

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 October 2017

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

Decision (including any steps ordered)

1. The complainant has requested information on private hire operators in London including the number of vehicles registered with each one. Transport for London (TfL) refused to provide this information on the basis of section 41 and 43 of the FOIA.
2. The Commissioner's decision is that TfL has correctly applied the provisions of section 41 to withhold the information and she requires no steps to be taken.

Request and response

3. On 14 October 2016, the complainant wrote to Transport for London (TfL) and requested information in the following terms:
"Can you supply me a list of all private hire operators in London (most recent) and how many private hire vehicles are registered with each one allowed to accept hirings."
4. TfL responded on 2 November 2016. It stated that it held the requested information and provided a link to a licence checker where details of all currently licensed operators could be found. With regard to how many private hire vehicles are registered with each one allowed to accept hirings; TfL stated this information was being withheld on the basis of the exemptions at section 41 and 43 of the FOIA.
5. The complainant requested an internal review of this decision on 3 November 2016. After several days, TfL responded to the complainant

on 21 March 2017 with the outcome of its internal review. TfL upheld the view that the information was provided in confidence and provided more detail on its reasoning for citing section 43; specifically that information on the number of vehicles registered is collated for all operators and could therefore be of more commercial interest as it could be used by other operators.

6. TfL stated it considered that some drivers might be registered with several operators but concluded that despite this the routine disclosure of the number of drivers with a particular operator would affect competition in the market. TfL did provide a small amount of information showing the number of small (no more than two vehicles) and standard (more than two vehicles) operators.

Scope of the case

7. The complainant contacted the Commissioner on 3 April 2017 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of her investigation to be to determine if TfL has correctly applied any of the provisions of section 41 or section 43 and if so, where the balance of the public interest lies.

Reasons for decision

Section 41 – information provided in confidence

9. Section 41(1) of the FOIA states that:

"Information is exempt information if –

- a) it was obtained by the public authority from any other person (including another public authority), and*
- b) the disclosure of the information to the public (otherwise that under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person."*

Was the information obtained from another person?

10. TfL explained that the requested information about the number of vehicles used by each private hire operator in the previous week is supplied to TfL on a weekly basis by operators. The Commissioner is satisfied therefore that the information is provided to it by another person.

Would disclosure constitute an actionable breach of confidence?

11. In considering whether disclosure of information constitutes an actionable breach of confidence the Commissioner will consider the following:
- whether the information has the necessary quality of confidence;
 - whether the information was imparted in circumstances importing an obligation of confidence; and
 - whether disclosure would be an unauthorised use of the information to the detriment of the confider.

Does the information have the necessary quality of confidence?

12. The Commissioner finds that information will have the necessary quality of confidence if it is not otherwise accessible, and if it is more than trivial.
13. TfL has explained that operators are required to supply TfL with the requested information under the Private Hire Vehicles (London)(Operators' Licenses)(Amendment) Regulations 2016¹. In its additional guidance on this² it is stated:
- "Operators are required to provide us with details of the drivers and vehicles they have used to fulfil private hire bookings, or have had available to them to fulfil bookings in a specified period. We use this information provided for data analysis."*
14. Having viewed the withheld information and read the obligations requiring the provision of the information the Commissioner does accept the information is not trivial. It is clear the information is not otherwise accessible; although TfL does acknowledge that the largest operator has occasionally made public statements about the number of drivers it works with this is not the case for all other operators which, including smaller private hire operators, amounts to thousands.
15. The information is not trivial as it is provided only through obligation and is not information that smaller private hire operators would

¹ <http://content.tfl.gov.uk/phv-ammendment-regs-2016.pdf>

² <https://tfl.gov.uk/info-for/taxis-and-private-hire/new-private-hire-regulations#on-this-page-2>

volunteer to provide to the public as they consider that details of the number of drivers they have may put them at a commercial disadvantage. Whilst the Commissioner has not considered the arguments related to commercial sensitivities as part of her decision she does recognise that this belief by smaller companies of the potential prejudice, whether perceived or real, does make the information more than trivial to the smaller operators.

16. Having regard to the above, the Commissioner would accept that the information cannot be said to be publicly available and as such it cannot be considered to be otherwise accessible. The Commissioner also accepts that the information is not trivial. Therefore, the Commissioner is satisfied that the information has the necessary quality of confidence.

Was the information imparted in circumstances importing an obligation of confidence?

17. The Commissioner refers to the test set out in *Coco v AN Clark (Engineers) Ltd [1969] RPC 41*, specifically:

"...if the circumstances are such that any reasonable man standing in the shoes of the recipient of the information would have realised that upon reasonable grounds the information was being provided to him in confidence, then this should suffice to impose upon him an equitable obligation of confidence".

18. TfL informs operators the information they provide will be used for data analysis. There is no suggestion the information will be shared or published. For this reason TfL considers the information carries an implied obligation of confidence. In addition, TfL has provided examples of statements made when information is submitted from a range of operators, large and small. These statements show that the operators regard this information as confidential and many make reference to it only being intended for the recipient.
19. The Commissioner recognises that the limited use TfL states the information will be used for and supporting statements made by operators when submitting returns do show there is an implied obligation of confidence attached to this information and she therefore accepts TfL has demonstrated this point.

Would disclosure be of detriment to the confider?

20. TfL has argued that the private hire business is competitive with a small number of Pan-London operators and a majority of operators operating in a smaller geographical area. At any time an operator may be expanding their operation or facing a shortage of drivers and licensed vehicles. Therefore, it is argued that disclosing the requested

information to rival operators would be detrimental to some operators. In support of this view, TfL has pointed to an example³ of one operator seeking to both obtain and protect similar information – numbers of receipts – in other locations.

21. The Commissioner acknowledges the argument that knowing how many drivers or vehicles a competitor has may be useful to an operator, for example if an operator is considering expansion it may be advantageous to know how many drivers or vehicles a competitor had if they are both competing for business in the same area. For this reason she would accept there would be a detriment to the operators providing information.

Is there a public interest defence for disclosure?

22. Section 41 is an absolute exemption and so there is no requirement for an application of the conventional public interest test. However, disclosure of confidential information where there is an overriding public interest is a *defence* to an action for breach of confidentiality. The Commissioner is therefore required to consider whether TfL could successfully rely on such a public interest defence to an action for breach of confidence in this case.
23. TfL does not consider there to be any public interest defence in disclosure of the requested information about all operators. Although a small minority of operators (usually the larger ones) choose to make statements about how many drivers they have or have a large enough market share to be at low risk of detriment through disclosure, TfL does not consider there is an overriding public interest that would justify disclosing the vehicle returns submitted by all operators, particularly those with lesser market share.
24. The complainant believes that there is a monopoly building in London's private hire industry and disclosing this information would help combat this. He also points to the fact that when the Metropolitan Police Cab Unit issue Traffic Offence Reports (TORs) to private hire vehicles they note the operator the driver is associated with. The complainant argues that knowing the number of vehicles registered to operators is essential to establish if drivers for certain operators are disproportionately receiving TORs to ensure the public can choose a safe operator. He

³ <https://www.theguardian.com/technology/2017/apr/24/unrollme-mail-unsubscription-service-heartbroken-sells-user-inbox-data-slice>

provided a link to a news article⁴ which discusses one of the larger operators and the number of driving offences registered to its drivers as a percentage of the total number of offences.

25. Whilst the Commissioner understands the importance of the public being assured about the safety of private hire operators and being given information to make informed choices she is not minded to accept that disclosing the requested information would allow for this to happen. The information that has been requested relates to number of vehicles and drivers at operators, not to offences. If this information is publicly available the Commissioner has not been able to find it from conducting basic internet searches and, in fact, the news article suggests the figures found on the larger operator were obtained from confidential emails.
26. For this reason, the Commissioner does not accept this is a public interest argument for overriding the obligation of confidence. She has further considered if there would be any public interest in disclosing the requested information other than safety concerns and acknowledges there may be some interest to the public in knowing the size of the large hire operators in London to verify statement they make about their operations and to understand and assess TfL's role as a regulator.
27. However, arguments for disclosure are likely to be weighted towards information on the largest operators but for smaller operators who may only have small number of vehicles and drivers the arguments are much weaker. The public may be able to gain some insight into the capacity and capability of a private hire firm but as this information is only a snapshot of the situation over one week it is not likely to be of much use without additional information on numbers of trips, drivers shift patterns etc to estimate how capable an operator might be and decide whether to use them.
28. Balanced against this is the detriment to the operators, particularly the smaller operators and the need to preserve the obligation of confidence which the Commissioner has already established. Based on the above, the Commissioner does not consider there is sufficient evidence to suggest the public interest is significant enough to outweigh the public interest in maintaining the confidence in the information.

⁴ <http://www.dailymail.co.uk/news/article-4807298/Uber-drivers-commit-62-minicab-driving-offences.html>

29. Therefore, the Commissioner finds that the information was correctly withheld under section 41 of the FOIA and has not gone on to consider section 43(2).

Right of appeal

30. 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

31. 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.
32. 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

Jill Hulley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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