

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 March 2014

Public Authority: Transport for London
Address: 8th Floor, Windsor House,
42-50 Victoria Street,
London,
SW1H 0TL

Decision (including any steps ordered)

1. The complainant requested information about Penalty Charge Notices (PCNs) to Transport for London (TfL). TfL initially stated that it did not hold the information as requested but at internal review it also stated that to try and comply with the request would exceed the appropriate limit in costs set by section 12(1) of the Freedom of Information Act 2000 ("the FOIA"). The Commissioner's decision is that TfL correctly applied section 12(1) and found that there is no breach of section 16(1).

Request and response

2. On 15 June 2013 the complainant made a request for information under the FOIA about PCNs. There were 8 questions concerning, in brief, the numbers of PCNs issued in loading bays and contested by owners of private and commercial vehicles. Question 2 stated:

'How many Parking Charge Notices (PCNs) were issued to owners of private vehicles seen loading or unloading by remote CCTV on these sites, during the last 24 months? Were any PCNs issued for commercial vehicles using these sites for longer than the 20 minutes permitted, or at all?'
3. On 8 August 2013 TfL responded and provided answers to the 8 questions. Their response to question 2 was:

'when issuing a PCN we do not record whether the vehicle is used for private or commercial purposes, nor do we record the length of our observation because the CCTV camera operator, who observes a vehicle, makes a digital recording of the contravention. During the period 1 April 2011 to 31 March 2013, we issued 32,088 PCNs to vehicles observed contravening the red route restrictions in the 1818 loading bays described above.'

4. The complainant requested an internal review and made a further request:

'You take photographs of the vehicle which you allege committed the offence, therefore you know – if you care to look at the file – whether it's commercial or private. I want that information on the 32,088 PCNs issued.'

5. On 10 September 2013 TfL provided an internal review and explained that the photographs will not form *'a reliable or complete record of the status of vehicles to which PCNs have been issued.'*
6. TfL further explained that to attempt to provide the details that are held by checking the photographs as suggested by the complainant would exceed the cost threshold of £450 and therefore refused to provide the requested information citing Section 12 of FOIA.

Scope of the case

7. On 3 December 2013 a complaint was made to the Information Commissioner about this outstanding issue of collating the information from the photographs to establish whether the vehicles were used for private or commercial purposes.
8. The complainant asked the Commissioner to consider whether TfL had correctly relied on section 12 of the FOIA.
9. The Commissioner notes that TfL's initial position was that it did not consider that it held the requested information. However section 12 was added at internal review as its secondary consideration.
10. It is the Commissioner's view for the reasons explained below that it is incorrect for TfL to say that the information is not held as some information may be held upon examination of the photographs it refers to, albeit this may provide incomplete or unreliable information. TfL has stated that the cost of determining what information may be held prevents it from providing any information under section 12 of FOIA.

Therefore the Commissioner has focussed his analysis on whether or not TfL has correctly applied section 12.

11. The Commissioner also considered whether TfL provided appropriate advice and assistance under section 16 of the FOIA.

Reasons for decision

Section 12 – The cost of compliance

12. Section 12(1) of the FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

13. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations") sets the appropriate limit at £450 for the public authority in question. Under the Regulations, a public authority may charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 24 hours work in accordance with the appropriate limit set out above.
14. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:
 - determining whether it holds the information;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.

Would the cost of compliance exceed the appropriate limit?

15. As is the practice in a case such as this, the Commissioner asked TfL to confirm if the information is held, and if so, to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
16. In his assessment of whether TfL has correctly relied upon section 12 of the FOIA, the Commissioner has considered the submission provided by TfL to him on 17 February 2014, as well as the refusal notice and subsequent internal review provided by TfL to the complainant.

17. TfL has explained to the Commissioner that when issuing a PCN, TfL does not record whether the vehicle is used for private or commercial purposes. Therefore the requested information about numbers of PCNs issued to private or commercial vehicles is not held by TfL.
18. When asked by the complainant to consider looking at the photographs of the vehicle taken at the time of issuing a PCN, TfL explained that the photographs may contain some limited relevant information but TfL maintained that it did not hold information that would answer the request.
19. TfL went on to explain that any type of vehicle (car, van or lorry) may be a commercial vehicle and may or may not display a commercial livery. In addition, if a commercial livery is visible in the photograph, it would not be possible to tell if the owner of the vehicle was using it at the time of the PCN for a personal or commercial reason.
20. TfL explained that their internal review response could have *'confirmed more explicitly that TfL's position was that we consider we do not hold the requested information, in accordance with section 1, but we consider that this was apparent in both the original response and the internal review response.'*
21. TfL's position at the internal review was that it did not hold the requested information but stated that

'The photographs taken for the purpose of the PCN will not form a reliable or complete record of the status of vehicles to which PCNs have been issued. A photograph will only show whether a vehicle is displaying a commercial livery, if it is apparent, and this will not be a reliable indicator. Some commercial vehicles will not display livery and some liveried vehicles may be being used for private purposes. Therefore, TfL does not hold accurate or detailed information on this point.

In any case, even if TfL were to attempt to provide the details that are held by checking the photographs as you suggest, this would exceed the cost limit for replying to an FOI request.'
22. In response to the Commissioner's questions, the Congestion Charging and Traffic Enforcement (CCTE) team estimated that to check each of the 32,088 PCN files would take about one minute. This would involve locating the file by entering the PCN numbers for the time covered by the request into the database, opening the file, locate the photograph, open it, identifying the offending vehicle, checking for visible signs of a commercial livery and then recording whether the vehicle appears to be commercial or not. In total this equates to 534 hours and further time

would be needed to collate the proportion of apparently commercial versus private vehicles.

23. Given TfL's explanation in the difficulty of identifying accurate and reliable information and the above estimated times that would be involved in responding to the complainant's request, the Commissioner is satisfied that although some information may be held the cost of establishing this and therefore the cost of compliance with the request would far exceed the appropriate limit. TfL was therefore correct to apply section 12 of the FOIA to the complainant's request.

Section 16(1) – The duty to provide advice and assistance

24. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice (the "code")¹ in providing advice and assistance, it will have complied with section 16(1).
25. In this instance, TfL's internal review confirmed that the information was not held and explained the difficulties to the complainant about providing accurate and reliable information within the scope of the request. As their primary response to the complainant was that TfL did not hold the information, TfL did not provide the complainant with advice and assistance on reducing the scope of the request.
26. Although the Commissioner considers that TfL was incorrect to state that the information requested was not held and should have initially relied on section 12 of FOIA the Commissioner is satisfied that TfL provided such advice and assistance as was reasonable in the circumstances, and therefore complied with section 16(1).

Section 1

27. On 21 February 2014, the complainant telephoned the Commissioner and queried whether Question 8 from the original request had been answered by TfL:

'8. Similarly what legal basis is there to state private car-owners are not permitted to pick up purchases made at the time from nearby shops?'

¹ <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-ofpractice.pdf>

28. The Commissioner raised this with TfL who stated that the question had been answered in their response of 8 August 2013 but would waive the internal review on this point and provide further arguments so that both issues could be dealt with together.

29. TfL provided the complainant with the following answer to the question on 8 August 2013:

"we do not state that private car-owners are not permitted to use loading bays on the TLRN. Loading bays are there for all road users but the loading restrictions must be adhered to. Further information is available on our website at:

<http://www.tfl.gov.uk/roadusers/redroutes/949.aspx>."

30. TfL stated to the Commissioner that they recognised that *'the response could have been more explicit that we consider that the information was not held, but the response was intended to address what we considered to be a loaded question, based upon a faulty premise.'*

31. The Commissioner understands from the further explanations provided by TfL that the complainant has been made aware of the conditions under which loading/unloading should take place, both in their correspondence to him and during the refusal of his appeal to the issuing of a Penalty Charge Notice:

'loading bays are installed on the red route network to load or unload heavy and bulky items. Although you had the intention of loading I must advise you that you are not permitted to purchase the goods prior to loading as this is deemed to be shopping and is therefore regarded as a misuse of the bay. Drivers are advised to ensure that goods are purchased and prepared for loading prior to entering the loading bay.'

32. TfL further explained that

'The use of a loading bay on the red route is not restricted to commercial vehicles. Any motorist may stop in a loading bay for a maximum of 20 minutes to load or unload goods; however for non-commercial drivers, the goods must be of a sufficient size or weight that the use of a vehicle is necessary rather than convenient.

Any motorist who believes they should not have been issued a PCN has the legal right to challenge the PCN; however they will be asked to provide evidence that they were using the bay correctly. This approach has been tested and upheld by independent Adjudicators at PATAS.'

33. The Commissioner is therefore satisfied that the information, as requested in question 8, is not held.

Right of appeal

34. If 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

35. 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.
36. 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
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