

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 March 2017

Public Authority: Department for Transport
Address: Great Minster House
33 Horseferry Road
London
SW1P 4DR

Decision (including any steps ordered)

1. The complainant has requested an electronic copy of the document containing the penalty fare appeals criteria used by the Independent Appeals Service and approved by the Department for Transport (DfT). The DfT refused to disclose the requested information under section 31(1)(c), 41, 43(2) and 44(1)(a) FOIA.
2. The Commissioner's decision is that the DfT has correctly applied section 44 (1)(a) FOIA to the withheld information.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 29 July 2016 the complainant requested information of the following description:

This is a request under the Freedom of Information Act 2000 for an electronic copy of the document containing the penalty fare appeals criteria used by the Independent Appeals Service (IAS) and approved by your department. You have previously confirmed to the Information Commissioner's Office under reference FS50619752 that you hold this information.

I am aware that you have previously refused to provide it and have been upheld by the Commissioner as such, however I intend to

challenge this conclusion before the Commissioner and, if necessary, before the First tier Tribunal. In particular, I note:

- The information is not exempt under section 44 of FOIA (read with section 145 of the Railways Act 1993) because no provision of the Railways Act relates to appeal criteria, and they were therefore not provided to the department 'under any provision of the act'
 - As section 145 of the Railways Act could potentially constitute an interference with individuals' human right to receive information and to a fair trial according to published criteria, however it must be read compatibly with these rights as per section 3 of the Human Rights Act 1998. A narrow reading is appropriate.
5. On 24 August 2016 the DfT responded. It refused to disclose the requested information under section 41(1) and section 44(1)(a) FOIA.
 6. The complainant requested an internal review on 26 August 2016. The DfT sent the outcome of its internal review on 23 September 2016. It upheld its original position and additionally applied section 31(1)(c) and 43(2) FOIA to the withheld information.

Scope of the case

7. The complainant contacted the Commissioner on 26 September 2016 to complain about the way the request for information had been handled.
8. The Commissioner has considered whether the DfT has correctly applied section 31(1)(c), 41, 43(2) or 44(1)(a) FOIA to refuse to provide the requested information.

Reasons for decision

Section 44(1)(a)

9. Section 44(1)(a) of FOIA provides that information is exempt if disclosure is prohibited by or under any enactment. In this case the DfT have said that the relevant statutory prohibition is section 145 of the Railways Act 1993 ("the 1993 Act") which provides that:

(1) ...no information with respect to any particular business which—

(a) has been obtained under or by virtue of any of the provisions of this Act; and

(b) relates to the affairs of any individual or to any particular business,

shall, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.

10. The withheld information in this case is a document used by the IAS to determine appeals against penalty fares. It details the different reasons which might be given by an appellant when challenging an appeal and in which circumstances an appeal might be accepted or rejected. The document formed part of the IAS code of practice which it had to produce in order to gain approval for processing appeals.
11. The DfT has explained that the relevant provision under which the information was obtained is section 130 of the 1993 Act which permits the Secretary of State to create a penalty fares regime for the railways. It said that using this power the Secretary of State created a regime under which penalty fares appeals bodies must obtain approval for their code of practice before they are permitted to process appeals. The regime also requires individual Train Operating Companies (TOCs) to obtain approval of the penalty fares scheme they intend to operate, including the arrangement they have for processing appeals.
12. The DfT has said that it has been unable to confirm definitively the source of the document. However, it said that it believed that that the document was provided to the Strategic Rail Authority (now subsumed within the DfT) when the IAS sought approval for its code of practice. Alternatively, the other potential source would have been one of the TOCs as they could have provided the document to the Strategic Rail Authority or subsequently the DfT when seeking approval of their penalty fair scheme. Either way, it said that the information would have been provided by virtue of provisions in the 1993 Act.
13. The Commissioner has considered the arguments made by the DfT and is satisfied that the information would have been obtained under the 1993 Act and that therefore the statutory prohibition applies. Whilst the DfT could not say with absolute certainty where the information was obtained from the explanations of their likely source are entirely reasonable and plausible. The Commissioner accepts that the information will have been obtained either from the IAS itself or one of the TOCs and in either event the statutory prohibition applies given that the information also relates to the affairs of the IAS and consent for disclosure has been refused.

14. Therefore as previously concluded under case reference FS50619752, the Commissioner is satisfied that the withheld information is exempt under section 44(1)(a) of FOIA by virtue of section 145 of the 1993 Act. Section 44 is an absolute exemption and therefore there is no public interest test to apply.
15. The Commissioner has decided that all of the withheld information is exempt under section 44 and so she has not gone on to consider whether any of the other exemptions relied on by the DfT might also apply.

Right of appeal

16. 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

17. 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.
18. 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

Gemma Garvey
Senior Case Officer

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF