

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 February 2023

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

Decision (including any steps ordered)

1. The complainant requested the total number of tickets issued and revenue received at Camberwell New Road/Warner Road/Camberwell Passage box junction. Transport for London (TfL) refused to disclose the requested information under section 31(1)(b), 31(1)(g) with subsection 31(2)(a) and section 43(2) FOIA.
2. The Commissioner's decision is that TfL has correctly applied section 31(1)(b) and 31(1)(g) with subsection 31(2)(a) FOIA to refuse to disclose the withheld information.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 9 November 2022 the complainant made a request for the following information:

"Please send the total number of tickets issued and revenue received at Camberwell New Road/Warner Road/Camberwell Passage box junction."
5. On 29 November 2022 TfL responded. It refused to disclose the requested information under 31(1)(b) and 31(1)(g) with subsection 31(2)(a) FOIA.

6. On 5 December 2022 the complainant requested an internal review.
7. On 3 January 2023 TfL provided the internal review. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 6 January 2023 to complain about the way his request for information had been handled.
9. In its submissions to the Commissioner TfL additionally applied section 43(2) (prejudice to commercial interests) to the withheld information.
10. The Commissioner has considered whether TfL was correct to refuse to disclose the withheld information under section 31(1)(b), 31(1)(g) with subsection 31(2)(a) and, if necessary, section 43(2) FOIA.

Reasons for decision

11. Section 31(1) of the FOIA states that:

Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

(b) the apprehension or prosecution of offenders

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)

12. Section 31(2) of the FOIA states that purposes referred to in the above sub-section are:

(a) the purpose of ascertaining whether any person has failed to comply with the law

TfL's functions

13. Within London, responsibility for public roads is divided between TfL and the various Borough Councils. TfL is the Highway Authority responsible for the management of the TfL Road Network (TLRN), which may be

better known as the "red routes". This is a 580km network of the most important strategic roads in London. Within the red route network in London are strategic roads which make up only 5% of the roads in London but carry over 30% of the city's traffic. The London Boroughs are responsible for the remaining public roads within their respective boundaries.

14. TfL have a Network Management Duty under the Traffic Management Act 2004 to ensure the safe and expeditious movement of traffic (this includes all modes of transport covering pedestrians, cyclists and buses etc). Traffic regulations and controls allow TfL to meet that duty and it's crucial that drivers obey the regulations that are in place. TfL has the required powers to take enforcement action against drivers who infringe those regulations
15. Section 16 of the Traffic Management Act 2004 places TfL under a duty in relation to management of the TLRN as a "local traffic authority". The duties thus conferred are set out as follows:

16 The network management duty

(1) It is the duty of a local traffic authority to manage their road network with a view to achieving, so far as may be reasonably practicable having regard to their other obligations, policies and objectives, the following objectives—

(a) securing the expeditious movement of traffic on the authority's road network; and

(b) facilitating the expeditious movement of traffic on road networks for which another authority is the traffic authority.

(2) The action which the authority may take in performing that duty includes, in particular, any action which they consider will contribute to securing—

(a) the more efficient use of their road network; or

(b) the avoidance, elimination or reduction of road congestion or other disruption to the movement of traffic on their road network or a road network for which another authority is the traffic authority;

and may involve the exercise of any power to regulate or co-ordinate the uses made of any road (or part of a road) in the road network

(whether or not the power was conferred on them in their capacity as a traffic authority).

16. It is a contravention of these controls that may give rise to the issuing of a Penalty Charge Notice (PCN). PCNs are issued at specific locations on the red routes and Yellow Box Junctions (YBJ) form part of this enforcement activity.
17. The purpose of enforcement is to deter motorists from contravening the restrictions in place, thereby supporting TfL's Network Management Duty to ensure traffic is kept moving for the benefit of all road users.
18. Enforcement of the controls set out in TfL's Traffic Orders is subject to a separate and well-established right of appeal against the PCN, whereby the recipient of the PCN can appeal to a Parking and Traffic Adjudicator.

TfL's position

19. Whilst TfL recognises that the YBJ at the location covered by the request is no longer in use, it has to take into account the wider repercussions of disclosure. It said that FOI requests for volumes of PCNs issued at specific locations along the red routes are a common and long running theme. Predominantly this occurs when members of the public have received a PCN themselves.
20. It said that information regarding enforcement activity on areas that are no longer functional retains a present and future value to anyone seeking to build up an enforcement picture and/or attempt to predict patterns of enforcement. Whilst the specific YBJ that is subject to this request is no longer functional, the process and procedures that underpinned the enforcement of that junction remain and provision of the information would significantly harm TfL's efforts to keep traffic flowing.
21. TfL therefore considers the fact that this particular YBJ is no longer operational to be immaterial to the principle behind the exemption and the request must be considered in the context of a request to understand its enforcement processes, procedures and practices.
22. When considering the prejudice test and taking into account any harm likely to arise if the requested information were put together with other information already published into the public domain (commonly known as the 'mosaic effect'), it believes that continually publishing data on the number of PCNs issued at specified locations would, in effect, over

time enable others to build up a comprehensive knowledge database of enforcement functionality across TfL's network which would be likely to prejudice its ability to apprehend or prosecute offenders and its ability to ascertain whether any person has failed to comply with the law.

23. TfL explained that the complainant made another FOI request for historic PCN data for five different locations recently which was also refused in accordance with section 31 FOIA. It is the continued 'drip' requests of this nature if disclosed into the public domain that would inevitably enable anyone who is tenacious enough to build up a detailed insight into TfL's enforcement procedures.
24. TfL has provided further supporting submissions which have been included in a confidential annex attached to this Notice.

The Commissioner's view

25. The Commissioner is satisfied that TfL has a duty to ensure the safe and expeditious movement of traffic and relies on traffic regulations and controls to meet that duty. Those controls include the issuing of PCNs against individuals who fail to comply with the controls put in place.
26. In this case, despite the fact that the YBJ relevant to the request is no longer in operation, disclosing information would still be likely to assist individuals in building up a picture of how TfL operates its enforcement procedures to attempt to evade prosecution when used alongside other information which may be available. TfL has indicated that this particular requester has asked for similar information at five different locations. The Commissioner is also aware that these types of requests are not uncommon and that information regarding PCNs is often shared online.
27. Disclosure of the withheld information would therefore be likely to prejudice the prosecution of offenders or TfL's ability to ascertain whether any person has failed to comply with the law. Section 31(1)(b) and section 31(1)(g) with subsection 31(2)(a) FOIA were correctly engaged in this case.

Public interest test

Public interest in favour of disclosure

28. TfL has argued that YBJ prohibitions operate 24 hours a day, 7 days a week and so there is no ambiguity about their restrictions of use. Therefore, it said that there is very limited public interest in the provision of this information other than transparency around the extent to which motorists are flouting the restrictions. It does not consider providing PCN enforcement data for this specified location provides any additional public interest.

Public interest in favour of maintain the exemption

29. TfL said that on an average London residents aged 16+ make 4.6 million car driver trips and 1.4 million car passenger trips on an average day, of which 3.7 million are within London. It therefore believes there remains a very strong public interest in TfL being able to successfully maintain its network management duty, ensure continued compliance amongst motorists and retain the smooth operation and free flow of traffic on TfL's very busy road network. It considers that the inevitable impact of disclosure on its ability to prosecute offenders or ascertain whether any person has failed to comply with the law cannot be considered to be in the public interest.

Balance of the public interest

30. The Commissioner considers that there is very limited public interest in transparency around the extent to which motorists are flouting the restrictions in relation to a YJB which is no longer in use. However the historical information would still provide insight into how TfL operates its enforcement procedures, when using this as a building block to put together a bigger picture, this would be likely to enable individuals to use this information in an attempt to evade prosecution. Given the limited public interest in disclosure of the withheld information and the strong public interest in TfL being able to prosecute offenders or ascertain whether any person has failed to comply with the law to successfully maintain its network management duty, the Commissioner considers that the public interest favours maintaining the exemptions in this case.

31. As the Commissioner has found that the exemptions applied under section 31 are engaged and the public interest favours maintaining the exemptions, he has not gone on to consider TfL's additional application of section 43(2) FOIA in this case.

Right of appeal

32. 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@Justice.gov.uk

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

33. 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.
34. 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.....

Gemma Garvey
Senior Case Officer

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Wycliffe House
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