

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 January 2022

Public Authority: Transport for London
Address: 5 Endeavour Square
London
E20 1JN

Decision (including any steps ordered)

1. The complainant made three requests, comprising of 38 separate questions, broadly relating to funding for transport projects. Transport for London ("TfL") relied on section 12 of the FOIA to refuse all three requests as the aggregated cost of responding would have exceeded the appropriate limit.
2. The Commissioner's decision is that TfL was entitled to consider the combined cost of responding to all three requests and that it has reasonably estimated that combined cost as exceeding the appropriate limit. Consequently TfL was entitled to rely on section 12 of the FOIA to refuse all three requests. However, TfL failed to comply with its section 16 duty because it did not provide reasonable advice and assistance to the complainant to help him refine his request so that it fell within the cost limit.
3. The Commissioner requires TfL to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with advice and assistance to help him submit a request falling within the appropriate limit.
4. TfL must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 10 April 2021 the complainant requested information of the following description:

"In 2018 you funded a programme called "Cycling Grants London" which offered grants of up to £10,000 over 3 years to encourage london communities to cycle more.

1. Can you please state the total number of applications made and submitted to TfL seeking the grants?

2. How many of those applications were then awarded?

3. The total (£) value of those awarded grants?

4. Please release a breakdown by borough showing the total number of applications made.

5. Please release a breakdown by borough showing where the grants were awarded by TfL after application stage?

6. What KPIs were used to benchmark the success of any of those grants?

7. What were the terms of those grants?

8. Has TfL at any point in the past 6 years had any schemes that issue grants for any protected groups?

9. If yes, what are those schemes and how much was awarded and to which boroughs?

10. If no schemes for protected groups, why not?"

6. On 28 April 2021 he submitted a further request:

"On November 23rd a letter was issued to Gareth Powell from Rupert Furness at DfT stating the terms of the active travel fund.

"On page two (the relevant paragraph is attached to this email as an image)

"Stats that TfL will be providing the DfT with the output monitoring data for:

A) when schemes are complete (installed)

B) at 6 months after completion

C) at 12 months after completion'

"...Please ensure all evaluation data for A & B above are released for each borough, specifically Enfield"

7. On 4 May 2021, the complainant made a third request:

"1. In the image attached it shows fox lane LTN consultation page which can be found here:

https://letstalk.enfield.gov.uk/foxlaneQN/survey_tools/statutory-consultation1

Within it, it states that "The trial is being funded from the Transport for London Streetspace Programme, an initiative that has been launched in response to the COVID-19 pandemic."

A) Can you therefore please advise what the total allocation for this scheme was?

B) if this was allocated from Tranche 1 or Tranche 2?

C) whether this relates to streetspace guidelines?

D) was the funding issued as active travel funds ATF or emergency active travel funds EATF?

E) who issued the guidance and on what date?

F) what are the terms issued to TfL from DFT in order to receive and allocate the funding?

2. On your website consultation for streetspace consultation (<https://consultations.tfl.gov.uk/general/streetspace-for-london/consultation/subpage.2020-10-19.2329535760/>) it does not list Enfield on there (also as shown in image attached)

A) what assessment was made by TfL to not include Enfield on this consultation?

B) who is responsible for that assessment?

C) what guidelines and information is available to Enfield residents about how to consult with you about streetspace schemes In Enfield?

D) would any such time that has elapsed since that streetspace TFL consultation opened be given back to Enfield residents as a way to remedy their lack of inclusion and involvement?

E) where is the equality impact assessment for this scheme?

F) do you access equality impact assessments for each individual borough prior to issuing funds?

G) do you have any further consultations that are active specifically for protected groups and their carers?

3. In this FOI (<https://tfl.gov.uk/corporate/transparency/freedom-of-information/foi-request-detail?referenceId=FOI-2008-2021>) within the attachment "LSP LTN commitments" it only states Bowes for Enfield at 160k under tranche 2.

A) can you please advise what the 160k for Bowes LTN "under tranche 2" was awarded for?

B) can you clarify when you say "allocated" what exactly does that mean and who is in possession of the funds?

C) where is fox lane on this FOI declaration of funding allocations?

D) where is Connaught gardens on this FOI declaration of funding allocations?

4. On this link you support and advocate "Sustrans" and refer to their interactive map. They state that boundary roads remain open (as a through route) for cars.

A) Have you informed them of this?

B) if so, when?

C) if not, have TFL informed Sustrans that not all boundary roads of LTNs remain open to through traffic?

D) when did TfL advise Sustrans of this correct information?

e) within their interactive map, who supplied the data they included within it? TFL?

5. A) Can TFL confirm based on their data and decisions on funding whether any footways we're made wider in Enfield through any covid-19 related funding?

B) if they do exist please state where those pedestrian (only - not combined with cycling) schemes are and what the award for those were (£)

C) if they do not exist, can you please state who from Enfield Council did not request any funding for widening of footways in their bids nor request any funding for this in any correspondence with you?

8. On 7 May 2021, TfL responded. It relied on section 12 of the FOIA to refuse all three of the requests as it considered that the combined cost of responding would exceed the appropriate limit.
9. The complainant requested an internal review on the same day. TfL sent the outcome of its internal review on 8 June 2021. It upheld its original position.

Scope of the case

10. The complainant first contacted the Commissioner on 8 June 2021 to complain about the way his request for information had been handled. He accused TfL of "trying to conceal information" and asked the Commissioner to consider TfL's

"unacceptable handling and misapplication of the FOIA"

11. The Commissioner considers that the scope of his investigation is to determine whether or not:
 - a) TfL is entitled to aggregate any or all of the three requests and, if so;
 - b) Whether the combined cost of the aggregated requests would exceed the appropriate limit – or, if any of the requests cannot be aggregated, whether those requests would individually exceed the cost limit and;
 - c) Whether TfL provided adequate advice and assistance to help the complainant refine his request within the cost limit.

Reasons for decision

Section 12 – Cost of Compliance Exceeds Appropriate Limit

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

Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.*

13. Section 12 of the FOIA states that:

- (1) 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.*
- (2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.*

14. The "Appropriate Limit" is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations") and is set at £450 for a public authority such as TfL. The Regulations also state that staff time should be notionally charged at a flat rate of £25 per hour, giving an effective time limit of 18 hours.

15. Regulation 5 of the Regulations states that:

(1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority—

- (a) by one person, or*
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,*

the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account

by the authority, under regulation 4, of complying with all of them.

- (2) *This regulation applies in circumstances in which–*
- (a) *the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and*
 - (b) *those requests are received by the public authority within any period of sixty consecutive working days.*

Was TfL entitled to aggregate the requests?

16. Regulation 5 of the Regulations sets out three criteria which must be met in order for several requests to be aggregated. Firstly, the requests must be made by either the same person or a group of people acting together. Secondly, the most recent request must have been submitted within 60 working days of the oldest request. Finally, the requests must all relate to the same or similar information “to any extent”.
17. It is beyond doubt that all three requests were made by the complainant and fewer than 20 working days separates the dates on which the first and the final requests were made.
18. The Commissioner’s guidance interprets the phrase “to any extent” to be a fairly wide test. However, he goes on to note that:

“requests are likely to relate to the same or similar information where, for example, the requestor has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested.”¹
19. The complainant argued that each request should be dealt with individually, but did not appear to argue that the requests were not for similar information.
20. The Commissioner accepts that, between them, the three requests cover a broad range of information. However, he notes that most of the elements of each request seek information about the allocation of grants local transport schemes – particularly those designed to promote

¹ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

walking or cycling or those in the London Borough of Enfield. He therefore accepts that all of the requests relate, to some extent, to similar information and thus TfL was entitled to aggregate the three requests.

Would the aggregated cost of the three requests exceed the appropriate limit?

21. Where requests can be aggregated, the public authority is entitled to consider the total combined cost of complying with all the aggregated requests when deciding whether it can comply with them.
22. Where the aggregated requests contain multiple individual elements (as is the case here), if the cost of complying with a single one of those elements exceeds the appropriate limit, the public authority is entitled to refuse all the aggregated requests.
23. When estimating the cost of complying with a request, a public authority is entitled to take account of time or cost spent in:
 - (a) determining whether it holds the information,
 - (b) locating the information, or a document which may contain the information,
 - (c) retrieving the information, or a document which may contain the information, and
 - (d) extracting the information from a document containing it.
24. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency* EA/2007/0004, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence".² The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the requests.

² <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

TfL's position

25. TfL explained to the Commissioner that because of the breadth of the information that had been requested, it was unable to provide an estimate of the total cost of complying with all three requests. Nevertheless, it remained confident that it could demonstrate that some individual elements of the request would, on their own, exceed the appropriate limit and that this would be sufficient to show that the aggregated cost would also exceed that limit.

26. TfL focused on the complainant's first request which related to a scheme called "Walking and Cycling London." TfL noted that the scheme had been running since 2015 (not 2018 as indicated in the request), but that, even if the request was limited to grants since 2018:

"Since 2018 there have been 135 approved applications which have received grants under this scheme and a further 75 applications which have been unsuccessful.

"To locate, retrieve and collate the information requested against each scheme would require us to manually review the specific elements of each application and extract the specific information being sought. In particular, questions 4&5 ask for a breakdown by which London Borough the applications were made. The nature of the scheme is not intended to be restricted or constrained to specific Boroughs and it is not the case that applications are considered on a Borough by Borough basis. Applications are made by community groups across London who will often be representative of areas spanning multiple Boroughs and so isn't something that is directly reportable because this is not the way in which the scheme operates.

"Further, questions 6&7 ask for details on the anticipated outputs and key performance indicators (KPIs) of any scheme. By their very nature, the schemes themselves vary considerably and were aimed at considerably different ages and demographics and so there is no defined set of KPIs that we can provide. We would therefore need to review the basis upon which each and every application was made and granted to extract any relevant information that is held in relation to this."

27. TfL also noted that elements [8]-[10] of the first request sought information about funding for any schemes issuing grants for protected groups in the past six years. It explained that:

"one of the primary purposes of the WCGL scheme is to encourage walking and cycling in under-represented groups and this will

invariably include disability groups, religious groups, gender/sex focussed groups, people with a history of substance abuse of rehabilitated offenders and more. It isn't always immediately obvious that a group is set up specifically for protected groups (for instance by virtue of the group's name), may include protected groups but not be exclusively for those groups and it is also the case that in a significant number of cases schemes will cover more than one protected group.

"Therefore, again, there is no direct and easy way to report on this. Each application is judged on its specific merits ahead of the awarding of a grant and the community groups to which they relate vary considerably. Whether the community groups specifically serves a protected group is not something that is recorded for reporting purposes and so we would need to review the initial application in detail and make an assessment on whether it serves a protected group.

"Since the scheme began in 2015 there have been 235 individual projects successfully awarded a grant under the WCGL scheme. It is not a requirement of the scheme to be specifically aimed at protected groups but many of the community groups are. However in order to provide this information we would need to include this within the reviewing process explained above and compile the information accordingly.

"Based on a conservative estimate of five minutes to review each of the 235 successful applications alone, we estimate it would take around 19.5 hours to locate, extract and collate the information requested. This processing time would increase further to include the 75 unsuccessful applications in the more narrowed time period of 2018 to present and this would broaden considerably further if we were to broaden our searches to 'any schemes that offer grants to protected groups' over the past five years as this would cover a non-exhaustive list of schemes way beyond WCGL."

28. Finally, in relation to element [4] of the third request, TfL noted that it had no easy way of searching for its communications with Sustrans on such a specific issue and that over 3,000 emails had been exchanged with (or involved) this organisation over just a three month period. It couldn't be sure the specific issue had been discussed with Sustrans over email and would therefore struggle to define keyword searches that would enable it to confirm beyond doubt that it did or did not hold the information.

The Commissioner's view

29. The Commissioner considers that the combined cost of the requests would exceed the appropriate limit. Between them, the three requests contain 38 individual elements and that is always going to increase the cost necessary to comply.
30. TfL has explained (and the Commissioner accepts) that it does not record much of the information the complainant has sought, in relation to the first request, in easily reportable format. That would mean it would need to undertake a manual trawl of the relevant applications in order to extract the information. Given that there are 210 applications since 2018 alone, a central estimate of five minutes per application would not be sufficient to review every single file.
31. Furthermore the Commissioner notes that this figure does not include any time spent searching the 100 applications for this scheme prior to 2018 or the applications that may have been submitted for other schemes.
32. 5 minutes per file seems to be a reasonable estimate for the time needed. Given the potential volume of information that would need to be sifted, just in respect of the first request, the Commissioner considers that, even if that figure could be reduced, TfL would still struggle to comply with that request without exceeding the cost limit – and of course that does not take into account the time needed to deal with the other two requests.
33. TfL may have “cherry-picked” the most difficult or mostly costly elements to highlight to the Commissioner – however, even if that is the case and the remaining elements could be addressed with minimal additional work (which the Commissioner considers to be unlikely), the aggregated cost would already exceed the appropriate limit.
34. The Commissioner therefore considers that TfL has reasonably estimated that the cost of complying with the three requests would exceed the appropriate limit.

Section 16 – advice and assistance

35. Section 16 of the FOIA requires public authorities to provide “reasonable advice and assistance” to those making (or wishing to make) information requests under the FOIA.
36. Precisely what advice and assistance will be “reasonable” will depend on the particular circumstances of each request – however the FOIA Code of Practice states that, where a public authorities have relied on section 12 of the FOIA to refuse a request they should:

"provide applicants with advice and assistance to help them reframe or refocus their request with a view to bringing it within the costs limit."

37. A public authority is not required to "lavish ingenuity" on finding ways to reframe the request, but it should be able to explain simple ways of reducing the scope – such as reducing the time parameters, or identifying elements of a multi-part request that could be answered within the cost limit.

38. Equally, there will sometimes be requests that are so broad, voluminous or multi-faceted in their scope that it is simply not possible for it to be refined in such a way as to bring it within the cost limit whilst still retaining the thrust of the original request. In such circumstances the public authority should simply explain that it cannot provide meaningful advice and assistance.

39. In its refusal notice, TfL told the complainant that:

"we suggest that you prioritise the information that is of most importance ahead of submitting any further requests to ensure that you are able to make the best use of the processing time available to you under the FOI Act."

40. As part of his investigation, the Commissioner invited TfL to explain whether or not it considered that it had provided adequate advice and assistance. TfL responded to say that:

"We are also content that extensive advice and assistance was provided in relation to this series of requests to enable the requester to sufficiently refine and/or prioritise his requests and make better use of the FOI Act in general."

41. It is not clear to the Commissioner whether TfL has provided more detailed advice and assistance in respect of other requests (he is aware that the complainant has made several requests to TfL), but TfL has not provided any evidence to demonstrate that this is the case. Therefore the Commissioner can only consider the advice and assistance given in the correspondence relating to these requests.

42. It is not in the interests of either the requestor or the public authority for the requestor to keep submitting requests that the public authority cannot comply with. A key purpose of providing advice and assistance is to prevent that from happening by explaining how the request needs to be refined.

43. In the Commissioner's view, TfL has done little more than instruct the complainant to refine his request – without providing any meaningful explanation as to how that might be achieved.
44. Where a request involves multiple elements, the Commissioner does not expect a public authority to estimate the cost of complying with each individual element or to provide individual advice on how to narrow each element – but that does not prevent a public authority from identifying those elements of the request that it could comply with more easily.
45. Having looked at the requests, the Commissioner considers that some elements could be answered more easily than others. Alternatively, it is possible that some elements might be answerable if their parameters are refined.
46. It will be for the complainant to decide whether or not he wishes to make a fresh request and, if so, on what terms. However, there is more that TfL can do to assist him in refining his request so that it falls within the cost limit.
47. The Commissioner therefore considers that TfL did not comply with its section 16 duty.

Right of appeal

48. 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

49. 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.
50. 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

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