

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 June 2021

Public Authority: Chief Constable for British Transport Police
Address: Force Headquarters
25 Camden Road
London
NW1 9LN

Decision (including any steps ordered)

1. The complainant requested information about the number of reported incidents for a specified rail network and time period. British Transport Police ('BTP') advised that to comply with the request would exceed the appropriate limit at section 12 of FOIA. The complainant did not consider that BTP had provided him with adequate advice and assistance about his request, as required under section 16 of FOIA.
2. The Commissioner's decision is that BTP complied with its duty under section 16 of FOIA. No steps are required.

Request and response

2. On 8 March 2020, the complainant wrote to BTP and requested information in the following terms:

"Can you inform me how many incidents were reported to the BTP that occurred on trains operated by c2c Rail or stations managed by c2c Rail from 1st January 2020 through to 29th February 2020."

3. BTP responded on 3 April 2020 and refused to provide the requested information, advising that to do so would exceed the appropriate cost limit at section 12 of FOIA.

4. On 16 August 2020, the complainant requested an internal review some four months after receiving BTP's response, in which he raised his concern about its section 16 advice and assistance as follows:

"Section 16 of the FOI 2000 Act requires a public authority to provide advice and assistance. In refusing my FOI request, British Transport Police has not advised me how to adapt my request to so that is [sic] satisfies the requirements set out in Section 12 of the Act.

Kindly inform me why such assistance was not provided and inform me the date range that would comply with Section 12 of the Act."

5. BTP noted that the complainant's request for internal review had been submitted significantly outside its 40 working days' recommended timescale but advised it had processed it "as a matter of courtesy and in view of the questions asked." BTP maintained that it had provided appropriate section 16 advice and assistance, but went into further detail as part of its internal review response.

Scope of the case

6. The complainant contacted the Commissioner on 9 November 2020 to complain about the way his request for information had been handled. He submitted the following grounds of complaint:

"I do not feel that the BTP satisfied the requirements in Section 16 of the FOI Act 2000 to provide me advice and assistance. In the response to my internal review, [name redacted] considers that the BTP offered a substantial amount of advice. In the original response, the BTP estimated that with scope of my request it would take around 18 hours to complete. When combined with the 2 hours the BTP inform me they had already spent on the request, it exceed the 'appropriate level' by 2 hours. In my opinion the BTP should have contacted me as soon as it was calculated my request would exceed the 'appropriate time'. The BTP could have suggested that I amend the request by either a) change the definition of 'incidents' to 'crimes'; or b) to reduce the time window from 2 months to, for example, 7 weeks.

If the BTP had of [sic] contacted me in March 2020 with the above assistance, I would have requested the time window to be reduced by a week (delaying the start date) so that my request remained within the 'appropriate level'. I am seeking your review of Section 16 of the Act and if you agree this was not satisfied, instruct my revised request to be completed."

7. On 17 May 2021, the Commissioner wrote to the complainant, which included the following:

"Where possible the Information Commissioner prefers complaints to be resolved informally and we ask both parties to be open to compromise. Having reviewed the case correspondence, and having also noted your grounds of complaint, I would like to propose a potential resolution/way forward.

Your complaint seems to focus only on section 16 and not on BTP's citing of section 12. I have formed a preliminary view that BTP did not provide you with specific section 16 advice and assistance in its initial response; however it rectified this at internal review. I note your suggested refined request of delaying the start date of the time period by one week. Please note that the Commissioner cannot compel a public authority to respond to a refined request which has not been formally submitted by a requester ie you have not sent your refined request to BTP. It is also for BTP to state whether this refinement would reduce the scope sufficiently to bring it within the cost limit (once it has received your refined request).

If you would like me to investigate your complaint I can do so but, based on the evidence currently available to me, any decision notice issued is likely to conclude that section 16 advice and assistance was provided at internal review, which means that there would be no breach of section 16. As explained above, the Commissioner cannot order a public authority to respond to a request which it has not yet received from the requester. In my view, investigating your complaint will not take your request any further forward.

I would like to suggest that you instead consider submitting your refined request to BTP – you can make a further new complaint to the Commissioner should you remain dissatisfied following BTP's response and any internal review for that refined request."

8. She asked the complainant to respond by 1 June 2021. In the absence of any reply, the Commissioner sent the complainant a reminder on 7 June 2021, asking him to respond no later than 11 June 2021.
9. On 11 June 2021, the complainant responded as follows:

"I refer to your emails on the 17th May 2021 and the 7th June 2021.

Notwithstanding how inefficient it would be for both myself and the BTP if I was to submit a new and refined request, I have not been provided the date parameters that the BTP believe would make the request compliant with Section 12.

My complaint remains. If the BTP provides acceptable date parameters then I will accept the proposal to bring this request to a conclusion."

10. The Commissioner has considered the above in the 'Other matters' section of this notice. She has also examined whether BTP has complied with its section 16 obligations.

Reasons for decision

Section 16 – advice and assistance

11. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request, so far as it would be reasonable to do so. In general, where section 12(1) is cited, in order to comply with this duty, a public authority should advise the requester as to how their request could be refined to bring it within the cost limit, albeit that the Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.
12. The Commissioner has reviewed BTP's response to the request. Whilst she cannot find any reference to section 16 of FOIA, nor any suggested refinements to potentially bring the request within the section 12 cost limit, she notes that BTP considers it had offered the complainant a "*substantial amount of advice*" in the course of explaining the cost exemption, specifically advising him:

"In relation to your request for the number of incidents reported that occurred onboard C2C trains, the information you have requested cannot be easily retrieved. I would note that 'incidents' has a specific meaning to the police service and relates to a call for police assistance that may or may not turn out to be a crime. Crimes are recorded on a different system and each crime would be recorded along with a searchable field indicating where the crime has occurred (eg. on train, etc) and which train operating company the crime is attached to. That is not the case for incident logs which are operational logs intended to manage the deployment of police units and the management of an ongoing situation. As such neither the train operating company nor whether the incident has occurred on a train, at the lineside or in a part of a station is not recorded in a set and searchable place.

In order to retrieve this information, we would need to manually review each potential incident log which could be in scope and retrieve the information from free text entries."

13. As part of its internal review response, BTP also stated that its advice to the complainant included an explanation of the difference in police systems between an 'incident' (which the request asked for) and a 'crime' (which is often what people actually mean when referring to incidents). It gave an explanation of how crimes would be recorded with searchable fields indicating which train operating company was affected and where the crime specifically occurred, (including onboard a train) whereas these details would not be recorded on an incident log so would have to be confirmed (if possible) from the free text comments on the log and what an incident log actually signifies (as stated an incident log could be a criminal matter, relate to a missing person or concern for safety, be related to a medical issue, etc). It said crimes would be recorded in line with Home Office Counting Rules for recorded crime – some recorded crimes may also have been originally recorded as an incident log, some of them will not be because there was no original call for service (eg a late report after the event)
14. Additionally, at internal review, and based on the above, BTP told the complainant:

"This then suggests several possible avenues for a refined request, depending on what you are trying to actually find out (which we do not know). If you are looking for statistics on recorded crime on C2C trains and managed stations, then this is an easy search which, as explained, can be conducted on an automated basis on the time period stated, or equally on a longer time period. If you are actually interested in number of incident logs with the parameters stated then we have quantified the number of total incidents that could be in scope of the request, the time that our Analytics & Insight team estimate would be required to manually review each individual log for the details required and we have noted the three specific stations which account for more than half of those incidents – two of those stations are not managed by C2C and therefore it is likely that only a small minority of incidents assigned to them will be within scope of the request but it is not possible to confirm how many without checking each one. Therefore, you would be able to consider a request based on a shorter time period or on a smaller defined geographic area based on the information that we have given you.

As we do not know what your specific point of interest it would not be proper for us to suggest one specific formulation of a refined request, but I consider that we have arguably gone

beyond the minimum requirement under Section 16 in this case as we have not only supplied advice based on the wording used in the request, but have also suggested other possible alternatives if you were not aware of the specific definition of an 'incident' used by the police service and were in fact looking to access different information."

15. The Commissioner understands that the complainant has not clarified which information he is seeking, ie recorded crime statistics or the actual number of incident logs which is key to BTP's ability to provide any more specific advice and assistance to the complainant.
16. Furthermore, she considers that BTP cannot provide a date range as specifically requested by the complainant given that it does not know which category of information he requires.
17. From reading the explanations it provided to the complainant, the Commissioner considers that BTP offered adequate advice and assistance in this case and that there was no breach of section 16(1) of FOIA.

Other matters

18. The complainant set out his view of how to progress his complaint (as set out in paragraph 9 above).
19. The Commissioner has concluded that BTP provided adequate advice and assistance in accordance with section 16 of FOIA. Given this conclusion, there is no requirement upon the Commissioner within her FOIA remit to try to elicit further advice and assistance from BTP to assist the complainant. Furthermore, BTP has already asked the complainant to clarify which type of information he is seeking, which he has not yet done. It is the Commissioner's view that this clarification is necessary to enable a more specific response to be provided.
20. Whilst the complainant may view submitting a refined request as "*inefficient*" for both himself and BTP, the Commissioner cannot compel a public authority to respond to a request which differs to that originally made and which has not even been made by a complainant (as was explained to the complainant in this case in her letter of 17 May 2021). She cannot make an information request on behalf of a complainant.
21. The Commissioner would suggest that the complainant reviews the advice and assistance given to him at internal review, with a view to refining his request accordingly.

Right of appeal

22. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

23. 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.
24. 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

Carolyn Howes
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