

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 February 2024

Public Authority: Transport for London
Address: 5 Endeavour Square
London
E20 1JN

Decision (including any steps ordered)

1. The complainant has requested information about the revenue generated by the London Ultra Low Emission Zone (ULEZ). Transport for London ("TfL") relied on section 12 of FOIA (cost of compliance) to refuse the request.
2. The Commissioner's decision is that TfL was entitled to rely on section 12(1) of FOIA to refuse the request. The Commissioner also finds that TfL complied with its obligation under section 16 to offer advice and assistance.
3. The Commissioner does not require TfL to take any further steps as a result of this decision notice.

Request and response

4. On 14 June 2023, the complainant submitted the following request for information to TfL:

"Please can you provide a full break down on what the all revenue from the London ULEZ charges and fines have been spent on from the period covering its introduction up to today's date (14 June 2023)"
5. On 11 July 2023, TfL responded. It relied on section 12 of FOIA to refuse the request – a position it upheld following an internal review.

Reasons for decision

Section 12 – cost of compliance

6. The following analysis covers whether complying with the request would have exceeded the appropriate limit.
7. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the “appropriate limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).
8. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies, and the armed forces and at £450 for all other public authorities. The appropriate limit for TfL is £450.
9. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours work for TfL before the cost of complying would exceed the appropriate limit.
10. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
11. A public authority does not have to make a precise calculation of the costs of complying with a request; instead, only an estimate is required. However, it must be a reasonable estimate. The Commissioner considers that any estimate must be sensible, realistic, and supported by cogent evidence. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
12. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under

FOIA to consider whether there is a public interest in the disclosure of the information.

13. Where a public authority claims that section 12 of FOIA 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 FOIA.

The complainant's position

14. The complainant does not believe that the information they have requested would take over 18 hours to provide.

The public authority's position

15. TfL has confirmed that there isn't a statutory requirement to maintain an account for the actual allocation of net proceeds. TfL stated that it published a four-year programme which sets out how the net proceeds of the Low Emissions and Ultra Low Emission Schemes will be applied to selected elements of certain improvement programmes across its network. It confirmed that the net proceeds of a charging scheme must be used only for any purpose which directly or indirectly facilitates the implementation of any policies or proposals set out in the Mayor's Transport Strategy and provides value for money. TfL is therefore confident that the net proceeds are being used to support these initiatives.
16. TfL confirmed that it doesn't maintain a central 'tracking' record for each and every amount spent on improvement / development programmes and initiatives that has revenue generated income allocated. Therefore, it doesn't have a central repository record that it could easily use to run a report on to address this request for five years' worth of spend breakdown.
17. TfL stated that its central accounting system does hold information on its overall financial activities. However, as the specific reporting on this topic is not required or currently undertaken, TfL stated that to identify, locate and extract the financial breakdown requested would require many subject matter experts to accurately interrogate and extract the information from the TfL system to ensure its accuracy and validity.
18. TfL explained that the current four-year programme outlines that the net proceeds are allocated across six separate 'themes', which are categorised as:
 - Walking & Cycling,
 - Safety,

- Environment,
 - Buses,
 - Customer Information and
 - Rail.
19. TfL further explained that the above six themes cover a total of 18 different areas of varying activity. It stated that each of these separate themes would require a dedicated Finance Business Partner to identify, locate and extract the information whilst working in additional consultation with other subject matter experts around the business to ensure the collated information is fully accurate and validated.
20. TfL provided the following example:

“The scrutiny required by [TfL’s] Finance Business Partners and additional subject matter experts across all 6 themes of Walking & Cycling, Safety, Environment, Buses, Customer Information & Rail just for the current financial year would cover areas such as –

- **Discrete investment schemes** - These are projects with their own defined project line in SAP, fully funded by ULEZ net proceeds.
- **Elements of larger portfolio** -These interventions are part of a larger programme or portfolio of hundreds of projects a year, which would need to be extracted from this wider work bank.
- **Incremental service changes** - These are far more complex pieces of analysis that require separating the incremental cost (against a previous baselines that [it would] also need to calculate) covered by the four-year plan. This may require assessing the net impact after revenue effects (distinct from other revenue changes that effect demand or yield) have been accounted for.

Given the number of individuals that would be involved in trying to collate the required breakdown of financial information and the granular level of analysis required, [TfL has] estimated that this would be approximately 66 hours of staff time and resource.

In addition to the extraction and analysis outlined above, the data would need to then be drawn together to ensure that a number can match the actual net proceeds. TfL estimate this to be a further 70 hours of staff time and resource, making a total of 136 hours.

In reality the above estimates will likely be higher and as mentioned the above estimates correlate only to the current financial year of 2023/2024. [The complainant's] request is for [TfL] to extrapolate 5 years' worth of financial data dating back to 2019."

21. TfL has clarified that whilst the request is focused just on the ULEZ scheme, the information will be held across multiple areas of the organisation going back to the introduction of the scheme, which is held across different specialist functions of the organisation.
22. TfL has confirmed that it has no other way to respond to the request within the prescribed 18 hour limit. TfL reiterated that to identify, locate, extract, and collate the data would involve multiple individuals across the organisation, dedicating time away from their core roles for sustained period.

The Commissioner's view

23. The Commissioner is satisfied that complying with this request would exceed the appropriate limit.
24. In this case, TfL has estimated that it would take approximately 136 hours of subject matter experts time and resources to collate the required breakdown of financial information across the six themes. This is clearly over the cost limits prescribed by FOIA of 18 hours.
25. Whilst the Commissioner recognises that the complainant disputes this estimate, he notes that to bring the cost of compliance under the cost limit, TfL would have to carry out no more than an hour's work on each area of activity for the entire period covered by the request. Given the information provided by TfL on the work that this would entail, he considers it unlikely that this is possible.
26. TfL states that this estimate is likely to be much higher as the above estimate is only for the current financial year of 2023/2024, and the complainant has requested the information from its induction in 2019 to the date of the request (14 June 2023).
27. As TfL has estimated that the cost limit is exceeded for the current financial year's worth of data alone, the Commissioner is satisfied that it is not unreasonable for TfL to estimate that the cost of complying with the request in full would significantly exceed the cost limit. He is therefore satisfied that TfL is entitled to refuse to comply with the complainant's request on the basis of cost.

Section 16 – advice and assistance

28. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.
29. When a public authority refuses a request because the cost of compliance exceeds the appropriate limit, it should explain, to the requester, how they could refine their request such that it would fall within that limit. In rare cases, it will be appropriate for the public authority to explain to the requester why their request cannot be meaningfully refined.
30. In this case, TfL advised the requester in its internal review response, to “vastly narrow the scope of [their] request to a much shorter time period and perhaps focus on one specific area of interest (such as revenue generated spend on the improvement of bus services as an example).”
31. The Commissioner is therefore satisfied that TfL did comply with section 16 of FOIA when dealing with this request.

Right of appeal

32. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

33. 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.
34. 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

Pamela Clements
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