

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 January 2014

Public Authority: East Coast Mainline Company Limited

Address: 4th Floor,
5 Chancery Lane,
London, EC4A 1BL

Decision (including any steps ordered)

1. The complainant has requested information on East Coast Mainline Company Limited's policies and procedures relating to its ticket barriers and customer complaints.
2. East Coast Mainline Company Limited provided the complainant with the information requested but breached sections 10 and 17 of the FOIA.
3. The Commissioner's decision is that East Coast Mainline Company Limited has breached sections 10 and 17 of the FOIA but he does not require it to take any steps as the complainant has confirmed her satisfaction with the information disclosed.

Background

4. East Coast Mainline Company Limited is a wholly owned subsidiary of Directly Operated Railways Limited ("DOR"), which in turn is a wholly owned subsidiary of the Secretary of State for Transport (SoS), who is therefore ultimately responsible for the operations of East Coast Mainline Company Limited. The SoS discharges this responsibility to DOR.

Request and response

5. On 25 January 2013, the complainant wrote to the Customer Relations Team at East Coast Mainline Company Limited (East Coast) to make a

complaint in relation to an incident on 30 December 2012 and at the same time requested information in the following terms:

'Can I please have a copy of your policy about the use of passenger ticket barriers at all stations run by East Coast Main Line Stations and a copy of the particular procedure in use at Durham station which seems to operate generally as a law/policy unto itself?

Can I please have a copy of your Complaints Procedure/Customer Escalation Policy/Procedure?'

6. East Coast acknowledged the complaint in an email dated 25 January 2013 indicating that it was its aim to respond within 10 working days.
7. As the complainant had not heard from East Coast by 2 March 2013, she sent a further email enquiring about the status of her complaint.
8. As the complainant still had not received a response by 11 March 2013 she sent another email to East Coast and this time addressed it to its Chief Executive Officer requesting a reply within 7 days.
9. East Coast responded to the complainant on 15 March 2013 (35 working days after the initial request). In its response it apologised for the delay.
10. In relation to its operating procedures for ticket barriers, it stated it was only prepared to supply some extracts as it felt it was unnecessary to provide the full information and furthermore it said that some of the information was sensitive as it related to station security. It did not refer to any exemptions under the FOIA in respect of the information it withheld.
11. In relation to its Complaint's Procedure it attached a copy.
12. The Commissioner notes that East Coast did not advise the complainant of her right to request an internal review or make a complaint to the Information Commissioner's Office if she was dissatisfied with its response.
13. The complainant contacted East Coast again on 15 March 2013 saying that she was not reassured by its response in relation to her complaint in respect of the incident on 30 December 2013 and wanted matters reviewed and addressed in full. At the same time she submitted a subject access request under the Data Protection Act 1998 (the DPA).
14. Following correspondence in relation to this specific incident, the complainant contacted East Coast again on 13 July 2013 to formally

request an 'internal review' in relation to its response dated 15 March as she did not believe it was in line with the FOIA. In particular, she said it did not explain why it was unnecessary to provide her with the complete copy of its procedures on ticket barriers.

15. East Coast responded to the complainant on 12 September 2013 (which was 124 working days after her initial expression of dissatisfaction on 15 March and 43 working days after her subsequent one dated 13 July in which she specifically requested an 'internal review').
16. East Coast apologised for the manner in which the complainant's information request was handled and the time taken to process the internal review response.
17. In relation to the complainant's request for its operating procedures for ticket barriers, it stated that while it did hold procedure guides for each station where it operated an automatic barrier, it did not hold a separate or overarching guide or procedure document.
18. East Coast disclosed copies of its standard operating procedures for ticket barriers operated at its managed stations with the personal data of certain individuals redacted under section 40(2) and other information concerning 'user names' and 'passwords' redacted under sections 31 and 38 of the FOIA.
19. Finally, East Coast stated that it was reviewing and where necessary improving the processes followed by its Customer Relations team in respect of identifying and processing requests made under both the FOIA and DPA. It also stated that its processes needed to be made more robust to ensure all future requests were handled in line with established policy and procedure consistently.

Scope of the case

20. The complainant contacted the Commissioner by email on 18 September 2013 to complain about the way her request for information had been handled.
21. She indicated that her two main outstanding issues were;
 - The apparent lack of transparency and information (for example, contact names, email and postal addresses and phone numbers) regarding who and how to contact East Coast to make a request under the FOIA and

- The absence of an explanation as to the *reasons* for the various delays in responding to her information and internal review requests in view of the statutory and good practice time scales.
22. The complainant has indicated that she does not wish to take issue with the information disclosed on 12 September 2013 and the redactions made to it.

Chronology

23. On 9 December 2013 the Commissioner wrote to East Coast and requested its comments in relation to the complainant's two outstanding issues regarding the apparent lack of transparency and delays.
24. East Coast responded on 12 December 2013.
25. In relation to the apparent lack of transparency, East Coast stated that in addition to the information in its publication scheme and internal review process documents, it had added a section to the 'contact us' section on its website to include the process for submitting a request under the FOIA or the Environmental Information Regulations 2004 (EIR).
26. In relation to the delays, East Coast explained the reasons for these in detail and outlined the steps that had been taken to avoid similar delays occurring in the future.
27. East Coast concluded by stating that it accepted that it had not handled the complainant's request correctly within the terms of the FOIA but had taken the matter seriously and introduced a number of steps to avoid such failings being repeated in the future.
28. On 12 December 2013 the Commissioner replied to East Coast and asked for its consent to disclose a copy of its detailed response to the complainant.
29. East Coast agreed by return and on the same day a copy of its response was shared with the complainant.

Reasons for decision

Section 10(1) – time for responding

30. Section 10 of the FOIA provides that a public authority must provide all relevant information within 20 working days of receipt of the request.
31. In this case the Commissioner finds that East Coast did not provide all relevant information to the complainant within the appropriate timescale and has therefore recorded a breach of section 10(1) of the FOIA.

Section 17– Refusal of request

32. Section 17(1) of the FOIA requires that a public authority wishing to rely on an exemption must issue a refusal notice within the time for compliance provided by section 10(1) and specify the exemption in question.
33. Section 17(7) of the FOIA requires a public authority issuing a refusal notice under section 17(1) to include within it particulars of any procedure it has for dealing with complaints about information requests or state that it does not have any such procedure.
34. In this case the Commissioner has identified that East Coast issued a refusal notice outside 20 working days without specifying the exemptions it was relying on and therefore breached the requirement of section 17(1).
35. Furthermore, by not advising the complainant in its initial response of its published procedure for dealing with complaints, East Coast also breached section 17(7) of the FOIA.

Other matters

36. The Commissioner has seen a copy of East Coast's 'Complaints and Appeals Policy for requests for information under Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations 2004 (EIR)' and notes that it should treat any complaint or negative response to, or request for reconsideration or appeal of, an initial response to an information request under FOIA and/or EIR by the relevant requester of information as a complaint triggering a review under this policy.
37. The Commissioner also notes that this policy states that internal reviews should be completed, as soon as reasonably practicable and in

line with the timescale notified to complainants in its publication scheme being 20 Working Days from the date of receipt of the complaint.

38. The Commissioner has also seen a copy of East Coast's 'Publication Scheme-Freedom of Information Act (2000)' and notes the statement contained within in that internal review requests 'will be dealt within 20 working days of receipt'.
39. The Commissioner notes that it took East Coast 124 working days to reply to the complainant's initial expression of dissatisfaction on 15 March following the response to her FOIA request and 43 working days from her subsequent one dated 13 July in which she specifically requested an 'internal review'.
40. The Commissioner would like remind East Coast of its own procedures and draw its attention to his guide to the Freedom of Information Act¹ which states that public authorities should ensure that internal reviews takes no longer than 20 working days in most cases, or 40 in exceptional circumstances.
41. The Commissioner notes the statement in East Coast's letter dated 12 December 2013 that it has taken steps to ensure that information requests in the future will be dealt with in accordance with the terms of the FOIA.

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http://www.ico.org.uk/for_organisations/freedom_of_information/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/guide_to_freedom_of_information.pdf

Right of appeal

42. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

43. 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.
44. 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

Rachael Cragg
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