

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 June 2016

Public Authority: PATROL (Parking and Traffic Regulations Outside London)

Address: Springfield House
Water Lane
Wilmslow
SK9 5BG

Decision (including any steps ordered)

1. The complainant has requested financial information relating to a particular High Court appeal. PATROL has confirmed that it holds the requested information but that it holds it solely on behalf of a parking adjudicator involved in the appeal. It says that since parking adjudicators are not public authorities, PATROL cannot be said to hold the information for the purposes of the FOIA.
2. The Commissioner is satisfied that PATROL does not hold the requested information for the purposes of the FOIA, and section 1 specifically. The Commissioner does not require PATROL to take any steps.

Request and response

3. On 5 October 2015, the complainant wrote to PATROL and requested information in the following terms:

"how much has PATROL spent in dealing with the High Court/Court of Appeal action by Phillip Morgan v Parking Adjudicator (interested party Elmbridge Borough Council).

Please provide lawyer's invoices."

4. PATROL responded on 5 November 2015. It said that any legal costs relating to the above appeal are the costs of the parking adjudicator concerned. It said that these adjudicators are not public authorities and

that the FOIA does not therefore apply to the request. However, PATROL also said that if the Act *did* apply, the requested information would be exempt from disclosure under section 42 (legal professional privilege), section 41 (information provided in confidence) and section 43 (commercial interests).

5. Following an internal review PATROL wrote to the complainant on 15 February 2016. It maintained this position.

Scope of the case

6. The complainant contacted the Commissioner on 16 December 2015 to complain about the way his request for information had been handled. He disputed PATROL's position that the FOIA does not apply to his request and that if it did, the information he requested is exempt from disclosure.
7. To decide whether the FOIA applies to the request, and whether PATROL can be said to hold the requested information under section 1, the Commissioner has first confirmed the status of both PATROL and parking adjudicators. If he finds that the FOIA applies to the request, he has been prepared to consider whether PATROL is entitled to withhold the information on the basis of sections 42 and, if necessary, sections 41 and 43 of the FOIA.

Reasons for decision

Background to the case

8. In its submission, PATROL has provided the Commissioner with background to this case. In 2013, a particular borough Council ('the Council'), acting as an agent of a particular County Council, issued a Penalty Charge Notice (PCN) to an individual (Mr M - not the complainant) for parking in a designated disabled person's parking place without displaying a valid disabled person's blue badge. Mr M conceded that the contravention occurred but his contention was that there were mitigating factors.
9. A parking adjudicator cannot allow an appeal on grounds of mitigation. Mr M's appeal was considered by Adjudicator A in March 2014. Mr M applied for a review of the adjudicator's decision to dismiss the appeal. The review application was considered and rejected by Adjudicator B in May 2014.

10. In July 2014, Mr M applied in the High Court for a judicial review of the review decision that had been taken by Adjudicator B, who was the only named defendant in those proceedings. The Council was named as an Interested Party.
11. In those proceedings, Mr M alleged '*judicial bias*' on the part of Adjudicator A and '*judicial impropriety*' on the part of Adjudicator B. In addition, PATROL has told the Commissioner that Mr M's action was inherently challenging the exercise of the adjudicators' discretion under the procedural regulations. It says that Adjudicator B took a neutral stance in the matter: his submissions were directed at ensuring that the court understood the legislative context and that it had the benefit of the relevant legal argument. Consistent with that neutral position, PATROL says that Adjudicator B made it clear that he would not be seeking any order for costs should Mr M's application be dismissed.
12. PATROL says that, in October 2014, the judge refused Mr M's application to appeal. Mr M then renewed it. In December 2014 a separate judge refused the renewed application at an oral hearing, rejecting all the grounds relied on by Mr M and holding that none of them gave rise to a properly arguable challenge to Adjudicator B's decision. Although the Council had not appeared at the hearing of the application, the judge ordered Mr M to pay a contribution of £450 in respect of the Council's preparation of its acknowledgement of service and its summary grounds.

The second judge refused Mr M's application for permission to appeal his decision to the Court of Appeal. Mr M then sought permission from the Court of Appeal itself. In November 2015, a third judge refused that application for permission holding that: first, the application was totally without merit; second, that the second judge had been right to conclude that none of the grounds that Mr M relied on gave rise to an arguable challenge to Adjudicator B's decision; and third, that the second judge had been entitled to order Mr M to pay the Council the £450 contribution to its costs.

Is PATROL a public authority?

The civil enforcement scheme

13. PATROL has also confirmed to the Commissioner that it does hold the information the complainant has requested and provided the Commissioner with copies of this material. Its position is that, although it is itself a public authority, it holds the information solely on behalf of the adjudicator in question. Since adjudicators are not public authorities, PATROL cannot be said to hold the information for the purposes of the FOIA.

14. In its submission to the Commissioner, PATROL has explained the civil enforcement scheme in relation to enforcement of traffic contraventions and explained its role.
15. Under section 101 of the Local Government Act 1972, local authorities that wish to undertake civil enforcement of traffic contraventions are required to form a joint committee to exercise their functions in compliance with section 81 of the Traffic Management Act (TMA). Section 81 of TMA obliges authorities to appoint adjudicators, and, under 81(4), to defray (that is, to provide payment for) any expenses incurred by the adjudicators.
16. The joint committee formed outside of London is known as PATROL. PATROL confirmed to the Commissioner that it is a public authority as set out in the FOIA Schedule 1 Part II(25), because it is "*A joint committee constituted in accordance with section 102(1)(b) of the Local Government Act 1972*". The Commissioner is satisfied that PATROL is a public authority.

Are parking adjudicators public authorities?

17. PATROL has told the Commissioner that parking adjudicators are appointed under the Civil Enforcement of Parking Contraventions Representations and Appeals Regulations 2007 to hear appeals by motorists against PCNs issued by enforcement authorities in England and Wales.
18. The Lord Chancellor consents to each parking adjudicator appointment, and the Chief Adjudicator oversees the adjudicators. Parking adjudicators are independent office holders exercising a judicial function. They are not employees of authorities and are independent of them. The jurisdiction of a parking adjudicator arises by virtue of a) Section 81(2) (a) of TMA; b) the Civil Enforcement of Parking Contraventions (England) General Regulations 2007 (the 'General Regulations') and c) the Civil Enforcement of Parking Contraventions Representations and Appeals Regulations 2007. An adjudicator's decision can be subject to judicial review, as in the case outlined in the background above.
19. From the information PATROL has provided to him, the Commissioner accepts that parking adjudicators are not public authorities.

Does PATROL hold the requested information for the purposes of the FOIA?

20. Under section 1 of the FOIA, anyone who requests information from a public authority is entitled to be informed by the authority whether it holds the information and, if it does, to have that information communicated to him or her.

21. PATROL does not dispute that it holds the information requested; the question is whether PATROL holds it for the purposes of the FOIA.
22. In its submission, PATROL has confirmed that the costs to which the request relates were incurred by Adjudicator B. It has explained that Adjudicator B was a named defendant in Mr M's application for permission for a judicial review of Adjudicator B's review decision. It says that the Chief Adjudicator, on behalf of Adjudicator B, instructed solicitors on his behalf to put before the Court the legal framework and background information regarding adjudicators' jurisdiction.
23. PATROL has told the Commissioner that, therefore, the legal costs of the action brought by Mr M were incurred on behalf of the individual adjudicator, Adjudicator B. Pursuant to section 81(4) of the TMA, PATROL was required to defray Adjudicator B's costs in relation to the action. For that reason, the invoices in question are addressed to PATROL. However, PATROL says that the Chief Adjudicator gave all instructions in relation to the proceedings, on behalf of Adjudicator B, and that the documents and information remain at all times the possessions of Adjudicator B. Since Adjudicator B is not a public authority for the purposes of the FOIA, PATROL argues that Adjudicator B's documents are not subject to release under the FOIA.
24. PATROL has further argued that significant prejudice would be suffered by adjudicators if the requested information were to be disclosed, for two reasons. First, it would inevitably result in an FOI request being made to disclose legal bills in every case where the adjudicator and Chief Adjudicator saw fit to be represented, for both past cases and in the future. Second, enforced disclosure could have implications for other tribunals and courts that have taken part in public law reviews on their jurisdiction and procedures.
25. The Commissioner has produced guidance on information held by a public authority for the purposes of the FOIA¹.
26. The guidance says that when a public authority holds information solely on behalf of another person (ie a person or body that is not a public authority) it does not hold the information itself for FOIA. It also says

¹ https://ico.org.uk/media/for-organisations/documents/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf

that when a public authority holds information principally or partly on behalf of another person but exercises control over the information, ie it also holds it to any extent for its own purposes - it will also hold the information itself.

27. Factors that would indicate that the information is held solely on behalf of the another person include:

- the authority has no access to, use for, or interest in the information
- access to the information is controlled by the other person
- the authority does not provide any direct assistance at its own discretion in creating, recording, filing or removing the information; or
- the authority is merely providing storage facilities – physical or electronic.

28. Factors that would indicate that the information is also held by the public authority include:

- the authority provides clerical and administrative support for the other person, whether legally or not
- the authority controls access to the information
- the authority itself decides what information is retained, altered or deleted
- the authority deals with enquires about the information, or
- costs arising from holding the information are included in the authority's overall budget.

29. PATROL has considered the Commissioner's guidance and, on 5 June 2016, confirmed that it is of the opinion that PATROL holds the information in question solely on behalf of another person and that access to the information is controlled by the other person, namely the adjudicator. PATROL went on to tell the Commissioner that statutory provisions relating to parking and bus lane adjudicators are almost identical to those relating to coroners. However, in PATROL's case, the functions of the local authorities are performed through the joint committee set up under Section 101(s) of the TMA, as explained above.

30. PATROL confirmed that in the appeal that is the focus of this case – *Morgan v The Parking Adjudicator* – the costs were incurred by the adjudicator, who was the defendant named in the application for judicial review of a decision made by that adjudicator. The joint committee agreed through a Memorandum of Understanding with the adjudicators that costs incurred in defending proceedings brought against them in a case where they were performing their statutory judicial function will be

indemnified. As such PATROL's position remains that the information being sought is held by PATROL solely on behalf of the adjudicator.

31. Having considered PATROL's submissions, the Commissioner is satisfied that PATROL holds the requested information solely on behalf of another person – a parking adjudicator. As explained above, the Commissioner is satisfied that parking adjudicators are not public authorities. Consequently, and in line with his guidance, the Commissioner has decided that that PATROL does not hold the information for the purposes of the FOIA.
32. Since the Commissioner has found that PATROL does not hold the requested information, it has not been necessary to consider the FOI exemptions that it cited in its response to the complainant.

Right of appeal

33. 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@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

34. 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.
35. 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