

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 28 February 2011**

**Public Authority:** British Transport Police  
**Address:** Force HQ  
25 Camden Road  
London  
NW1 9LN

### Summary

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On 12 March 2010 the complainant contacted the British Transport Police to request information relating to its current fleet of vehicles including the station/location at which each vehicle was based and the name and contact details of the fleet manager. The British Transport Police refused the request as vexatious under section 14(1) of the Act. The Commissioner has investigated and finds that the application of section 14(1) was not justified. He therefore now requires the British Transport Police to either confirm or deny that the information is held and, if it is held, to either provide the complainant with the requested information or issue a valid refusal notice within 35 calendar days of this Notice. He has also decided that the British Transport Police failed to issue a valid refusal notice within the statutory time period as laid out in section 17(5) of the Act, or to notify the complainant of its review procedure or of his right to approach the Commissioner in accordance with its obligations under section 17(7)(a) and (b).

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

## The Request

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2. On 12 March 2010 the complainant contacted the British Transport Police to request the following information:

*"Please could you provide me with a current and up to date fleet list containing all vehicles marked and unmarked (not including personal vehicles/vehicles that conduct sensitive work) used by the British Transport Police.*

*Also could you please advise me of the name and contact details of your current fleet manager.*

*If possible could you provide the make, model, age, function, call sign (e.g. L56 for vehicle EU07GXP) and the station/location where the vehicle is based. If possible could I have this in electronic format e.g. word document or spreadsheet?"*

3. The request was received by the British Transport Police on 15 March 2010.
4. On 16 April 2010 the complainant contacted the Commissioner to complain about the British Transport Police's delay in responding to his request.
5. On 26 May 2010 the Commissioner wrote to the British Transport Police to make it aware of the complaint he had received and remind it of its duties under the Act. After further contact from the Commissioner, the British Transport Police provided a response to the complainant on 30 June 2010, refusing to comply with the request by reference to section 14(1) of the Act.

## The Investigation

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### Scope of the case

6. On 11 June 2010 the complainant contacted the Commissioner again to complain about the way his request for information had been handled. The complainant originally asked the Commissioner to consider the fact that he had to date not received a response to his request. During the course of the investigation the public authority issued a refusal notice on the grounds that the request engaged section 14(1) of the Act. The

complainant remained dissatisfied with this response and asked the Commissioner to investigate the application of 14(1) to the request.

## Chronology

7. On 16 June 2010 the Commissioner wrote to the British Transport Police recommending that a response be provided to the complainant.
8. On 30 June 2010 the British Transport Police provided a response to the complainant in which it refused to comply with the request by virtue of section 14(1) of the Act.
9. On 3 August 2010 the Commissioner wrote to the British Transport Police in order to obtain further arguments in support of its application of section 14(1) to the requested information.
10. On 12 October 2010 the British Transport Police contacted the Commissioner with regard to the complaint.

## Analysis

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### Substantive Procedural Matters

11. The full wording of the sections of the Act included here can be found in the Legal Annex at the end of this Notice.

### Section 14 – Vexatious or repeated requests

12. Section 14(1) provides that a public authority is not obliged to comply with a request where it is considered vexatious. As a general principle, the Commissioner considers that this section of the Act is intended to serve as protection to public authorities against those who may abuse the right to seek information.
13. The Commissioner's guidance on section 14<sup>1</sup> states the following:

*“Deciding whether a request is vexatious is a balancing exercise, taking into account the context and history of the request. The*

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[http://www.ico.gov.uk/what\\_we\\_cover/freedom\\_of\\_information/guidance.aspx](http://www.ico.gov.uk/what_we_cover/freedom_of_information/guidance.aspx)  
[http://www.ico.gov.uk/what\\_we\\_cover/freedom\\_of\\_information/guidance.aspx](http://www.ico.gov.uk/what_we_cover/freedom_of_information/guidance.aspx)

*key question is whether the request is likely to cause unjustified distress, disruption or irritation. In particular, you should consider the following questions:*

- *Could the request fairly be seen as obsessive?*
- *Is the request harassing the authority or causing distress to staff?*
- *Would complying with the request impose a significant burden in terms of expense and distraction?*
- *Is the request designed to cause disruption and annoyance?*
- *Does the request lack any serious purpose or value?."*

14. In order to aid his investigation into whether section 14(1) was correctly applied to the request the Commissioner sought evidence from the British Transport Police to demonstrate that the request met some or all of the five criteria described above.
15. The British Transport Police informed the Commissioner that it had applied section 14(1) as the result of representations from another organisation, the Association of Chief Police Officers, indicating that the public authority had not itself considered the appropriateness of the applying section 14(1) to the request. The British Transport Police thus failed to engage with the Commissioner's investigation in any meaningful way. Despite repeated attempts by the Commissioner to obtain from them arguments in relation to the five criteria above to support the public authority's application of section 14(1), British Transport Police failed to respond.
16. In these circumstances and in the absence of any reasoned arguments from the British Transport Police, the Commissioner has decided that section 14(1) was not properly applied in this case.

## **Section 17 – Refusal of request**

17. Section 17(5) of the Act stipulates that, where a public authority applies section 14, it must issue a refusal notice which states this fact within 20 working days. The British Transport Police took three-and-a-half months to provide its response in this case, and thereby breached its obligations under section 17(5).
18. Section 17(7)(a) obliges the public authority to provide details of any review procedure which the applicant can enter into on receipt of the refusal notice, and section 17(7)(b) obliges the public authority to provide details of the complainant's right to complain to the Commissioner.

19. In this case, the British Transport Police has advised the Commissioner that it consciously took the decision, on advice, not to notify the complainant of either its review procedure or his right to approach the Commissioner. The Commissioner has concluded that it thereby breached section 17(7)(a) and (b).

## **The Decision**

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20. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act:
- it incorrectly applied section 14(1) to the request;
  - it failed to issue a valid refusal notice within the statutory time period, in breach of section 17(5);
  - it failed to notify the complainant of its review procedure, in breach of section 17(7)(a);
  - it failed to notify the complainant of his right to approach the Commissioner, in breach of section 17(7)(b).

## **Steps Required**

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21. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- confirm or deny whether information pertaining to the request is held, to comply with section 1(1)(a);
  - if information is held, either disclose it to the complainant, or issue a valid refusal notice in line with section 17(1).
22. The public authority must take the steps required by this notice within 35 calendar days of the date of this Notice.

## **Failure to comply**

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23. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Other matters

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24. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint.
25. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review.
26. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, the British Transport Police failed to offer an internal review to the complainant, despite confirming to the Commissioner that it had such a procedure in place and the publication of his guidance on the matter.

## Right of Appeal

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27. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 28<sup>th</sup> day of February 2011**

**Signed .....**

**Graham Smith  
Deputy Commissioner  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## **Legal Annex**

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### **General Right of Access**

**Section 1(1)** provides that -

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

### **Vexatious requests**

**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"

### **Refusal of Request**

**Section 17(1)** provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies."

**Section 17(2)** states –

"Where–

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-

(i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or



(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached."

**Section 17(3)** provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."

**Section 17(4)** provides that -

"A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

**Section 17(5)** provides that -

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."

**Section 17(6)** provides that –

“Subsection (5) does not apply where –

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.”

**Section 17(7)** provides that –

“A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.”