

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 April 2012

Public Authority: Transport for London
Address: 6th Floor
Windsor House
42-50 Victoria Street
London
SW1H 0TL

Decision (including any steps ordered)

1. The complainant made a number of requests for information to Transport for London ("TfL") over a short period of time.
2. TfL considered that all the requests were vexatious and relied on section 14(1) of the FOIA.
3. The Commissioner considers that the requests were vexatious and that section 14(1) was correctly engaged.
4. The Commissioner requires no remedial steps to be taken.

Requests and response

5. TfL issued the complainant with a parking fine. The complainant chose not to appeal the ticket but paid it. However, the complainant remained concerned about the validity of the ticket.
6. Between 18 July 2011 and 2 August 2011 the complainant submitted six sets of requests to TfL (some were undated). These requests have been placed in Annex A and are each numbered from [1] to [25].
7. TfL tried to deal with requests [8] to [13] under 'normal course of business' on 22 July 2011. It issued a refusal notice for requests [1] to [7] and [14] to [25] on 18 August 2011. It confirmed that it would not answer any of these requests because it considered that they were all vexatious and section 14(1) was engaged.

8. The complainant requested an internal review and the TfL upheld its decision on 14 October 2011. It also explained that each subsequent request would be considered on its own merits.
9. During the Commissioner's investigation, the complainant confirmed that she was concerned about the TfL response to requests [8] to [13]. TfL confirmed to the Commissioner that it failed to respond specifically to these requests due to a human oversight. However these requests were, as with all the others, deemed to be vexatious as part of the TfL internal review dated 14 October 2011.

Scope of the case

10. On 11 November 2011 the complainant contacted the Commissioner to complain about the way her requests had been handled. She explained why she considered that her requests were not vexatious and why the information should be disclosed.
11. TfL raised an issue about whether the requests due to their structure could be said to be valid. This issue has been considered first as only valid requests for information need to be answered.
12. The Commissioner has therefore considered whether requests [1] to [25] are valid and if so, whether TfL correctly found that a reasonable public authority could say that they could be characterised as vexatious.
13. The complainant also raised other issues that are not addressed in this decision notice because they are not requirements of Part 1 of the FOIA. In particular, the Commissioner will not pass judgement on the validity of penalty charge notices. He also cannot judge on the accuracy or otherwise of any information that was provided under TfL's normal course of business outside its obligations under FOIA.

Reasons for decision

Are the requests valid?

14. During the course of the Commissioner's investigation, TfL raised the preliminary issue about whether the requests were valid.
15. The complainant explained in a number of communications that she either wanted the requests answered or for the penalties to be cancelled. TfL said that it could not determine whether the penalties would be cancelled until its penalties appeal process was exhausted. It

did not know whether or not it should answer the requests under FOIA and asked whether this affected their validity.

16. Section 8 of FOIA outlines what constitutes a valid request for information. Section 8(1)(c) explains that a request must describe what information is requested.
17. The Commissioner considers that conditional requests, such as these ones, are valid requests for information under FOIA because they explain what information is requested. However, conditional requests that require something to happen before they can be answered cannot be said to be valid requests under the FOIA because they do not describe what information is required at the date of the request in a meaningful way.
18. The requests on this occasion are valid requests under FOIA. The Commissioner has therefore gone on to explain why he considers them to be vexatious.

Section 14(1)

19. TfL argue that the requests are vexatious when considered in their context and that it should be entitled to rely on section 14(1) of FOIA.
20. Section 14(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.”
21. The Commissioner considers that the equitable time to judge whether the requests are vexatious is the time of the response. This means he is assessing the situation as it was on 18 August 2011.
22. In this case the FOIA is being used as a vehicle to obtain the alleged need for a ‘correction’ i.e. the parking penalties were issued incorrectly and should be withdrawn. The Commissioner notes that it is not the purpose of the FOIA to assist requesters in placing undue pressure on a public authority either as part of a campaign to expose maladministration or in order to force it into an admission of liability.¹
23. The Commissioner has issued guidance as a tool to assist in the consideration of what constitutes a vexatious request.² This guidance

¹ *Betts v IC* [EA/2007/0109] at paragraph 33.

² This guidance is called ‘When can a request be considered vexatious or requested?’ and can be located at:

http://www.ico.gov.uk/~/_media/documents/library/Freedom_of_Information/Detailed_speci alist_guides/VEXATIOUS_AND_REPEATED_REQUESTS.ashx

explains that for a request to be deemed vexatious the Commissioner will consider the context and history of the request as well as the strengths and weaknesses of both parties' arguments.

24. The Commissioner will consider arguments put forward in relation to some or all of the following five factors to reach a reasoned conclusion as to whether a reasonable public authority could refuse to comply with the requests on the grounds that they are vexatious:
- whether compliance would create a significant burden in terms of expense and distraction;
 - whether the request is designed to cause disruption or annoyance;
 - whether the request has the effect of harassing the public authority or its staff;
 - whether the request has any serious purpose or value.
 - whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable;
25. TfL has explained that it considers that the first four factors referred to in this guidance are satisfied by these requests in their context. The Commissioner has looked at these four factors in turn and also considered in the event of the requests having a serious purpose, whether the seriousness of the purpose outweighs all the other factors to render the requests as valid.

Would the requests constitute a significant burden in terms of expense and distraction?

26. TfL explained that it received the 25 requests in a short period of time and that it received the last request within less than 20 working days of the first. It explained that it considered that it was appropriate to consider the burden of the requests as a whole because there was an overlap of time when they all needed to be answered.
27. The Commissioner has considered the requests and does not consider that the splitting up of the requests can be said to have mitigated the burden of the separate requests in anyway whatsoever. As this is so, he considers the right approach is to consider whether the 25 requests together would constitute a significant burden in terms of expense and distraction.
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28. When considering whether a request constitutes a significant burden on a public authority the Commissioner endorses the Tribunal's approach where it is "*not just a question of financial resources but also includes issues of diversion and distraction from other work...*"³

29. When considering this factor, TfL explained:

- Even if it had not relied on section 14(1), the cost limits in section 12(1) would likely have been engaged. This is because some of the complainant's requests are very broad. For example, request [1] asks for all investigations concerning its employee role of around 20,000 staff and request [16] would require it to check all appeals that concerned tickets issued for similar circumstances to the complainant's, meaning it would need to check every ticket issued;
- The covering letter to one of the complainant's first requests stated that she was aware of the cost burden on TfL and that, "*you will undoubtedly complain about the cost of this. My response is that you started it and not me*";
- The complainant warned TfL that she was the successful complainant in another case the Commissioner had considered which "*would undoubtedly have cost many thousands of pounds*";
- TfL considered that the statements above prove the complainant had an intention to impose a significant burden in terms of staff time and costs;
- The subsequent requests were received before it had the chance to answer the earlier requests and their nature means that it would need to check a number of departments for a lot of information;
- TfL's principle duty is to provide an effective transport service for London. The appropriate forum to challenge the parking penalties is through the relevant appeal process. The complainant chose not to appeal the ticket through that process but instead decided to embark upon a private investigation herself. She explained that she would not appeal the ticket in the covering letter to her first requests. The making of requests rather than using the correct appeal mechanisms is a distraction from TfL's core purposes;
- TfL acknowledged that dealing with complaints (such as those about parking penalties) is a function it must undertake. However, it explained that it should be entitled to deal with complaints in a manner that is fair and efficient. There is a disagreement at the

³ *Welsh v IC* [EA/ 2007/0088] at paragraph 25

heart of this case that can only be resolved if TfL backs down on a parking fine and admits liability. It cannot be a correct use of FOIA to enable the complainant to place unmitigated and unacceptable pressure on TfL itself and individuals who work for it; and

- TfL has provided the complainant outside the FOIA with information about the penalty charge notice.
30. The complainant has argued that her requests do not constitute a significant burden in terms of expense and distraction:
- The complainant considers that she was only explaining to TfL that the inevitable consequence of dealing with requests was that they would cause expense;
 - Most questions are reasonably straightforward and that a well organised authority would have little trouble answering them;
 - The requests should be treated as individual requests; and
 - The complainant needs the answers to assess the integrity of TfL and penalty charge notices.
31. The Commissioner's view is that the requests in their context can be said to cause a significant burden in terms of expense and distraction and that the complainant's approach, while not intentional, appears to the objective reader as hostile and troublemaking. The requests can be regarded as placing pressure on the TfL in order to force it into cancelling the parking penalty charge. The Commissioner also finds that the breadth of the initial requests would have caused work that is, in this instance, burdensome. The Commissioner is satisfied that as the requests would have contributed to a significant distraction from TfL's core functions that the requests can be considered to constitute a "*significant administrative burden*".⁴
32. The Commissioner has considered whether it is reasonable for TfL to consider the potential effect of answering the requests should they be likely lead to further requests. In *Betts v The Information Commissioner* [EA/2007/0109] the Tribunal at paragraph 34 notes:

"...it may have been a simple matter to send the information requested in January 2007, experience showed that this was extremely likely to lead to further correspondence, further requests and in all likelihood complaints against individual officers. It was a reasonable conclusion for the Council to reach

⁴ *Coggins v Information Commissioner* [EA/2007/0130] at paragraph 27

that compliance with this request would most likely entail a significant burden in terms of resources."

33. The Commissioner acknowledges that the complainant considers that she requires the requested information to pursue her complaints. However, the Commissioner finds that the complainant will continuously and vigorously challenge TfL whenever a disapproving response, in her mind, is received. The Commissioner is satisfied that in all the circumstances the requests were unlikely to conclude until TfL cancelled the parking ticket. As this will not happen through the use of the FOIA, there is a potential for unceasing requests to be submitted by the complainant still. He considers that the potential for further requests supports TfL's view that answering the requests would constitute a significant burden in both expense and distraction.
34. It follows then that the Commissioner finds that the requests constitute a significant burden in terms of expense and distraction.

Do the requests have the effect of harassing TfL or its staff?

35. The Commissioner notes that this element of the criteria is concerned with the effect of the request on any reasonable public authority, rather than what the complainant's intention was. The Commissioner emphasises that it is the effect of the requests and not the requester that is to be considered. It is an objective test that asks whether a reasonable person would be likely to regard the request as harassing or distressing.
36. TfL explained that the requests in their context did not cause serious distress given its staff are employed in a complaints environment. TfL argued the requests, instead, harassed its staff.
37. In considering all the facts, the Commissioner finds that TfL has correctly identified the features to be considered that could make a request have the effect of harassing the public authority or its staff:
 - The volume and frequency of correspondence;
 - The use of hostile, abusive or offensive language;
 - An unreasonable fixation on individual members of staff; and
 - The mingling of requests with accusations and complaints.
38. TfL considers that the first, second and fourth factors were met in this case and that this has meant that the requests have had the effect of harassing the public authority.
39. TfL presented the Commissioner with the following arguments in order to show that the criteria for having a harassing effect had been met at the first, second and fourth factors:

- The frequency of the requests - including five pieces of correspondence in only 16 days;
 - The tone of the correspondence was hostile and combative to TfL. The complainant included the following comments within the covering letters to her requests:
 - The complainant assumed the fine *"will be used to finance your pension the like of which I cannot afford or dream about"*;
 - *"...you cannot reasonably expect any latitude from me"*; and
 - *"...you could of course review the PCN [Penalty Charge Notice] and consider a different outcome, particularly if you wish to avoid considerable work over a lengthy period and the possibility of similar consequences to those experienced by the [named organisation]"*.
 - Some of the correspondence mixes in requests for information with complaints about the service received. For example, request [25] was placed within the following text *"... it seems you have a poor command of the facts and are quite prepared to ignore your own evidence....it is an irony that people like myself work hard to rescue the country's faltering economy while you make no contribution beyond frustrating our efforts. The other significant difference between us is that if my work performance was as good as that demonstrated by your letter, I would no longer have a job"*.
40. The complainant contests that there is no evidence of these requests harassing the public authority or its staff, other than correctly holding it to account for its actions. Instead, she believes it was important that information held was in the public domain so that she could assess the integrity of TfL. She also believes that the information was necessary for her to have confidence in the processes employed by the public authority.
41. The complainant argued that her statements about TfL pensions are justified considering the pension deficit noted in the public authority's accounts and that she believed fines contributed to this fund.
42. The Commissioner does not consider the language in the requests as sufficiently intemperate to make them harassing. Of all the requests only [25] can be said to be mingled with accusations and complaints.
43. The Commissioner finds that, while finely balanced, these requests do not have the effect of harassing TfL or its staff.

Were the requests designed to cause disruption and annoyance?

44. TfL explained that it considered that the conditional nature of the requests and the implied threat that it either repealed her parking ticket or would have to answer a very large amount of questions evidenced that the complainant was making the requests to provide sufficient disruption and annoyance to pressure it into reneging on the issued penalty.
45. The complainant considered that these arguments were "*absurd*" and it was necessary for those who have concerns about tickets to ensure that the TfL manages and monitors how it issues tickets appropriately. The complainant explained that she considers that she was being reasonable in not wanting the information if the ticket was repealed – she was giving TfL a chance to get its 'house in order' and did not want it to undertake unnecessary work in the event that the ticket was no longer to stand.
46. The Commissioner considers that the way the requests were presented favours TfL in this instance. As noted in paragraph 22 above, the FOIA is not designed to be a mechanism through which substantial pressure can be placed on an authority in order to force an admission of liability.
47. The Commissioner considers that the complainant genuinely did consider that she was trying to help TfL in this case through saving it the work to answer the questions in the event that the ticket was not revoked. However, the Commissioner finds that TfL objectively read the requests as a threat and considered that their purpose was to create sufficient work to make it financially beneficial for the authority to revoke the ticket rather than carry out work required under the FOIA.
48. It follows that the Commissioner finds that the requests were designed to cause disruption and annoyance.

Did the requests have value and/or a serious purpose?

49. TfL has explained that it did not consider that these requests had a serious purpose or value because:
 - The requests were conditional – she wanted a fine cancelled and had little purpose or value;
 - The complainant's other correspondence confirmed this motivation;
 - The complainant chose not to appeal the ticket through the standard TfL process and so the information about the ticket would, in actual fact, be of little value to her in this respect; and

- It views the requests as being used to pressure TfL into surrendering the fine.
50. The complainant explained that she considered the requests had serious purpose or value because:
- The public requires the information in order to assess the integrity of TfL and the fines that it issues;
 - There is a great deal of public controversy about penalty charge notices and traffic monitoring cameras and so this adds further weight to the value of knowing if this particular ticket was issued correctly;
 - There is a public interest in knowing that TfL considered the correct evidence when issuing this specific fine; and
 - In her view this public interest is enhanced by the problems with the evidence in her particular case.
51. The Commissioner recognises that there is an assumption built into the FOIA that disclosure of information by public authorities on request is in the public interest in order to promote transparency and accountability in relation to the activities of public authorities. He considers that the first request in particular about TfL's staff conduct and payments is information which carries a public interest weight.
52. The Commissioner finds that the requests had value and a serious purpose at the time that they were made.
53. As noted above, the Commissioner must go on to consider whether the serious purpose of the requests is such as to render the requests not vexatious. This is where, for example, there might be a circumstance in which a request might be said to create a significant burden and yet, given its serious and proper purpose, ought not to be deemed as vexatious.⁵
54. In this case the Commissioner does not consider that sufficient weight can be placed on the serious purpose identified to make it inappropriate to deem the request vexatious. This is in view of the overall burden of the requests and the way that they were framed so that they can be reasonably seen as an example of inappropriate pressure on TfL. In addition, the Commissioner considers that the complainant's refusal to use the appropriate channels available to her to lodge an appeal against the fine substantially reduces the seriousness of the purpose.

⁵ *Ciggins v Information Commissioner* [EA/2007/0130] at paragraph 20.

Could a reasonable public authority refuse to comply with the requests on the grounds that they are vexatious?

55. The Commissioner recognises that there is sometimes a fine balancing act between protecting a public authority from meritless disclosures and the promotion of the transparency in the workings of the authority.
56. The Commissioner does not require the threshold for vexatious requests to be set too high.⁶ He notes that it is not necessary for every factor mentioned in his guidance to be met for the requests to be correctly characterised as vexatious.
57. The Commissioner has considered all the evidence presented in this case. The Commissioner is satisfied that the requests had a serious purpose and cannot be said to have harassed TfL or its staff. However, he has found that they were burdensome in terms of both expense and distraction and could be reasonably seen to be designed to cause disruption and annoyance. The Commissioner is satisfied that in all the circumstances the public authority was entitled to find the requests vexatious.
58. TfL explained that had the requests been made without the rhetoric and been less burdensome then it appreciated that they would have been unlikely to have been vexatious. The Commissioner upholds this position. Every request received should be considered on its own merits and the way these requests were made has led the Commissioner to the conclusion that they can be characterised as vexatious.

Other matters

59. The Commissioner notes that TfL breached section 10(1) of the FOIA by failing to respond to the complainant's requests [8] to [13] promptly or at all, within 20 working days. The Commissioner does however accept that the TfL complaints procedure was exhausted, in conformity with the code of practice at section 45, when it issued the results of an internal review on 14 October 2011 that included its final response to all the requests including those found at [8] to [13].

⁶ *Welsh v IC* [EA/ 2007/0088]

Right of appeal

60. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

61. 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.
62. 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
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Annex A – a schedule of the requests and when TfL received them

1. On 21 July 2011 (received 24 July 2011) the complainant wrote a letter to TfL and attached the following requests for information:

[1] Any documents which specify those elected Members, Members of your senior management Team (paid officials) and other staff of Transport for London who are currently under investigation internally or externally for any reasons, with full details and findings of the investigations.

[2] Details set out in any documents which record cases of staff who have left the organisation with superannuation benefits following, or during suspension or disciplinary proceedings since 1st April 2009.

[3] Transport for London's salaries and wages bill for the financial year 2010/2011 for directly employed staff and the cost to the authority in 2010/2011 of contributions to the Local Government Superannuation Scheme or/and other such scheme to which the authority's employees belong.

[4] The number of Freedom of Information Enquiries sent to Transport for London in 2010/11, the number which were answered within the statutory time limit of 20 working days and the number where the authority failed to comply with the statutory time limit.

[5] A list of cases where the authority is facing action for criminal offences or significant civil claims;

[6] A copy, when they are complete, of the authority's accounts for 2011/12, and the name and address of your auditor (external). (I will be arranging an objection against your accounts on the grounds that they confirm an entry [i.e. the sum of the fine] which should not be there.

[7] The names, designations and business address of the five most senior officers responsible for PCNs [Parking Charge Notice] and also of the operator responsible for the camera [reference number] at [named time].

2. The complainant also sent another undated request around this time to TfL that asked for the following:

[8] A plan or other document which shows the precise location of the yellow hatched box in [named location].

[9] A plan showing the precise dimensions of the box and any plan or photograph which demonstrates (or fails to demonstrate) that the yellow hatched box in 1. above complies with the required standards and/or if it does not so comply, the relevant approval from the Department for Transport. All this should be taken as a request for information about the box as it currently exists.

[10] Documentation setting out the last time that the road was resurfaced and the box repainted.

[11] A copy of the traffic order which created the box or, if no traffic order was required, a copy of the document which gave authorisation for the creation of the box, with the name of the person or body which gave such an authorisation.

[12] A copy of TfL's scheme of delegation conveying authority to the person or body to make the decision in 4.

[13] In the case of [penalty charge reference] how it was ascertained whether the exit from the box was clear or not at the time vehicle [registration number] entered the box. (My assumption is that you will need to produce a video recording to answer this question).

3. On 26 August 2011 the TfL received a letter containing the following requests from the complainant:

[14] A copy of the expenses claims of the highest paid officers employed by Transport for London from 1/4/2010 up to those most recently completed.

[15] A copy of a document which sets out the expenses allowable to such officers.

[16] A copy of documentation setting out the findings of PATAS in cases since 1/4/2009, where it has ruled against TfL where motorists have appealed against PCN's in relation to alleged 'stopping in yellow hatched box' offences [sic].

4. On 29 August 2011 the TfL received two further requests for information from the complainant. The first one asked for documentation that sets out:

[17] The location of camera which overlooks the yellow hatched box in [named location].

[18] The last occasion on which the camera was serviced and/or calibrated ie. Calibrated to ensure that all readings from it, including clock times, were correct.

[19] The technical specifications of the camera.

[20] The qualifications of and training given to camera operator [camera reference number].

[21] Any notes made by him/her, in whatever form in relation to PCN [reference number].

[22] Any risk assessment undertaken on:

1. The no stopping box;

2. The camera site;

3. The location/office etc of camera operator [camera reference number]

5. The second asked for the following information (after some of her requests were considered under normal course of business in connection with the ticket that was issued):

[23] Can you please advise me why one of your staff appears not to understand FOIA and also advise me of the training you provide, via any available documents to staff such as [named individual]. This request is made under FOIA 2000.

6. On 2 August 2011 the complainant wrote to TfL and made a number of further requests:

[24] Can you please tell me where in my letter I have stated that the information requests made are not made under the Freedom of Information Act? (final para of page 2 of your letter).

[25] It seems to me that you have a poor command of the facts and are quite prepared to ignore your own evidence. Please provide me with any documents which indicate the training given to your staff regarding gathering and interpreting evidence, and effective reading and comprehension.