

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 August 2014

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 about a Congestion Charge Penalty Charge Notice. Transport for London refused to comply with the request, saying that it was a vexatious request under section 14 of the FOIA.
2. The Commissioner's decision is that Transport for London has correctly applied section 14 to the request and is not obliged to comply with it. He does not require Transport for London to take any further steps.

Request and response

3. On 25 February 2014, the complainant wrote to Transport for London (TfL) and requested information about a Penalty Charge Notice (PCN) that they had received. The full text of the request is at Annex 1.
 4. On 4 March 2014, TfL responded. It refused to comply with the request, citing section 14 of the FOIA as its basis for doing so.
 5. Following an internal review TfL wrote to the complainant on 14 March; it upheld its original position.
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Scope of the case

6. The complainant contacted the Commissioner on 17 March to complain about the way their request for information had been handled and the Commissioner has focussed his investigation on whether TfL correctly applied section 14 to it.

Reasons for decision

7. Section 14(1) of the FOIA says that a public authority does not have to comply with a request for information if the request is vexatious.
8. The Commissioner's guidance, published in May 2013, refers to an Upper Tribunal decision that establishes the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious.
9. The guidance suggests that the key question the public authority must ask itself is whether the request is likely to cause disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, the Commissioner considers that public authorities should weigh the impact on the authority and balance this against the purpose and value of the request.
10. In addition, and in line with the May 13 guidance, in considering the request, the Commissioner has taken into account factors such as intransigence, unreasonable persistence, and frequent and overlapping requests.
11. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request. The Commissioner considers that these are of particular significance in this case.

Background and history

12. In its detailed submission to the Commissioner, TfL provided the Commissioner with what it considers to be the background to this request.
13. TfL is responsible for managing the Transport for London Road Network, a network of the most important strategic roads in London. TfL may issue drivers with a PCN if they do not follow signs and markings on this network.

14. The majority of FOI requests that TfL receives are embedded within representations made against PCNs. TfL says that the templates for most of these representations are sourced from one of many websites and forums dedicated to challenging PCNs, such as 'www.ticketfighter.co.uk' and 'www.pcn-appeals.co.uk'.
15. TfL believes that the request in question is part of one such organised campaign, 'Helping Hand', in which a large number of people have participated but which is principally organised by one named individual (not the complainant). Dating back to 2008, TfL says that Helping Hand attempts to expose alleged loopholes in TfL's parking enforcement practices in an effort to have PCNs cancelled on legal or technical points. TfL has recorded over 70 FOI requests using the same Helping Hand email address during 2013-14, and 20 such requests in 2014-15 as at 11 July.
16. TfL considers that the request in this case forms part of the above campaign. Substantially similar to a large number of other requests that TfL has received, it follows the same template and was submitted using the Helping Hand email address.
17. Having seen the request, the Commissioner notes that it was submitted to TfL using the Helping Hand email address. He also notes that in terms of its length and complexity it is substantially similar to separate requests the complainant submitted to TfL on 10 June 2013, 13 February 2014 and, more recently, 3 July 2014, all of which TfL provided to the Commissioner in support of their submission. TfL applied section 14 to the requests prior to the 3 July request (which it is still considering) and did not comply with them. TfL has also provided to the Commissioner examples of similar requests submitted through the Helping Hand email address by other individuals, going back to 2012.
18. TfL has told the Commissioner that the response that is the subject of this notice is the first that has prompted any of the requesters to complain to the Commissioner. TfL has argued that had any of the requesters, including the complainant, been acting in good faith, then it would have expected one of them to have pursued a complaint with the Commissioner before now. Given the additional evidence of a wider campaign to disrupt TfL, the Commissioner is prepared to accept that there may be some justification to this argument.
19. The Commissioner agrees that this and previous requests that the complainant has made, and the requests from other individuals, all

appear to originate from the same group. As well as the same email address, they share the same fax number and formatting and the questions are broadly similar. He is prepared to accept that the request that is the subject of this case forms part of this wider campaign.

20. The Commissioner is convinced by TfL's evidence that suggests that the aim of the campaign is to undermine TfL's attempts to operate parking controls in a particular area. The campaign seeks to have PCNs cancelled – either by challenging them directly or by causing maximum disruption to TfL in the hope that dealing with a complex representation is so resource heavy that it is not in TfL's interests to pursue it.

Level of disruption and impact on the authority

21. As mentioned at paragraph 15, TfL has received a very large number of FOIA requests over the last 18 months from Helping Hand. These typically form part of wider complaints about, and challenges to, a PCN and most contain a number of separate questions in one of a small number of standard formats.
22. In addition, much of the correspondence includes repeated requests that TfL has already answered in separate responses to other Helping Hand users.
23. In total since April 2013, TfL has generated 864 items of correspondence in relation to 100 PCNs issued to 84 individuals who TfL considers form part of the Helping Hand campaign.
24. TfL says that this correspondence can only be managed by one specific directorate – Congestion Charging and Traffic Enforcement (CCTE) – as no other business area has the knowledge and expertise necessary to provide a response.
25. As mentioned at paragraph 14, FOI requests submitted by Helping Hand users are typically included in a wider representation against PCNs. Legislation allows TfL 56 days to consider and respond to a representation but FOI requests have to be responded to within 20 working days. TfL says that checking and filtering these representations in order to identify and deal with any embedded FOI requests within the necessary timescale is a resource intensive process for TfL.
26. The Commissioner accepts that handling this amount of correspondence, of a complexity evidenced by the complainant's request at Annex 1, currently places a significant burden on the CCTE directorate and TfL as a whole.

Purpose and value of request

27. In common with many other, similar requests that TfL has received and which it believes to be part of a wider campaign, the complainant has sought information that they say they need in order to make representations against a PCN. TfL argues that most of the information they have requested would be of little or no relevance in any appeal. In addition, an appeal mechanism already exists through the Parking and Traffic Appeals Service (PATAS) and it would be for PATAS to determine what evidence and information is necessary.
28. The Commissioner is prepared to agree with TfL's argument that this request and those substantially similar to it are an attempt to circumvent and undermine the independent PCN appeal process.

Conclusion

29. The Commissioner is satisfied that the request in question is identical or similar both to previous requests that the complainant has submitted to TfL, and to requests that others have submitted. He is also satisfied that TfL has provided sufficient evidence to suggest that the request in question forms part of a wider campaign to disrupt the organisation and that the aim of the campaign is to undermine TfL's parking control of a particular area.
30. The Commissioner is convinced that the value and purpose of the request does not outweigh the disruption that dealing with this, and the related requests, has caused TfL. He has therefore decided that this request can be considered as vexatious and that TfL has correctly applied section 14 to it.

Right of appeal

31. 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: grc@hmcts.gsi.gov.uk

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

32. 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.
33. 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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

ANNEX 1

Request to Transport for London – 25 February 2014

"...I need all the following information that is with regards to the above mentioned ticket and place, as soon as possible in order that I can make an informed representation as this is not yet my representation. I therefore ask that that it be dealt with promptly as required rather than relying on the 20 working day time limit that is in reality only a "long stop" provision for FoI (see EA/2010/0030)

I need full details on any current signage in place for this spot.

TMA 2004 allowed the use of CCTV however according to guidance given by the Secretary of State (that the authorities must have regard to, as mentioned in the very same TMA) CCTV should not be used for enforcement at this location as it is not sensitive, impracticable or difficult to use foot patrol CEO enforcement. Further more as disabled are allowed to alight and even park at this spot CCTV is specifically disallowed. Can I be explained how regard is made to the guidance notwithstanding these points raised. TfL have a duty under basic human rights to supply any evidence it may have prior to any decision it may take. As TfL charge £10 for a copy of the recording I need to know How much TfL pays for the actual CCTV disc when supplying a copy of the recording? How much profit TfL make a year from charging the £10 fee for the CCTV recording. How much it cost TfL each time when it supplied magnetic media. What is the total annual cost to TfL for the showing of the recording footage in Croydon? What is the total annual recording views by the public done at the TfL viewing rooms in Croydon.

There is no email or fax number within the NTO. The appropriate email/fax number for the sake of representations within the NTO is a mandatory requirement. 3(4) (c) of **The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007** state that a fax number/email has to be included if appropriate. I have been given the fax number 01903 767 359 for making viewing requests and representations against parking tickets. This was given by TfL themselves when my associate rang in at the phone number given 02082537000 (the phone number for making the penalty payments). This fax number was also displayed on the TfL website. TfL (a public authority) had further adopted the practice to

accept representations on this fax number for quite some time and legally "*Where a public authority has issued a promise or adopted a practice which represents how it proposes to act in a given area, the law will require the promise or practice to be honored unless there is good reason not to do so*" (Nadarajah v Secretary of State).

I therefore need any information pertaining to this number and an in depth knowledge of the relationship TfL may have with any external subcontractors/partners. I will try to cite some examples that spring to mind (information on each required) but not exhaustive.

From what period were representations accepted on this fax number? From what date was this fax number in commission for public use. From what date were representation via faxes sent to this number disregarded? From what date where CCTV viewing requests via faxes sent to this number disregarded? What undertaking did the TfL partners (NSL?) have with TfL to accept representations via fax? What undertaking did the TfL partners (NSL?) have with TfL to accept any public enquiries for example viewing requests via fax? From what date was this fax number taken off the TfL website? Why was this number taken of the TfL website? I need a copy of any correspondence between TfL and their partners and any internal mail/memos pertaining to the use of fax and in particular this fax number for making representations.

I am aware that 'The London councils' have decided the form for making representations. (I will quote from the TfL own document the following "*the legislation merely defines a representation must be made in writing. Therefore a hand written letter, typed letter or e-mail are acceptable forms of representations, this list is not inclusive and other written formats are also acceptable and **must be considered** in accordance with this guidance*") In fact 'The London councils' they have clearly decided that any representation in any sort of form submitted is to be treated as so specified by 'The London Councils'. I quote *London boroughs **should not** reject representations delivered to them in another form on the sole ground that they are not presented in the standard form..... Furthermore, their procedures for dealing with correspondence must be such that they are able to identify valid representations raised in a normal letter.* This document included that a pink form has to be supplied for making representations. I quote once again. *It is therefore proposed that the form specified by the PCfL should set out the statutory grounds in plain English and be part of the NtO..... The sheet should always be pink, regardless of the different colours that individual boroughs select for the main part of*

the form. TfL have not given this pink form to me as required by 'The London Councils'. I therefore request any other documentation and guidance 'The London Councils' may have given with regards to the form (or means) for making representations overriding this last document of theirs as it appears that it is still applicable to TMA 2004.

3(3)(c) of the The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007: is very clear *(c) the address (including if appropriate any email address or FAX telephone number, as well as the postal address) to which representations must be sent and the form in which they must be made;* that the fax has to be included if appropriate. TfL therefore have a statutory duty to accept fax representations and to have this number included in the NTO. I see no reason why it should be inappropriate. Given the above I need any reason why is it not included and how can it be deemed inappropriate.

I understand that for all due purposes most of the decision making is done by a separate company even though TfL may have predetermined many scenarios and given guidance accordingly. I would need a copy of any contractual relationship TfL may have with them in order to formulate an informed stance. If as I believe TfL use NSL I would need a copy of the document NSL claim when mentioning *'We produced a rigorous policy document that clearly sets out the criteria for allowing or refusing representations against PCNs. This thorough document provides clear direction to the outsourced processing team for the whole process.'* The TfL document [schedule-2-enforcement-operations-sor.pdf](#) is again further proof of it. I therefore request to know what relationship has the decision makers outside London with TfL and need a copy of this non redacted version of this Schedule 2 – Enforcement Operations SOR and their appendixes as well.

As NSL co-run the decimalized parking and traffic process I request a rundown of the annual profit NSL makes from this franchise with TfL.

The photos supplied do not show the location for example the longitude and latitude. It is therefore highly unlikely that the device actually corresponds to any authorised system if not for this reason alone. In fact I have seen the model used that is not as specified. I therefore request a copy of the authorization and its full specification of the CCTV and auxiliary equipment known as the

'Technical Construction file' (TCF), and a rundown of the actual devices and procedures actually used and done. A simple certificate or an assertion is by far inadequate as it appears that the system used cannot be the same as the one specified that the certificate relates to.

I believe that TfL is not registered at the ICO for the specific purpose of the decriminalized traffic enforcements and revenue collection. If however it is claimed that TfL have registered the specific purposes I request a copy of this registration. Please do not just send me the link as I have already gone through it and can confirm the above. As these are at best prospective penalties and these are further ring fenced this cannot be classed as a tax or revenue. I need the name and contact of the data compliance officer.

I also need a list of the appropriate CCTV Signage and their locations, adequately indicating the use of the CCTV surveillance at this spot and contacts. This is very clearly spelled out in the ICO code of practice. As Transport for London have signed up to the Code of Practice for Operation of CCTV Enforcement Cameras published by 'the London Councils' they are duty bound to it. I quote "CCTV in public places MUST be operated with regard to the advice and guidelines issued by.... Office of Data Protection Registrar" (ICO). The ICO (formally known as the 'Office of Data Protection Registrar') have given very firm guidance with requirement to adequate signage."