

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 March 2017

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

Decision (including any steps ordered)

1. The complainant has requested information held by Transport for London (TfL) on the decision to rename Crossrail. TfL identified information within the scope of the request and provided some of this to the complainant but withheld some information on the basis of section 37(1)(a). The Commissioner sought to establish if the exemption had been applied correctly and whether TfL had identified all relevant information it held.
2. The Commissioner's decision is that TfL failed to initially identify all information within the scope of the request but she is satisfied it has now done so. For the information withheld by TfL she considers the section 37(1)(a) exemption is engaged and she therefore requires no steps to be taken.

Request and response

3. On 23 February 2016, the complainant wrote to Transport for London (TfL) and requested information in the following terms:

"The context of the request is the announcement today that crossrail is to be renamed the 'Elizabeth line'

I would like to request the following information:

- *The full cost estimate of the rebrand, including physical signage changes etc, and any document/outline prepared on this matter.*
- *The date this was first proposed and the date it was decided*

- *Any alternative names considered (if not held in below information requests)*
- *Any internal report/formal proposal/business case or similar document prepared, please forgive the lack of clarity on how it would be named.*
- *Any feasibility study, impact assessment and/or public perception studies held*
- *Minutes of any meetings held re this, most specifically if needing to be narrowed the meeting where the decision was made (if held)*
- *All correspondence relating to the decision (dated where possible)*

If 'all correspondence' is too broad then please consider the following specifics:

- *Between TfL and Crossrail LTD (if this would be separate in the structure of yourselves) and internally within your organisation/s re the decision*
 - *Between the Mayor of London's office/ Boris Johnson and yourselves re the decision*
 - *Between the GLA generally and yourselves re the decision*
 - *Between relevant Crossrail private contractors and yourselves re the decision*
 - *Between the Department for Transport, Downing Street and/or Cabinet Office and yourselves re the decision*
 - *Between Buckingham Palace (including the queen directly if held) and yourselves re the decision"*
4. TfL responded on 19 May 2016 and provided an approximate cost for the change, the date of the proposal and confirmed no alternative names were considered. TfL stated no feasibility study was carried out and information was therefore not held and similarly no minutes of meetings were held. TfL also stated it did not hold correspondence between itself and the DfT, Downing Street or the Cabinet Office. For any information held between TfL and Crossrail, the Mayor of London's Office, Crossrail contractors and Buckingham Palace, TfL considered the information to be exempt from disclosure on the basis of section 37(1)(a)(d) of the FOIA.
 5. Following an internal review TfL wrote to the complainant on 26 July 2016. It stated that it accepted the refusal notice did not specifically state whether information was held for each of the bullet points relating to correspondence between TfL and Crossrail, the Mayor of London's office, the GLA, private contractors and Buckingham Palace.
 6. The internal review clarified that the exemption was being applied to internal correspondence, correspondence with the Palace and correspondence between TfL and the Mayor's Office. No other

information on the decision to rename Crossrail was held in correspondence between TfL and any of the other bodies listed. In addition to this, TfL also clarified it had misquoted the subsection of section 37 it was relying on to withhold information and stated it considered section 37(1)(a) to be the applicable exemption.

Scope of the case

7. The complainant contacted the Commissioner on 20 May 2016 to complain about the way his request for information had been handled. He raised concerns about the use of an absolute exemption to withhold information. During the course of the Commissioner's investigation further issues came to light relating to the amount of information identified by TfL due to a later request made by the complainant to the TfL which resulted in the disclosure of documents which made reference to emails and letters not identified by TfL in response to this request.
8. The Commissioner considers the scope of her investigation to be to determine whether TfL holds any additional information within the scope of the request and whether the information that has been withheld correctly engages the absolute exemption at section 37(1)(a) of the FOIA.

Reasons for decision

Section 1 – information held

9. Section 1(1) of the FOIA says that anyone making a request for information to a public authority is entitled to be informed by the authority whether it holds the requested information and, if it does, to have that information communicated to him or her.
10. TfL identified a number of documents containing information that it considered exempt under section 37(1)(a) of the FOIA. This included direct communications from the Palace to TfL and internal TfL emails and emails with the Mayor of London's office in which the communications with the Sovereign are discussed. The analysis of this is included later in this notice.
11. The complainant raised concerns that there may be more information held by TfL that fell within the scope of his request. The complainant had made a meta-request to TfL for information relating to the handling of this request. The resulting information provided to him referred to

discussions and documents which he considered may have been information within the scope of this request.

12. The Commissioner reviewed the responses from TfL and looked again at the wording of this request and as a result asked TfL a number of questions regarding the information it had identified and the searches conducted to establish the information in the scope of the request.
13. The Commissioner's first line of enquiry with TfL was with regard to the fact that the information identified by TfL showed that contact was made with the Palace and then emails were exchanged following the response. There therefore appeared to be a question mark over whether any correspondence or exchanges occurred, either internally or externally, prior to the initial contact with the Palace. The Commissioner asked TfL to provide further clarification on this point and information on the searches it had conducted to establish what information was held.
14. TfL responded and clarified that the idea of the renaming of Crossrail was first proposed by the then Mayor of London, Boris Johnson, in a newspaper column in June 2013¹. It was only after this that letters were exchanged with the Palace to formalise the Mayor's proposals which is why no information was held which pre-dated the initial correspondence with the Palace. TfL further explained that in establishing what information was held it approached a number of members of staff who had been involved in or would have had knowledge of the Crossrail renaming. These individuals were asked to provide all correspondence and supporting information they held in relation to the decision. Once information was provided this was circulated internally to provide a further opportunity to identify any additional information.
15. TfL also explained that the decision to propose renaming Crossrail was a decision made by the Mayor of London and the Mayor's Office approached the Palace directly. The Mayor's Office is part of the Greater London Authority (GLA) which is a separate body from TfL. TfL therefore states that it is not surprising that the information held by TfL may not seem complete as it was not involved in the decision to propose the renaming and any information it holds follows after this.
16. The Commissioner also had some more specific questions following on from her review of the information provided in response to the meta-request. The Commissioner firstly asked TfL to confirm if any

¹ <http://www.telegraph.co.uk/news/politics/10094866/Crossrail-A-project-that-stands-tall-with-Everest-Just-look-under-your-feet.html>

information was held that showed the contact between the Mayor of London's office and TfL to initiate the contact with the Palace. In response, TfL again reiterated that no further communications, either written or verbal, were held by TfL following or preceding the letters to the Palace.

17. The Commissioner also asked for TfL's comments on one of the documents provided in response to the meta-request which contained an email with several redacted sections. One of the points in the email implied a further document was considered at one stage as possibly containing relevant information. TfL confirmed that the document referred to in this point was removed from the chain of emails when the request was first considered but on further review TfL accepted that the information in this document would be within the scope of the request and agreed to disclose this document to the complainant.
18. The Commissioner also identified an email that was disclosed as part of the meta-request which referred to information held on costs incurred in rebranding the line and a Sponsor Change Notice which will list the costs incurred. The Commissioner acknowledged that TfL had provided the complainant with an overall figure for the cost of the rebranding but the request specifically asked for the *"full cost estimate of this rebrand, including physical signage changes etc and any document/outline prepared on this matter"*. She therefore considered that any further detail provided in the Sponsor Change Notice would possibly be within the scope of the request if the information were held at the time of the request (as the email refers to the Notice waiting to be submitted). TfL responded and confirmed the Sponsor Change Notice was not held at the time of the request and that the change appraisal which confirmed the cost impact of the name change was also not received until after the request was received.
19. In light of the above, the Commissioner is satisfied that TfL has now identified all information relevant to the request. The searches conducted by TfL were proportionate and reasonable in the circumstances as it is likely only a small number of individuals would have been involved in or had knowledge of the Crossrail rebranding. In addition the Commissioner accepts the assurances of TfL that the GLA were leading on this and the information held by TfL is therefore more limited than that that may be held by other bodies. Finally, the responses by TfL to the Commissioner's further enquiries demonstrate that full consideration of all of the information held has been made and every effort has been made to seek out any information which may be relevant.

20. Therefore, on the balance of probabilities, the Commissioner is satisfied that TfL has now identified all of the information held and TfL has met its obligations under section 1(1) of the FOIA.

Section 37(1)(a)

21. Section 37(1)(a) states that information is exempt if it relates to communications with the Sovereign. For the purposes of this exemption it is important to note that Communications with the Sovereign are not necessarily made directly by, or to Her Majesty. Communications made or received on the Sovereign's behalf by her officials are included within this exemption, as made clear in section 37(1)(ad).²
22. Section 37(1)(a) is a class based and absolute exemption. This means that if the information in question falls within the class of information described in the exemption in question, it is exempt from disclosure under FOIA. It is not subject to a public interest test.
23. TfL identified information it considered engaged this exemption. Primarily this was the direct communications with the Palace on the issue of the renaming of Crossrail and some of the subsequent internal communications and communications with the Mayor of London's office in which the letters exchanged with the Palace (and the contents of the letters) were discussed.
24. The communications withheld by TfL recorded the views of the Sovereign as obtained by one of her officials and therefore would engage section 37(1)(a).
25. For the internal emails the situation is somewhat different. In line with her approach to the term 'relates to' when it appears in other sections of FOIA (for example section 35), the Commissioner interprets this term broadly and thus the exemption contained at section 37(1)(a) provides an exemption for information which 'relates to' communications with the Sovereign rather than simply to the communications themselves. Therefore, emails which relate to the communications with the Palace can engage the exemption at section 37(1)(a).

² Section 37(1)(ad) provides an exemption for information which relates to communications with the Royal Household (other than communications which fall within any of sections 37(1)(a) to (ac) because they are made or received on behalf of a person falling within any of those paragraphs.) The exemption contained at section 37(1)(ad) is qualified and thus subject to the public interest test.

26. The First Tier Tribunal³ considered section 37(1)(a) and commented on the fact that the exemption can cover communications which reference the “when, where, how, by whom and to whom” of any correspondence with the Sovereign. The Commissioner found that some of the information in the emails did not relate to the communications with the Palace or to the when, where, how or by whom of the correspondence and TfL accepted this position and disclosed this information to the complainant. For the remaining information in emails the Commissioner has determined this information does engage the section 37(1)(a) exemption as it relates to the communications with the Sovereign, either by directly referring to this correspondence or by virtue of it referencing the “when, where, how, by whom and to whom” of the correspondence.
27. Therefore the remaining information falls within the scope of the exemption as it either constitutes a communication with the Sovereign (or an official acting on her behalf) or it relates to such a communication. The Commissioner is satisfied this information therefore can be withheld on the basis of section 37(1)(a).

³ *Cross v Information Commissioner & Cabinet Office* (EA/2014/0320)

Right of appeal

28. 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

29. 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.
30. 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

Jill Hulley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF