

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 04 June 2018

**Public Authority:** Transport for London  
**Address:** Windsor House  
42-50 Victoria Street  
London, SW1H 0TL

#### Decision (including any steps ordered)

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1. The complainant requested information on the Transport for London's (TfL) decision on whether to grant Uber London Limited (ULL) an operator's licence. TfL refused the request on the basis of the section 31 exemption for law enforcement. During the investigation TfL disclosed the requested information but the complainant wished the Commissioner to decide if TfL was correct to apply section 31 at the time of the request.
2. The Commissioner's decision is that TfL has demonstrated that section 31(1)(c), prejudice to the administration of justice, is engaged and the public interest favours maintaining the exemption. She requires no steps to be taken.

#### Request and response

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3. On 23 September 2017 the complainant requested the following information:

*'Q1. Please provide me with any detailed reasons/decision letter given to Uber respecting the non-renewal of their private hire operator's licence as announced in September 2017.'*

*'Q2. Please also provide me with any detailed reasons/decision letter given to Uber respecting the grant of only a four-month licence as announced in May 2017.'*

4. On 16 November 2017 TfL refused to provide the information citing section 31. TfL applied section 31(1)(c) prejudice to the administration

of justice. In addition TfL applied section 31(2)(c) prejudice to regulatory activities as some of the information was held in connection *'with ongoing investigations by TfL in its role as regulator'*.

5. The complainant requested an internal review on 16 November 2017.

6. TfL provided the outcome of its internal review on 26 January 2018. It upheld the decision that, at the time of the request, it was appropriate to refuse the requested information under section 31.

7. TfL also stated that some information has now been disclosed:

*'However, the Panel are aware that since your request on the 23 September 2017 and your internal review request of 16 November 2017, TfL's letter setting out its decision not to renew Uber's licence in London on 22 September 2017 has been disclosed into the public domain via the LTDA website.'*

8. On 28 December 2017 the complainant contacted the Commissioner and the case was accepted (after the internal review was completed) on 1 February 2018.

9. During the Commissioner's investigation, TfL re-assessed the request and on 16 April 2018 provided the complainant with the September and May letters to Uber London Limited (ULL). It appeared to the Commissioner that the outstanding withheld information had been disclosed.

10. The Commissioner invited the complainant to withdraw his case as informally resolved on 2 May 2018. The Commissioner explained her view that to issue academic decision notices where information is already released is to be avoided, as it provides little additional value and diverts resources from consideration of other cases.

11. However, the complainant declined to withdraw his case and stated that *'their reliance on s.31 was misconceived from the start, and I would ask that the ICO decide whether the exemption was correctly applied.'*

12. Whilst the Commissioner has agreed to issue a decision notice on this occasion, she notes that she considers it appropriate for complaints to her to be resolved informally where possible; such an approach is in keeping with the principles of good regulation and allows for a proper and proportionate focus of resources on those information rights cases which demand it. She therefore strongly encourages a degree of cooperation and, where relevant, compromise, on the part of all parties to a complaint made to her.

## Scope of the case

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13. The Commissioner considers the scope of her investigation to be to determine whether TfL handled the request in accordance with the FOIA. Specifically, the investigation will focus on whether section 31 was cited correctly to refuse to provide the 2 ULL Licencing Decision letters from May and September 2017 at the time of the request. The Commissioner notes that the complainant has not disputed the small redactions in the letters.
14. TfL has applied section 31(1)(c) and section 31(2)(c). The Commissioner will therefore first consider whether TfL correctly applied section 31(1)(c). If this exemption has been correctly applied then the Commissioner will not consider section 31(2)(c).

## Reasons for decision

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### Section 31 – law enforcement

15. Section 31 provides a prejudice-based exemption which protects a variety of law enforcement interests. Consideration of this exemption is a two-stage process. Firstly, in order for the exemption to be engaged it must be at least likely that disclosure would prejudice one of the law enforcement interests protected by section 31 of FOIA. Secondly, the exemption is subject to a public interest balancing test. The effect of this is that the information should be disclosed if the public interest favours this, even though the exemption is engaged.
16. The relevant parts of section 31 of the FOI provide that:  
  
*‘(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—*  
  
*(c) the administration of justice*  
  
*(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),*  
  
*(2) The purposes referred to in subsection (1)(g) to (i) are –*  
  
*(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,*

17. TfL explained that the FOIA request was made the day after TfL informed Uber London Limited (ULL) in writing that it would not be renewing its licence to operate private hire services in London on the grounds that '(TfL) *was not satisfied that ULL is a fit and proper person to hold a licence*'. This was widely covered in the media and TfL received many requests for the disclosure of TfL's letter of 22 September and an earlier one of 26 May 2017 which had given ULL a four month extension of its existing licence.
18. The Private Hire Vehicles (London) Act 1998 gave ULL a right of appeal against TfL's decision not to renew its licence. If ULL intended to appeal, it had to make the appeal to the Magistrates' court within 21 days. TfL was aware from the public comments made by ULL immediately after the letter was sent to it that ULL intended to explore this option.
19. Accordingly, TfL were of the view that disclosure of the letters which outlined, in detail, its concerns surrounding ULL's conduct would prejudice the administration of justice.
20. ULL made its appeal to the Magistrates' court on 13 October 2017. TfL expected there to be a directions hearing listed where the court would set the timetable for the hearing and decide whether any of the hearing should be conducted in private. TfL considered that disclosing the letters at the time of the request (23 September 2017) would pre-empt the Magistrates' Court decision.
21. TfL also explained that although a summary of the licensing decision was made public, disclosing the detail from these letters would prejudice the appeal process in the Magistrates' court and would impact on it being able to achieve a fair outcome.
22. It is clear to the Commissioner that at the time of the request TfL was expecting ULL to appeal their decision not to grant the licence to the Magistrates' Court. As the issue was still live at the time of the request the Commissioner has to conclude that the likelihood of disclosure would impact on the appeal process to the Magistrates' Court.
23. Therefore the Commissioner considers that section 31(1)(c) is engaged in relation to the requested information. The exemption is a qualified exemption which means that the information in question should only be withheld where the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

*Public interest arguments in favour of disclosure*

24. TfL stated that careful consideration was given to the public interest test as it was aware of the sustained media coverage in the outcome of the

licensing decision, as well as the potential impact on the livelihoods and choices of individuals who live and work in London.

25. As a public authority with a regulatory role, TfL stated that it strives for its decision making to be transparent and open to public scrutiny.

*Public interest arguments in favour of maintaining the exemption*

26. TfL stated that it had made a regulatory decision involving a private company and TfL believed that the appropriate way to determine what information should be considered in public should rest with the Magistrates' court.
27. TfL was also concerned that if this information was made public at that early stage in the appeal process (before any direction or consideration had been given by the court), it would diminish TfL's ability to continue with the free flow of information with ULL which is an essential requirement of any ongoing investigation.
28. TfL also explained that disclosure would also be likely to prejudice future investigations as the investigated party would be less likely to cooperate if a running commentary were to be given through early FOI disclosures: *'Effective working between the Private Hire Vehicle (PHV) trade and the regulator relies on a safe space where information can be shared at a sufficiently early stage, which may avoid the need for formal enforcement action.'*

*Balance of the public interest arguments*

29. TfL argued that the effective regulation of Private Hire Vehicle operators is of interest to many parties but TfL felt that the balance of the public interest was best served in supporting the effective and timely sharing of information between TfL and the taxi and private hire trade, particularly at that appeal stage with ULL.
30. In reaching a view on where the public interest lies in this case, the Commissioner accepts there is a legitimate public interest in informing the public about the investigative process.
31. Balanced against this is the need to allow TfL to complete all investigations into licencing matters, including the appeal process to the Magistrates' Court, without disclosure through FOIA to third parties. Therefore the Commissioner considers that the public interest argument for withholding this information outweighs the public interest argument for disclosure.
32. The Commissioner therefore finds that section 31(1)(c) is engaged in relation to the withheld information and the public interest favours

maintaining the exemption. As this exemption has been correctly applied then there is no need for the Commissioner to go on to consider section 31(2)(c).

## **Procedural matters**

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33. Section 10 of the FOIA provides that a public authority should respond to a request for information within 20 working days. TfL responded in 39 working days. The Commissioner has found a breach in this case because TfL did not respond within 20 working days.

## **Other Matters**

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### **Internal reviews**

34. The Code of Practice under section 45 of the FOIA provides that internal reviews should be undertaken "promptly". The Commissioner's guidance is that internal reviews should generally not take longer than 20 working days. TfL responded in 49 working days. She trusts that TfL will make improvements in this regard in the future.

## Right of appeal

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35. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

36. 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.
37. 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**  
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**SK9 5AF**