

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 February 2024

Public Authority: Northern Trains Limited
Address: Northern House
9 Rougier Street
York
YO1 6HZ

Decision (including any steps ordered)

1. The complainant requested information relating to audio recording files. Northern Trains Limited (Northern Trains) relied on section 14(1) of FOIA (vexatious) to refuse the request, in addition to sections 12, 43, 24 and 38.
2. The Commissioner's decision is that the request was vexatious and therefore Northern Trains was entitled to rely upon section 14(1) of FOIA to refuse it. He has therefore not gone on to consider the other exemptions and he requires no steps to be taken.

Request and response

3. On 17 October 2023, the complainant wrote to Northern Trains and requested information in the following terms:

"Under the FOIA, I would like to request copies of contents of the SD cards used by your Digital Trains Team for upgrading your TrainFX systems on various rolling stock.

This should include a copy of the SD card contents for both types of APIS systems.

If not all SD card contents can be provided within the timeframe, please reframe my request to only include the supply of versions "15X NTL V1.3.0.34T" and "15XT SANDBOX".

4. Northern Trains responded on 27 October 2023. It refused the request and sited section 14, 12, 43(2), 24 and 38 as a basis to do so. Northern Trains did not offer the option of an internal review and directed the complainant directly to the Commissioner for any appeal. Northern Trains explained that its application of section 14 was in relation to the burden of time/cost the request would place upon it. Further to this, it informed the complainant that it not believe he had “any deliberate intention on your part to place an undue burden” upon Northern Trains.

Reasons for decision

Section 14(1) – vexatious requests

5. The following analysis considers whether the request was vexatious.
6. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
7. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s updated guidance on section 14(1)¹ states, it is established that section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
8. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
9. However, the ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
10. The emphasis on protecting public authorities’ resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013)

¹ <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

("Dransfield")². Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.

11. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
12. The four broad themes considered by the Upper Tribunal in Dransfield were:
 - the burden (on the public authority and its staff);
 - the motive (of the requester);
 - the value or serious purpose (of the request); and
 - any harassment or distress (of and to staff).
13. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. It stated:

"all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA" (paragraph 82).

Northern Trains' view

14. Northern Trains explained to the Commissioner that it had two ways in which it could comply with the request for information. Both methods would impose a large burden on Northern Trains and its staff. The first method would involve Northern Trains retrieving the requested information itself and the second method would require a third party retrieving the requested information.
15. Northern Trains explained that for the first method, it would be required to retrieve the requested information stored on SD cards, however this information is not held in a format which allows them to be extracted and distributed.
16. The requested information is encoded by proprietary software provided by a third party supplier (TrainFX) in the form of over 1000 audio

² <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

“snippets” which the software selects and “stitches” together to create the correct passenger announcement.

17. In order for Northern Trains to convert these files into the correct playable format on a computer, it would need to download each file individually. This would take approximately 4 hours for all audio files. After downloading each file, Northern Trains would then need to re-encode the audio files into a readable format.
18. Northern Trains explained that, on average, it took approximately 5 minutes per file to download the file, process the file using specialist software and then restore the file. This amounts to 12 files per hour being completed and a total approximate time of 83 hours and a total cost of over £2000.
19. Northern Trains explained that the other method of retrieving the requested information was directly from a third party supplier (Modux) who held the original audio recordings or TrainFX who store the requested information.
20. Modux advised Northern Trains that all the requested information is held within 5 files. Modux stated that it would cost £1,100 per file to extract and convert the audio records. Modux then advised that it would cost another £1,100 per file to rename and prepare the audio records. It would also add an expense charge of £130 per file and a standard VAT charge to undertake the work.
21. Modux informed Northern Trains that, in total, it would cost £5,500 for the extraction and audio conversion, £5,500 for the renaming and preparation, £650 for the expenses and there would be a £2,330 VAT charge. Northern Trains would therefore need to pay £13,980 for the requested information to be provided to the complainant.
22. TrainFX advised Northern Trains that the cost of extracting, verifying and delivering all the audio files to comply with the request, would be £6,750. Due to the large number of audio files, it also estimated it would take around 12 weeks to provide the requested information.
23. Northern Trains also argued that there was no serious value in the requested information and appeared to be the complainant’s private interest, rather than being of wider public interest.

The complainant’s view

24. The complainant stated that there is a strong public interest in seeing how money has been spent on changing the PIS systems, and the resulting effect this has had on the accessibility and overall effectiveness of the system.

25. The complainant also informed the Commissioner that other public authorities have been able to provide similar information without the same issues as Northern Trains.

The Commissioner's decision

26. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.
27. The Commissioner recognises that the complainant and rail enthusiasts have an interest in this information but this does not equate to a wider public interest in the information. It is difficult to see how the requested information would contribute to transparency, accountability or understanding decision making at Northern Trains. There is no obvious wider public interest in the information.
28. The Commissioner cannot comment on how other public authorities respond to similar requests and must consider this request on its own merits
29. Whilst the Commissioner considers there is a high threshold to be met for a request to be deemed vexatious, if there is no apparent obvious public interest in the information and therefore no wider value to the request it is not unreasonable to consider that when such a high financial burden is involved in complying with the request, that this could be seen as being grossly oppressive. Particularly as this will divert funds and resources from essential services.
30. Having considered the calculations and estimates provided by Northern Trains, the Commissioner is satisfied that it has considered multiple avenues to retrieve the requested information, but these options would all impose an undue burden on Northern Trains. Whether it would be that Northern Trains pay a large sum for the requested information to be provided by a supplier or for it to personally spend a large amount of staff time retrieving the requested information.
31. The Commissioner notes that even if the estimates were halved, it would still be over what the Commissioner would consider to be an appropriate cost/time spent on a request. This demonstrates to the Commissioner that complying with the request would impose a large burden on Northern Trains.
32. Given that the Commissioner is satisfied that the request is of low value, the Commissioner is also satisfied that it would then be unfair to ask Northern Trains to undertake such burdensome work.

33. The Commissioner considers that Northern Trains has argued correctly that the request is vexatious on the grounds of burden/cost under section 14(1) of FOIA. He has not therefore gone on to consider if any of the other cited exemptions may provide a basis for refusing the request.

Right of appeal

34. 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

35. 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.
36. 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

Michael Lea
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