

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 June 2015

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

Decision (including any steps ordered)

1. The complainant has made a multipart request for information about any positive action taken by Transport for London (TfL) to encourage people from ethnic minorities to become taxi drivers. TfL interpreted the request as being for information about an initiative which the London Development Agency had run and explained that, as it had not been responsible for that scheme, it did not hold the requested information. During the Information Commissioner's investigation TfL argued that it had not carried out any form of positive action itself and therefore it did not hold the requested information in any event.
2. The Information Commissioner's decision is that ultimately TfL met its obligations under section 1 of FOIA to inform the complainant whether or not it held the requested information except in respect of one element. TfL breached section 1 by failing to provide information on where the complainant could submit a compensation claim to.
3. However as the complainant has now acquired the necessary contact details for making a legal claim against the authority the Information Commissioner does not require TfL to take any further action in this matter.

Request and response

4. On 28 July 2014 , the complainant wrote to TfL and requested information in the following terms:

"I would be grateful if you could provide full details of the 'positive action' work that was carried out by TfL in respect of London Taxi Drivers.

Please include start and end dates where appropriate. And details of the relevant legal advices obtained on the limitations of 'positive action' in this field.

I would also be grateful if you could provide information on where compensation claims should be sent for persons who have suffered losses because of illegal activity on the part of TfL.

In respect of 'positive action', The Race Relations Act 1976 c. 74 makes a very clear and direct link between 'the area of work' and the 'area of under-representation'. They have to match, (just as any reasonable person would assume to be the case.) Each licensing area of London is (rightly) a separate entity in the eyes of the law. Each has a separate impact because of constraints on drivers to these individual areas.

I would therefore ask,

if TfL can show that 'all work areas' (licensing areas) affected by 'positive action' had significant under-representations of 'BAMES' or ethnic minorities;

if TfL was correctly determining those under-representations on the basis of thresholds either specific to those individual local 'areas of work' (licensing areas), or to Great Britain as a whole, as required (but not to London as a whole - that is not allowed in respect of Suburban licensing areas);

if TfL was monitoring all affected 'areas of work' throughout its campaign of 'positive action' to ensure that each had a significant under-representation of 'BAMES' during the previous 12 months, as required;

if TfL took any measures to ensure that their 'positive action' was proportionate, particularly in the longer term;

if TfL believes that creating massive over representations of BAMES' and massive oversupply in some 'areas of work' (licensing

areas), is consistent with the Local Authority's over-arching statutory duty to ensure that its policies 'promote good relations between persons of different racial groups'; finally

if TfL has any plans to come clean about its mistakes, and the illegality of its 'positive action' campaign, and offer proper redress or appropriate financial compensation to Suburban taxi drivers, many of whom face certain bankruptcy?

The information is required for various purposes related to the pursuance of justice for Suburban taxi drivers whose lives have been destroyed by the oversupply caused by TfL's illegal 'positive action'."

5. TfL responded on 18 August 2014. It informed the complainant that it did not hold any information other than that which it had already provided in response to an earlier request (TfL's reference 0169-1415). In response to that earlier request TfL had provided a breakdown of the ethnicity of new taxi licence holders for the last two years. In addition it had acknowledged the existence of a campaign, launched by the Mayor in 2005, to ensure the taxi industry was more representative of London's diverse communities. It went on to refer to a particular programme to support women and members of ethnic minorities while they learnt the 'knowledge'. TfL informed the complainant that that programme had been carried out by the London Development Agency, not TfL.
6. Following an internal review TfL wrote to the complainant on 30 October 2014. TfL set out its interpretation of the request. It identified eight individual questions which sought actual information. These are set out below:
 - a) Full details of the "positive action" work carried out by TfL in respect of London Taxi Drivers.
 - b) Start and end dates of this work.
 - c) Details of legal advice obtained.
 - d) The address to send compensation claims.
 - e) Whether TfL can show all work areas had significant under-representation of drivers from ethnic minorities.
 - f) How such under-representation was calculated.
 - g) What monitoring was in place.

- h) Whether measures were in place to ensure such action was proportionate.”
7. In respect of question a) TfL again referred the complainant to its response to his previous request. It reiterated that the programme to support females and ethnic minorities while they learnt the 'knowledge' was run by the London Development Agency
 8. In respect of question b) TfL explained that as it was not responsible for the positive action programme to support individuals from underrepresented groups while they learnt the knowledge it did not hold the start and end dates of that initiative.
 9. In respect of question c) TfL refused to confirm or deny whether it held any legal advice.
 10. In respect of question d) TfL explained that who he should send compensation claims to would depend on who he believed he had a claim against.
 11. In response to questions e) to h) TfL explained that as it was not responsible for delivering the positive action in question, it did not hold the requested information.
 12. Following the internal review the complainant wrote again to TfL and provided a link to a press statement released by TfL in July 2008 which was headed "Diversity boost for licensed taxi drivers". The article explained that almost a third of applications to learn the 'Knowledge' were now from those with a black, Asian or other ethnic minority background and put this down to a campaign launched by TfL in 2005 to encourage more applications from those groups. The press release specifically refers to the campaign starting with an initiative called 'Put Yourself in the Driving Seat'.

Scope of the case

13. The complainant contacted the Commissioner on 1 January 2015 to complain about the way his request for information had been handled. His main concern was that in responding to his request TfL had focussed on a particular programme which had been run by the London Development Agency and had ignored any programmes which, in light of the 2008 press release, he believed TfL had been responsible for.
14. During the Information Commissioner's investigation the complainant made it clear that he was not interested in the programme run by the London Development Agency.

15. The Information Commissioner considers that the matter to be determined is whether TfL holds any information about positive action programmes that TfL itself had carried out.
16. The complainant was also concerned with the amount of time TfL had taken to deal with his request. Following discussions between the Information Commissioner and the complainant he clarified that he wished the Information Commissioner to consider the length of time TfL took to conduct the internal review. There is no statutory time limit on internal reviews and therefore this issue will be addressed at the end of the formal decision under 'Other matters'.

Reasons for decision

Section 1 - information held

17. In so far as is relevant section, under section 1(1)(a) a person making a request to a public authority is entitled to be told whether the requested information is held. If it is held, under section 1(1)(b) the public authority is required to communicate that information to the applicant, subject, of course, to a number of exemptions.
18. The Information Commissioner has first looked at whether TfL identified all the different elements of the request correctly. He accepts that TfL correctly identified elements a) to h) as set out in paragraph 6 above however he notes that in addition to these elements there are two further questions posed by the complainant. The Information Commissioner has paraphrased these questions as follows:
 - i) Any information on whether, what the complainant perceives to be, the consequences of any positive action undertaken by TfL is consistent with its broader policies regarding the promotion of good race relations.
 - j) Clarification of whether TfL "plans to come clean about its mistakes".
19. TfL did not provide responses to these last two points on the basis that they are not valid requests. In respect of i) TfL argues that rather than seeking information the question, as originally phrased by the complainant, is seeking an opinion/confirmation whether TfL believes something. The information Commissioner does not accept this. Putting aside the rather subjective language used, he considers this is a valid request. If TfL had undertaken positive action, it is reasonable to assume that it would also have monitored the outcome of that action and considered any consequences.

20. The Information Commissioner does however accept that the character of question j) is different. This question is a direct attempt to solicit an acknowledgement of fault on the part of the TfL, rather than being a genuine attempt to seek information. During the course of the Information Commissioner's investigation the complainant accepted this point and therefore the Information Commissioner will not consider this part of the request any further.
21. Having looked at the different elements of the request it is important to note that they are based on the premise that TfL has in fact carried out positive action as part of a campaign to increase diversity within the taxi industry. It follows that if TfL has not carried out any programmes of positive action, it will not hold any information relevant to the request. There is one exception to this, that being d) the address to which compensations claims should be sent, which will be dealt with later.
22. First though the Information Commissioner will consider what constitutes 'positive action'. A layman may well interpret the term to include any steps taken with the aim of increasing or promoting participation of individuals from an underrepresented group in a particular activity or occupation. However the request refers the Race Relations Act 1976 suggesting the complainant's intention is for the term to be given the same meaning as used in that Act. In broad terms, the Race Relations Act makes it illegal to discriminate against an individual on grounds of race. There are exceptions and, although it does not use the term 'positive action', the Race Relations Act does set out, in sections 35 and 37, the conditions necessary for discrimination in the field of employment to be legal. These sections allow discrimination in favour of someone from a particular racial group when providing training for work, so long as individuals from that group are underrepresented in that occupation, or are underrepresented in that occupation within a particular geographical area. It is this form of preferential treatment, where individuals from one particular group are provided with opportunities not available to those from another group, which TfL argues is the defining characteristic of positive action.
23. The Equalities Act 2010 does use the term 'positive action' but does not define it. However it is clear from the context in which it is used in that legislation that positive action again concerns the preferential of one particular racial group over another because of the former group's underrepresentation in an occupation or activity.
24. TfL maintains that in order for any initiative it took to constitute positive action that initiative would have to include steps to actively support those from ethnic minorities which were not available to others.

25. The Commissioner accepts TfL's understanding of the term positive action.
26. TfL has informed the Information Commissioner that it is only aware of two initiatives that related to the issue of ethnic minority representation within the taxi industry. The first being the programme run by the London Development Agency in which both women and members of ethnic minorities were provided with practical support while they studied the 'knowledge', a prerequisite for obtaining a license as a London taxi driver. The support offered to individuals from these groups was not available to other people and therefore TfL considers that programme to be an example of positive action.
27. The other initiative, and the only one TfL ran itself, was called 'Put Yourself in the Driving Seat'. That initiative ran from 2005 and was discontinued in 2011. TfL readily accept that the aim of that scheme was to promote taxi driving as an occupation amongst women and ethnic minorities. The initiative involved a road show visiting various venues which attracted members of those underrepresented groups, supported by posters and leaflets which explained how to become a taxi driver. Importantly however the literature and information provided at those road shows would have been equally relevant to all members of the community. Therefore although the initiative targeted ethnic minorities and women, it was not accompanied by any measures to confer any kind of support or advantage to those groups. TfL argue that as there was no preferential treatment of those groups this initiative would not constitute a programme of positive action. Having studied the literature distributed by TfL as part of the 'Put Yourself in the Driving Seat' initiative the Information Commissioner is satisfied with TfL's description of the initiative and he accepts it was simply an awareness raising campaign which fell short of being positive action.
28. TfL has confirmed that the 'Put Yourself in the Driving Seat' is the only initiative relating to the ethnic representation in the taxi industry that it has been responsible for. The Information Commissioner considers it is conceivable that, historically, TfL may have been involved in other initiatives. However it is clear from the complainant's references to press releases relating to a campaign launched in 2005 that his request concerns these more recent initiatives, rather than any similar work which was undertaken in the more distant past.
29. The Information Commissioner recognises that the TfL's own press release, 'Diversity boost for licensed taxi drivers', which reports on the success of a campaign to promote diversity, gives the impression that the 'Put Yourself in the Driving Seat' initiative, was merely one strand of a wider programme of activities to increase diversity. This is clearly the complainant's belief. TfL has not explained in any detail the apparent

contradiction between that impression and its current position that the 'Put Yourself in the Driving Seat' was the one and only initiative TfL itself undertook. However TfL does not consider a simple press release can be taken of conclusive evidence that there were other programmes.

30. The Information Commissioner has considered this point. Press releases are often simply a means of conveying a newsworthy event to the media in an easily digestible manner. The focus of the press release was on the results of the campaign rather than the means by which those results were achieved and the accuracy of the press release may reflect that. Furthermore TfL were aware of the programme run by the London Development Agency which complimented its own work.
31. Therefore in light of the above and the assertions by TfL as to the extent of its own campaign, the Information Commissioner is satisfied that the 'Put Yourself in the Driving Seat' initiative was the only scheme TfL was responsible for. As this programme did not involve the preferential treatment of one racial group over another it does not constitute positive action. Therefore the Information Commissioner is satisfied that TfL does not hold any information relevant to the request. The exception to this is d), the address to which compensation claims should be sent. This will be dealt with shortly.
32. First however it is necessary to look at the responses TfL provided at the internal review stage and to consider how these relate to the Information Commissioner's finding that TfL does not hold the vast majority of the requested information.
33. TfL's response was based on an assumption that the complainant was seeking information about the programme run by the London Development Agency as this was the only programme it was aware of that could be considered to be a form of positive action. TfL therefore advised the complainant that it was not responsible for that programme and so did not hold any information relating to it. Technically it could be argued that this falls short of the obligations imposed by section 1(1)(a) which require a public authority to confirm or deny whether it holds the requested information since if it had misidentified the information TfL's response under 1(1)(a) would inevitably be flawed. It would have been far clearer if TfL had simply said that as it had not carried any form of positive action itself it did not hold any information relevant to the request. TfL could still have gone onto explain that it believed the complainant may have been referring a programme run by the London Development Agency if it had chosen to.
34. Nevertheless, one could understand from its response that TfL was effectively denying it held information on programmes of positive action. It is clear that the complainant understood this to be TfL's position.

Therefore although TfL's response was not technically perfect, it effectively complied with TfL's obligations under section 1(1)(a). Furthermore, the Information Commissioner appreciates that in responding the way it did TfL was wishing to be helpful and clear up a misunderstanding which it believed the complainant was under regarding who had been responsible for the programme to support members of ethnic minorities while studying the 'knowledge'.

35. In respect of element c) of the request TfL refused to confirm or deny whether it held any legal advice on the limitations of positive action. TfL has explained to the Information Commissioner that although a public authority in its own right, it is also part of the wider family of public authorities that, collectively, is sometimes referred to as the Greater London Authority. Having a large legal department TfL provided legal advice on behalf of smaller members of that family. It is therefore conceivable that it could have provided legal advice to the London Development Agency on its positive action programme. Since it had interpreted the request as seeking information on the London Development Agency's programme TfL considered it prudent to refuse to confirm or deny whether it held any such legal advice.
36. The Information Commissioner considers it likely that even if it had provided advice to the London Development Agency that advice would be held on behalf of the London Development Agency rather than being held by TfL for the purposes of FOIA. In any event based on a correct interpretation of the request ie for information about positive action carried by TfL, any advice provided to the London Development Agency would not be relevant.
37. The Information Commissioner does not accept that based on the correct and intended interpretation of the request, a neither confirm nor deny response was appropriate to the request for legal advice. During the Information Commissioner's investigation TfL did change its position and accepted that the correct response would be to say that no legal advice was held in respect of any positive action TfL itself was responsible for. Normally a public authority would be expected to inform the complainant of this change of position directly, however as this has been achieved through this notice the Information Commissioner does not require TfL to take any additional steps in respect of the request for legal advice.
38. The final issue that needs to be considered is TfL's response to the complainant's request for the address to which compensation claims should be submitted. At the internal review stage TfL informed the complainant that who to send claims to would depend on who the complainant believed he has a claim against. The full request is set out below:

"I would be grateful if you could provide information on where compensation claims should be sent for persons who suffered losses because of illegal activity on the part of TfL."

39. It is clear from the request that the complainant envisages making a claim against the TfL and therefore the Information Commissioner considers that TfL would hold the relevant contact details.
40. It is understandable that TfL would be reluctant to respond in a way that the complainant might interpret as an acceptance of liability. It could even be argued that rather than seeking actual information this was another attempt to solicit an admission of liability from TfL. However the Information Commissioner considers that the correct approach would be to ignore the tone of the request and simply to have provided details of where legal claims against TfL could be submitted.
41. TfL has explained that any claim could be submitted to addresses already available to the complainant via its website. Such claims can be made to customer services, or to TfL's Head Office buildings. Any legal claim submitted through these routes would be directed to TfL's legal department. Furthermore TfL has advised the Information Commissioner that the complainant has indeed sought to initiate legal proceedings against TfL (TfL considers there is no validity in that claim.). Therefore although TfL failed to provide this information, it is apparent that the complainant has accessed the information he needs. Therefore although the Information Commissioner finds that TfL breached section 1 by failing to provide the information sought in this element of the request he does not require TfL to take any further action.
42. In summary the Information Commissioner finds that in respect to elements a), b), e) to i) TfL does not hold information relevant to the request. Although its response to these elements was not perfect it did manage to convey this to the complainant. The Information Commissioner does not require the public authority to take any further action in respect of these elements.
43. In respect of element c), the request for legal advice, TfL ultimately accepted that its neither confirm nor deny response issued at the internal review stage was incorrect. As this notice serves the purpose of informing the complainant of this change in position the Information Commissioner does not require TfL to take any further action.
44. Finally TfL breached section 1(b) by failing to provide the complainant with the details of where to submit legal claims to. However as it is apparent the complainant has already successfully contacted TfL's legal department over his concerns the Information Commissioner does not

require the TfL to take any further action in respect of this element of the request either.

Other matters

45. Although not forming part of the formal decision notice the Information Commissioner wishes to raise his concerns over the length of time taken by TfL to conduct its internal review. The complainant received an initial response on 18 August 2014 and requested a review the same day. TfL informed the complainant of the outcome of the internal review on 30 October 2014. Allowing for the August bank holiday, the time taken to complete the review was 52 working days.
46. Although FOIA does not specify a time limit for conducting internal reviews, the Information Commissioner has published guidance to the effect that a public authority should generally take no longer than 20 working days to complete a review and even in the exceptional circumstances it should take no longer than 40 working days.

Right of appeal

47. 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

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

48. 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.
49. 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
Wilmslow
Cheshire
SK9 5AF