

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 August 2017

Public Authority: Transport Focus
Address: Fleetbank House
2-6 Salisbury Square
London EC4Y 8JX

Decision (including any steps ordered)

1. The complainant has requested Transport Focus's responses to requests it has received under the FOIA. Transport Focus has refused to comply with the request under section 12(1) of the FOIA as it says to do so would exceed the appropriate cost and time limit.
2. The Commissioner's decision is that the cost and time needed to comply with the request will not exceed the appropriate limit and that section 12(1) is not engaged.
3. The Commissioner requires Transport Focus to take the following step to ensure compliance with the legislation:
 - Issue a fresh response under the FOIA which does not rely on section 12(1).
4. Transport Focus must take this step 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 3 October 2016 the complainant wrote to Transport Focus and requested information in the following terms:

"Kindly provide me:

1. The last 50 responses to FOI requests sent by Transport Focus..."

6. Transport Focus responded on 11 October 2016. It released information on the last 50 FOIA requests it had received (summaries of titles and dates of receipt) and said it was unable to provide the complainant with copies of its responses to these requests as to do so would require a disproportionate amount of resources.
7. Following an internal review Transport Focus wrote to the complainant on 6 January 2017. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 11 November 2016 to complain about the way his request for information had been handled.
9. In an attempt to resolve the complaint informally, Transport Focus indicated during the Commissioner's investigation that it is willing to retrospectively publish its responses to the 50 requests it received up to 3 October 2016, at a rate of two per week if possible. It also indicated it would actively publish its responses to FOI requests in the future.
10. This seemed to the Commissioner to be a helpful attempt at a compromise but the complainant was not prepared to accept it and has preferred to conclude his complaint formally through a decision notice.
11. The Commissioner's investigation has focussed whether the request engages section 12(1) of the FOIA and, if necessary, whether Transport Focus complied with its duty under section 16(1).

Reasons for decision

Section 12 – cost exceeds appropriate limit

12. Section 12(1) of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit to comply with the request in its entirety.

13. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to Transport Focus. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
- determine whether it holds the information
 - locate the information, or a document which may contain the information
 - retrieve the information, or a document which may contain the information, and
 - extract the information from a document containing it.
14. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.
15. Transport Focus has confirmed that it holds the requested information. It says that its records are held on an electronic system that requires a detailed interrogation to find particular records. The system is primarily configured to deal with passenger complaints about railway services, and it says that in many cases there are multiple records per complainant. Transport Focus has told the Commissioner that complaint cases often turn into FOIA cases. A system interrogation therefore requires it to distinguish between the different types of cases.
16. Transport Focus has provided the Commissioner with the following table:

REF	TASK	ESTIMATED TIME (HOURS)
1a	Determining whether we hold the information requested	0
1b	Finding the information requested, or the records containing the information	4
1c	Retrieving the information or records	8
1d	Extracting the requested information from our records	8
	Sub total	20

17. Transport Focus has explained to the Commissioner that it has estimated that to locate the information, or the records containing it, would take four hours. It says that for each case it would take around 20 minutes to retrieve and extract relevant information. This means that to retrieve the information would take eight hours and to extract the information from the records would also take eight hours. This is a total of 20 hours, which exceeds the appropriate limit.
18. Transport Focus has said that this does not allow for time spent redacting any information, such as personal data. However, the Commissioner advises that the provision under section 12(1) does not include the time it would take to redact information.
19. The member of Transport Focus staff who would undertake this work is a regular user of its systems and has confirmed that he is quite familiar with the process of extracting records from them. Transport Focus did not therefore consider it necessary to conduct any additional sampling exercises.
20. Transport Focus confirmed that since virtually all its records are electronic, there is no quicker way to retrieve and extract the records.
21. The Commissioner notes that Transport Focus has not carried out a sampling exercise but, based on experience, has estimated that it would take approximately 20 minutes to retrieve and extract the requested information from each of the 50 records. The Commissioner considers the table above to be evidence of a somewhat 'broad brush' approach. The table and Transport Focus's unsubstantiated explanation alone do not convince her that it would take 20 minutes to electronically process (that is, to search, cut and paste) the information that has been requested from each of the 50 records.
22. Moreover, the complainant has argued that Transport Focus has already provided to him a list of the 50 requests it received up to 3 October 2016 ie it has already located the information in particular records. By referring to that list, the complainant considers that Transport Focus could comply with his request within 18 hours.
23. The Commissioner agrees that Transport Focus already appears to have located the information and that this therefore reduces by four hours the time Transport Focus has said it would take to comply with the request. This would bring the amount of time needed down to 16 hours which is within the cost and time limit.

24. Because of this, and because Transport Focus has not undertaken a sampling exercise that might have persuaded otherwise, the Commissioner has not been persuaded that it would take Transport Focus more than 18 hours to comply with the complainant's request and considers that the provision under section 12(1) cannot be applied to it. This is despite giving Transport Focus an additional opportunity, on 18 July 2017, to provide further supporting arguments. No reply has been received as at the date of this decision notice.

Right of appeal

25. 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

26. 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.
27. 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
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