order to complete the task within the cost/time limit would require it to spend no more than two minutes reviewing all the documentation it holds for each application.
39. The Commissioner has considered TfL's explanation of the activities it would need to undertake to locate and retrieve information that falls within the scope of the complainant's request. He considers that these activities are credible and that it would take TfL more than 18 hours to complete these activities including reviewing the necessary material: 416 LEZ applications of, on average, 20 pages each, and any appeal documents and complaints. If one application were to take on average

three minutes to review (the most conservative of TfL's estimates), the task of reviewing the 416 applications alone would take 20 hours.

40. To summarise his conclusion, the Commissioner is prepared to accept that TfL does not have an arrangement with members of the Showmen's Guild that exempts its members from the Low Emission Charge. It does now have in place a Showman's Discount for which any showman can apply. The application form does not require applicants to state whether or not they are members of the Guild. The form does ask applicants to provide proof that they are a showman. Some showmen may submit evidence that they are a member of the Guild as proof. Some showmen may provide other evidence as proof (even if they are also a member of the Guild). Because membership of the Guild is not a requirement for the Discount, TfL does not record whether an applicant is or is not a member of the Showmen's Guild. It therefore does not hold information relevant to the complainant's request that it could easily access in order to release the specific information that he has requested, in the manner that the complainant has suggested at paragraph 29. On the evidence that TfL has provided to him, the Commissioner is satisfied that TfL has correctly applied section 12 to the complainant's request. It has not therefore been necessary to consider whether the request is vexatious under section 14(1).

Section 16 – advice and assistance

41. Section 16 of the FOIA places an obligation on public authorities to offer advice and assistance to an applicant.
42. In addition, paragraph 14 of the FOIA section 45 Code of Practice says that where a public authority is not obliged to comply with a request because it would exceed the appropriate limit to do so, then it:

"...should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee."
43. TfL has told the Commissioner that it believes there is nothing further it can do to address the complainant's complaint and that it has exhausted all avenues of assistance that it is able to provide. As detailed previously in this notice, TfL has explained that it has been corresponding with the complainant and the complainant's client "for months", providing advice, guidance and assistance with the client's unsuccessful application for the Showman's Discount.
44. The Commissioner notes that TfL did release some related information to the complainant on review – the number of applications it had

received for the Showman's Discount – although it acknowledges that this would not address his specific request. TfL does not formally collect information on whether or not applicants for the Showman's Discount are members of the Showmen's Guild and it explained this to the complainant more than once. However membership of the Showmen's Guild appears to be the focus of the complainant's interest as he considers that non-members are discriminated against. In these circumstances, the Commissioner does not consider that the request could have been reformulated in such a way that TfL could have responded to it within the cost limit, with the response addressing the complainant's specific concern. Consequently the Commissioner considers that no breach of section 16 has occurred.

45. In light of his finding on section 12 the Commissioner has not gone on to consider whether the request is vexatious under section 14(1) of the FOIA.

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: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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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