

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 October 2022

Public Authority: Department for Transport
Address: Great Minster House
33 Horseferry Road
London
SW1P 4DR

Decision (including any steps ordered)

1. The complainant requested copies of correspondence relating to decisions taken about passenger assistance during Storm Eunice from South East Trains Ltd ("SETL"). South East Trains Ltd. operating as "Southeastern" is owned by the Department of Transport. For the purposes of this decision notice SETL will be referenced throughout.
2. South East Trains Ltd ("SETL") provided copies of email correspondence with names and employment roles redacted citing section 40(2) (personal information) of FOIA.
3. The Commissioner's decision is that SETL is correct to rely upon exemption under section 40(2) of FOIA for the information redacted.
4. The Commissioner requires no steps as a result of this decision notice.

Request and response

5. The complainant made the following request for information under FOIA to SETL on 20 February 2022:

"Please supply the notes and formal decision from any meetings that resulted in the above decision / guidance, copies of emails that mention or discuss plans for booked passenger assistance sent from RDG to the access and inclusion forum & the storm response management plan groups in each train operating company, and emails from the train operating companies to request action/cancellations etc. relating to booked passenger assistance during the storm.

Please also advise what actions and decisions you took regarding booked passenger assistance involving services and stations you manage and provide. Did you continue to provide said assistance? Did you mass cancel and refuse assistance bookings involving your stations and trains, as GTR did? Did you provide alternative transport for disabled people?"

6. SETL clarified the request with the complainant and provided its response on 17 March 2022, providing copies of emails relating to the information requested. SETL redacted names, employment roles and company details of the senders.
7. Following an internal review on 29 March 2022, SETL provided additional information, including telephone numbers and website links to the companies involved. SETL apologised as previously the names of companies had been redacted in error. Names and job roles remained withheld under section 40(2) of FOIA.

Reasons for decision

Section 40 -personal information

8. Section 40(2) provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
9. Section 3(2) of the Data Protection Act 2018 defines personal data as:

"any information relating to an identified or identifiable living individual."

10. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
11. In this case, the complainant has requested correspondence that related to decisions made during Storm Eunice about passenger assistance. SETL have provided most of this information and copies of emails that related to this event. SETL redacted names and job roles as these identified individuals within the emails. They advised the individuals would have no expectation of their details being disclosed under FOIA. SETL have stated that the individuals involved are not sufficiently senior within their organisations to expect their identification to be released under FOIA.
12. The Commissioner has viewed the unredacted information and is satisfied that the withheld information is personal data. The information relates to and identifies individuals who would have no expectation of this information being shared under FOIA. Information would be considered within the definition of 'personal data' in section 3(2) of the DPA.
13. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on principle (a), which states:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
14. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair, and transparent.
15. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.
16. The Commissioner considers that the complainant is pursuing a legitimate interest and that disclosure of the requested information is necessary to meet that legitimate interest. However, the Commissioner also considers that the individuals whose information is recorded have a strong reasonable expectation that their names and job titles which would identify them, would be withheld.

17. The Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individuals concerned, particularly as the individuals concerned are not sufficiently senior within their organisation to expect their details to be released to the world at large. Therefore, he considers that there is no legal basis for SETL to disclose the redacted information and to do so would be in breach of principle (a).
18. The Commissioner's decision is that SETL is entitled to rely on section 40(2) of the FOIA to refuse to provide the redacted information. He requires no further action to be taken by the SETL in relation to this notice.

Right of appeal

19. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

20. 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.
21. 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

Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF