

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 October 2012

Public Authority: Transport for London

Address: 6th Floor, Windsor house,
42-50 Victoria Street, London,
SW1H 0TL

Decision (including any steps ordered)

1. The complainant made a number of requests for information to Transport for London ("TfL").
2. TfL considered that some of the requests were vexatious and relied on section 14(1) of the FOIA.
3. The Commissioner considers that the requests were vexatious and that section 14(1) was correctly engaged.
4. The Commissioner does not require the public authority to take any steps.

Request and response

5. TfL issued the complainant's wife with a parking fine. The complainant's wife contested the fine and requested information to support her appeal.

6. On 3 October 2011 the complainant's wife wrote to TfL appealing against the issue of a Penalty Charge Notice (PCN) and made conditional requests for information, the condition being that if the appeal was successful TfL need not provide the information. (see Annex A for information requested)
7. On 5 October 2011 TfL responded rejecting the appeal against the PCN and advising a response to the FOI requests would be issued separately.
8. On 18 October 2011 the complainant's wife further appealed against the PCN and the initial rejection by TfL.
9. On 19 October 2011 TfL responded and confirmed that the appeal would not be contested and therefore the PCN would be waived.
10. On 24 October 2011, the complainant wrote to TfL and requested *"for the exact nature of the administrative error that lead to the decision not to contest my appeal"* and also reminded TfL that a response to the previous information request had not been received.
11. TfL responded on 9 November 2011 and stated that upon investigation, the restrictions at the location where the PCN had been issued were found to be incorrect.
12. The complainant's wife complained to the Commissioner that her request for information dated 3 October 2011 had not been responded to.
13. TfL issued a response on 9 January 2012.
14. On 12 January 2012 TfL received further correspondence: *I requested (under the Freedom of Information act) to be supplied with the "exact nature of the administrative error". However, in TfL's response dated 9 November 2011 not only was I not given this information but the 'administrative error' changed and the reason now given was that 'restrictions..were found to be incorrect'. Why was this initially referred to simply as an 'administrative error'? Why did your subsequent letter of 9*

January 2012 state this is under review if an investigation had already taken place? Your letter also fails to elaborate sufficiently about the exact nature of the possible difference between the details the sign...and the details on the system? Again under the Freedom of Information Act I request that these full details be provided. Furthermore, please confirm if any corrective action has or is due to be taken.

15. TfL responded on 24 January 2012.
16. On 26 January 2012 a further request for information was received; *Please advise the date of TfL's sign maintenance engineers undertook maintenance or changes to signs at location [redacted] but failed to add those to your system. How many PCNs have TfL issued since that date to 19 October 2011, and the amount of revenue collected during that period? How many PCNs TfL have issued since 19 October 2011 to the present, and the amount of revenue collected during this period.*
17. TfL responded on 23 February 2012 providing the information that it held. TfL did not hold information relating to the maintenance engineers or how many PCNs were issued since that date to 19 October 2011, and the amount of revenue collected during that period.
18. TfL further advised that since 19 October 2011 it had issued 10 PCNs at that location and the value of the payments received in respect of those PCNs was £520.
19. On 24 February 2012 TfL received a further request for information; *how is it that TfL continued to enforce this location since 19 October 2011 by issuing 10 PCNs and collecting revenue of £520 if due to the said discrepancy these PCNs could not legally be contested, and the PCNs this being issued illegally while TfL were well aware that the site was scheduled to be reviewed by TfL's maintenance engineers?*
20. TfL responded on 15 March 2012 and stated that on 19 October 2011 it had not contested the appeal because of the concerns raised about the signs at that location. The appeals processing

team forwarded those concerns on to the sign maintenance team and this was logged in their reporting system as an enquiry. At that point the site was not scheduled for review. TfL went on to explain that an enquiry differed from a review in that an enquiry involved checking that the information held in its systems was correct, which would include any information held regarding on-street faults.

21. While investigating the previous complaint to the Commissioner TfL became aware that the enquiry had not been completed, and as part of that investigation, the enquiry was escalated. On 6 January 2012 TfL suspended enforcement at the location in question and requested a full review of the signs and lines.
22. TfL stated that it was not aware that the site was scheduled to be reviewed until 6 January 2012, as it had not requested a review until that date.
23. TfL also advised that it would review the 10 PCNs that had been issued between 19 October 2011 and 6 January 2012, but it was unable to discuss the circumstances with anyone other than the registered keeper of the vehicles due to data protection.
24. On 16 March 2012 a further request for information was received (see Annex B).
25. TfL responded on 18 April 2012. It stated that the request was vexatious and therefore TfL would not provide the information requested.
26. Following an internal review TfL wrote to the complainant on 14 June 2012. It stated that its position was unchanged and the information would not be provided.

Scope of the case

27. The complainant contacted the Commissioner to complain about the way his request dated 16 March 2012 for information had been handled.
28. The Commissioner will consider whether TfL has correctly applied Section 14(1) of the FOIA.

Reasons for decision

29. Section 14 of FOIA states that:
 - (1) Section (1) does not oblige a public authority to comply with a request for information if the request is vexatious.
 - (2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.
30. In this case the FOIA is being used as a means to obtain the alleged need for a 'correction' i.e. the parking penalties were issued incorrectly and should be withdrawn. The Commissioner notes that it is not the purpose of the FOIA to assist requesters in placing undue pressure on a public authority either as part of a campaign to expose maladministration or in order to force it into an admission of liability.
31. The Commissioner has issued guidance to assist in the consideration of what constitutes a vexatious request. This guidance explains that for a request to be deemed vexatious the Commissioner will consider the context and the history of the

request as well as the strengths and weaknesses of both parties arguments.

32. The Commissioner will consider arguments put forward in relation to some or all of the following five factors to reach a reasoned conclusion as to whether a reasonable public authority could refuse to comply with the requests on the grounds that they are vexatious:
- whether compliance would create a significant burden on terms of expense and distraction;
 - whether the request is designed to cause disruption or annoyance;
 - whether the request has the effect of harassing the public authority or its staff;
 - whether the request has any serious purpose or value;
 - whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable;
33. The Commissioner agrees with the Tribunal that the bar need not be set too high in determining whether to deem a request vexatious. He also agrees with the Tribunal that the term 'vexatious' should be given its ordinary meaning, which is that it 'vexes' (causes irritation or annoyance; in relation to section 14(1), the annoyance must be caused by the process of complying with the request).
34. TfL explained that it considers that four of the above factors referred to in this guidance are satisfied by the request of 16 March 2012 when viewed in the context of the complainant's other FOI requests and correspondence with TfL. The Commissioner has looked at these factors in turn and also considered in the event of the requests having a serious purpose, whether the seriousness of that purpose outweighs all the other factors to render the requests as valid.

35. In the Commissioner's view, an affirmative response to all of the questions is not necessary for a request to be deemed vexatious.
36. However, he considers that, in order to judge a request as vexatious, a public authority should usually be able to make persuasive arguments under more than one of the above headings.
37. Accordingly, the Commissioner has considered whether TfL has provided sufficient arguments in support of any of the criteria above in its application of section 14(1) in this particular case.

TfL has presented the following arguments:

Would the requests constitute a significant burden in terms of expense or distraction?

38. The most recent piece of correspondence to TfL from the complainant's email address contained a number of separate FOIA requests. This is the sixth in a series of requests submitted from this individual in just over 5 months, several of which contain multiple FOIA requests (not all of which are valid requests).
39. In each case, following receipt of TfL's response further correspondence has been received within a short space of time with additional queries. Many of these queries are repeated versions of the queries submitted. This includes queries which have previously been considered invalid requests, as well as those that have previously elicited a response explaining that the information is exempt from disclosure.
40. TfL drew attention to the large volume of correspondence made within a short space of time, the fact that some correspondence contains numerous individual FOI requests and mixes FOI requests with various complaints and accusations. TfL noted that many of the points raised in correspondence are highly specific to the Congestion Charging & Traffic Enforcement (CCTE) function and therefore no other TfL business area has the necessary knowledge or expertise to be able to provide a response.
41. This situation is complicated by the fact that correspondence frequently raises challenges to the issuing of PCNs, both generally

and at specific locations, which are not actually relevant considerations in determining whether TfL has issued a PCN lawfully, and in fact rely on out of date or irrelevant legislation. The correspondent has also sought to require CTE to generate new information or take particular courses of action in response to their correspondence.

42. TfL considers that providing further responses to these requests would represent disproportionate effort for a single complainant and a significant distraction from CTE's on-going work of enforcing traffic regulations across TfL's London Road Network. This is supported by the fact that there is already an appropriate and longstanding appeals mechanism that can be used by anyone who is in receipt of a PCN.
43. When considering whether a request constitutes a significant burden on a public authority the Commissioner endorses the Tribunal's approach where *"it is not just a question of financial resources but also includes issues of diversion and distraction from other work.."* (Welsh v IC [EA/2007/0088])
44. TfL's principle duty is to provide an effective transport service for London. The appropriate forum to challenge the parking penalties is through the relevant appeal process. The complainant appealed against the PCN and it was not challenged. However, the correspondent has continued to make requests for information in connection with the PCN. Responding to these requests is a distraction from TfL's core purposes.
45. It is the Commissioner's view that the requests in their context can be said to cause a significant burden in terms of expense and distraction. The requests can be regarded as placing pressure on TfL in order to force it into cancelling the PCNs. The Commissioner also finds that as the requests would have contributed to a significant distraction from TfL's core functions that the requests can be considered to constitute a significant burden.

Could the requests be fairly seen as obsessive?

46. As referred to above TfL has received a large volume of correspondence within a short space of time, all of which relates

to the issuing of PCNs. In each case TfL's responses have led to further requests for information and the clear inference is that the correspondent is attempting to use the FOIA to further a wider campaign against parking restrictions and legitimate enforcement activity.

47. TfL considered it worth noting that the correspondent's PCN which initiated this chain of correspondence, was in fact cancelled and that all the subsequent correspondence represents part of an extended challenge to TfL when there is already an established appeals process for parking regulation.
48. In addition, as stated above, many of the past pieces of correspondence have contained multiple requests for information. However, not all of them are valid FOI requests as they do not request recorded information, but instead seek to require TfL to take a particular course of action. For example, requesting that contact details were forwarded to other people in receipt of a PCN at that same location.
49. TfL considers that there is no response it would be able to offer that would satisfy the correspondent, that any response would lead to further requests and that the aim is to use any information disclosed to further undermine the operation of TfL's CTE function.
50. In the Commissioner's view, the test to apply here is one of reasonableness. In other words, would a reasonable person describe the request as obsessive or manifestly unreasonable?
51. There is often a fine line between obsession and persistence and each case must be considered on its own facts. In answering the question regarding whether a request can be seen as obsessive,

the Commissioner's view is that the wider context and history of a request is important as it is unlikely that a one-off request could be obsessive.

52. In this case, taking into account the context and background to the request, the Commissioner considers that the request can fairly be seen as obsessive.

Is the request designed to cause disruption or annoyance?

53. TfL believes that this is closely aligned to the obsessive element outlined above. However, it considers that it is also appropriate to note that the correspondent's first request was a 'conditional' request – originally only wanting the requests for information processing if the PCN was not cancelled.
54. TfL explained that this presents a problem for the CTE function as the relevant legislation allows 56 days to reach a decision on whether an appeal will be allowed. However, FOI requests must be answered in 20 working days.
55. Although TfL did answer the original request following a complaint to the Commissioner, it still considers that this was an inappropriate use of the FOIA to place undue pressure on TfL to cancel the original PCN and/or accelerate the decision making process. TfL therefore believes it is arguable that the first request (Annex A) was vexatious and that subsequent requests have continued to use the FOIA to further a wider campaign against TfL with the aim of causing significant disruption and annoyance.
56. The Commissioner considers that this part of the vexatious criteria is difficult to prove because it requires objective evidence that it was the complainant's intention to cause disruption or annoyance.
57. The Commissioner considers that the way the requests were presented favours TfL in this instance. As noted in paragraph 29 above the FOIA is not designed to be a mechanism through which substantial pressure can be placed on an authority in order to force an admission of liability.
58. However, in this case, the Commissioner is satisfied that on balance TfL provided sufficiently strong evidence that the intention behind the complainant's requests is to cause disruption or annoyance.

Does the request lack serious purpose or value?

59. TfL explained above how it considers that this correspondence represents an attempt to use FOI as a tool to place undue and inappropriate pressure on TfL to cancel PCNs. TfL believes that this supports its contention that the request lacks serious purpose or value.
60. TfL has stated that all of this correspondence has come from the same email address and provides the same postal address. This address has been used to make a large number of representations and FOI requests. Subsequent PCN appeals received via this route follow the templates established in the first two cases, and therefore support the contention that these requests are part of an organised campaign by the holder of this particular email and postal address.
61. TfL has indicated that there are a number of common factors frequently encountered in the correspondence received via the email address:
- The correspondence generated via this email address all commences as a representation against the issuing of a PCN.
 - It is substantially similar in form, mingling representations, FOI requests and unsubstantiated allegations of unlawful activity.
 - The correspondence is voluminous, with individual letters running up to 17 pages.
 - The correspondence frequently contains conditional FOI requests which the requester states TfL is not obliged to answer if the PCN is cancelled.
 - The correspondence frequently contains inaccurate information, which cites irrelevant or out of date legislation.
 - The requester sometimes fails to provide their name in the correspondence.

- The template correspondence has sometimes not been properly adapted and instead of referring to TfL, asks for information relating to other public bodies.
62. TfL believes that the holder of this email account is providing a facility for others to make appeals against PCNs and seeks to use the FOIA to place inappropriate pressure on TfL. TfL considers that this is inherently a misuse of the information access rights created by the FOIA. The requests do not stem from a reasoned belief that a PCN has been issued inappropriately, instead it appears highly likely that they are being used as a means of exerting additional pressure on TfL's CTE function to make decisions in favour of the appellant.
 63. Many requests contain the following in the first paragraph *"please note that if all the information requested herein is not received within the 20 working days statutory period of the freedom of information act 2000 this PCN will be deemed cancelled and I request conformation [sic] within 20 days"*.
 64. The requests are formulated using wording derived from websites and internet forums that purport to provide information on how to avoid having to pay a PCN.
 65. In summary, TfL believes that these FOI requests form part of an organised campaign of disruption and that attempting to respond to all of them would create significant burden for its CTE function and have no serious purpose or value. While the Commissioner was not convinced that it could be said that these requests had no serious purpose or value, the value of responding is limited in view of the background to this matter and the fact that there is an alternative route available by which the complainant can complain about the PCNs.
 66. The Commissioner has therefore considered whether the serious purpose of the requests is such as to render the requests not vexatious. This is where for example, there might be a circumstance in which a request might be said to create a significant burden and yet, given its serious and proper purpose, ought not to be deemed as vexatious.

67. In this case the Commissioner does not consider that sufficient weight can be placed on the purpose identified to make it inappropriate to deem the request vexatious. This is in view of the overall burden of the requests and the way that they were framed so that they can be reasonably seen as an example of inappropriate pressure on TfL. In addition, the Commissioner considers the complainant's refusal to use the appropriate channels available to lodge a complaint against the fine substantially reduces the seriousness of the purpose.
68. The Commissioner notes that between 23 January 2012 and 22 July 2012, TfL had received eight requests for information. All eight requests were from the same email account, and quoted the same postal address. Four of the requests did not contain a name.
69. The eight requests received all requested the same/similar information (see Annex C).
70. Whilst the FOIA is intended to be applicant and purpose blind section 8(1) states – In this Act any reference to a “request for information” is a reference to such a request which -
 - a) is in writing
 - b) states that name of the applicant and an address for correspondence, and
 - c) describes the information requested
71. From the evidence provided by TfL it is apparent that not all the requesters have provided their names, that the requests have all come from the same email account, have all provided the same postal address and are identical/similar in many ways.
72. The First-tier Tribunal has commented that consideration of a request as vexatious may not necessarily lend itself to an overly structured approach and has provided its opinion that it will be obvious from an examination of the facts of the case if the request is vexatious. The Commissioner acknowledges this position and in addition to his analysis of the five factors set out above, considers that the requests are clearly vexatious when set against the long history of correspondence between the two parties.

Reference: FS50453960

73. Taking all the relevant matters into account, including the history and context of the request, the Commissioner has found that the number and strength of the factors in favour of applying section 14(1) are of sufficient weight to deem the requests as vexatious.

Right of appeal

74. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

75. 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.
76. 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, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Annex A – Request made on 3 October 2011

Please provide original of the parking contravention and all further information relating to this matter.

Please provide full details of contravention 46 as stated on the PCN, quoting the relevant act etc...

I request evidence that the Greater London Council passed such a resolution with regard to footway parking and evidence that the Association (defined in subsection 15(12) and the Secretary of State were both consulted as required.

I also request please that the enforcement authority provide evidence that the Notice was published and the date of its publication. Subsection 15(10) explains what 2 items can be accepted as evidence.

(10) Either –

(a) a copy of the newspaper containing the notice referred to in the last foregoing subsection

(b) a photostatic or other reproduction, certified by the Director-General and Clear to the Council to be a true reproduction, of a page or part of a page of the said newspaper bearing the date of its publication and containing the said notice; shall be evidence of the publication of the notice and the date of the publication. I request that both are provided.

Please provide recent TMO.

ANNUAL REPORTS

It is a requirement of the Traffic Management Act 2004 that all Authorities publish an annual report showing statistical information including the Councils performance and accounts. Please provide.

Reference: FS50453960

Civil Parking Policy Evaluator

The aim of the Civil Parking Policy Evaluator service is to help local authorities develop their Civil Parking Enforcement (CPE) operations with a view to achieving continuous improvement. Please provide copy of submission.

Please provide me with the Authorisation of Traffic Signs and Special Directions.

Please provide the model number and serial number of the camera used.

Please provide the manufacturer's specifications for the camera used.

Please provide the ??? speeds and camera shutter timing test results.

Please provide copies of the calibration certificate.

Please provide competency certificate issued to camera operator RNC/017.

Please provide the number which would relate to the film used.

Please provide details of the authority's appointed Traffic Manager who has overall responsibility for these statutory duties, together with all reports by the appointed Traffic Manager re same.

- a) A copy of the red route order or regulation giving effect to the red route.
- b) A copy of the Safety Audit for this road layout.
- c) A copy of the engineer's scale diagrams showing the layout of this red route, the road markings and the signage (including warnings of camera enforcement).
- d) Copies of any approvals of deviations of signage from TSFGD
- e) Logs of maintenance visits and verifying existence and condition of the signs.

Reference: FS50453960

- f) Certification of type of approval of the CCTV device.
- g) Details of the number of times that the videotape used has been degaussed and reused.
- h) A copy of the Camera Enforcement logbook recording the alleged contravention.
- i) Copies of the still images showing all the required information in the correct order.
- j) The number of PCNs issued by TfL in respect of this location.
- k) The number of PCNs issued by TfL in respect of this location and cancelled by them following informal challenge.
- l) The number of PCNs issued by TfL in respect of this location and cancelled by them following formal appeal.
- m) The number of PCNs issued by TfL in respect of this location and cancelled following appeal to a PATAS adjudicator.
- n) The number of PCNs issue by TfL in respect of this location and not pursued by them for any other reason.
- o) The average monthly penalty revenue raised by TfL in respect of this location.

Annex B – information requested on 16 March 2012

a) Please elaborate exactly what were the precautions that were taken to prevent an error of this nature recurring it was only as at 6 January 2012 that there was a request for a full review of the signs and lines.

b) Please advise why after investigating my complaint to the Information Commissioner was the enquiry not completed.

c) On 6 January 2012 enforcement was suspended at this location and a request for a full review of signs and lines. As previously advised, this review will include a site visit and will establish where any corrective action is required (either to our system, to the signs and lines on-street, or to both). Please advise what date TfL have set to undertake this full review.

d) Please confirm the number of PCNs issued by TfL in respect of this location and cancelled by them following informal challenges between 19 October 2011 and 6 January 2012?

e) The number of PCNs issued by TfL in respect of this location between 19 October 2011 and 6 January 2012 and cancelled following appeal to a PATAS adjudicator?

f) the number of PCNs issued by TfL in respect of this location between 19 October 2011 and 6 January 2012 and not pursued by them for any other reason?

g) Please confirm the date of the last PCN issued by TfL between the period 19 October 2011 and 6 January 2012.

h) Please confirm that there were no other PCNs issued by TfL after 6 January 2012.

i) Please confirm that as at today's date 16 March 2012 enforcement at this location is still suspended and no further PCNs have been issued since 6 January 2012.

- j) Please confirm why no signs were displayed on 6 January 2012, and why there are currently no signs displayed at this location, informing motorists that enforcement at this location is suspended
- k) Please confirm whether TfL were, or were not, legally entitled to pursue enforcement action and issue 10 PCNs at the location between 19 October 2011 and 6 January 2012?
- m) Please write to all 10 registered keepers of the vehicles that were issued with the 10 PCNs between 19 October 2011 and 6 January 2012, providing them with full details of the incorrect restrictions that were found at the location (because they did not match with details on your system and could not be contested at an appeal to PATAS) with a full explanation as to why they had all been issued with PCNs and how TfL accepted payments of same, if under the circumstances TfL were not legally entitled to enforce at the location. Please give each of the registered keeper concerned my full contact details including my address.
- n) Please write to all 10 registered keepers of the vehicles requesting written authorisation from the registered keeper's concerned for permission to discuss their PCN with another party.
- o) Please provide me with copies of the 10 PCNs issued.
- p) Please provide me with the registered address of the all registered keeper's concerned.
- q) Please elaborate on the nature of the review that TfL will undertake regarding the 10 PCNs that were issued at this location between 19 October 2011 and 6 January 2012.
- r) Please confirm the date which has been set by TfL to undertake the said review, and the name and full contact details of the officer responsible for conducting the said review.