

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 23 August 2021

**Public Authority:** Transport for London  
**Address:** 4th Floor  
14 Pier Walk  
London  
SE10 0ES

#### Decision (including any steps ordered)

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1. The complainant has requested copies of structural reports on Hammersmith Bridge.
2. The Commissioner's decision is that Transport for London ('TfL') is entitled to rely upon section 14(1) (vexatious requests) of the FOIA to refuse the request. However, in applying section 14(1) outside the time for compliance, TfL has breached section 17.
3. The Commissioner requires no further steps.

#### Background information

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4. In April 2019 Hammersmith bridge ('the bridge') was closed indefinitely to vehicular traffic due to safety concerns arising from cracks in the bridge's pedestals which support the its overall structure. In August 2020 this closure was extended to pedestrians and cyclists following a heatwave that exacerbated the bridge's structural issues.
5. Hammersmith and Fulham Council commissioned Mott MacDonald Consultants<sup>1</sup> to assess the bridge. Mott MacDonald produced two reports and TfL has explained '*the first was to inspect and assess the condition of the bridge and then the second report assessed the necessary refurbishments required.*' These reports are the subject of this request for information.

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<sup>1</sup> [Global engineering, management and development consultants - Mott MacDonald](#)

6. TfL has gone onto clarify that *'the entirety of the material that is subject to this request stretches beyond 50,000 pages of material.'*

## **Request and response**

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7. On 20 August 2020, the complainant wrote to TfL and requested information in the following terms:

*"Under FOI regulations, please release the most recent engineers structural report seen by TFL on Hammersmith Bridge. Please release the full document.*

*Under FOI regulations please release the previous engineers structural report seen by TFL on Hammersmith Bridge. Please release the full document."*

8. On 18 September 2020 TfL refused to provide the requested information. It cited section 24 (national security) and section 38 (health and safety) of the FOIA as its basis for doing so.
9. Following an internal review TfL wrote to the complainant on 23 October 2020, upholding its original position.
10. On 26 May 2021 the Commissioner contacted both parties to outline the scope of her investigation.
11. On 23 June 2021 TfL wrote to the complainant and stated *'I wanted to bring to your attention the publication of some engineering reports which may suit your requirements. These documents were published after the date of your request and the closure of your internal review but were as recent as December 2020. You may find these reports here.'*<sup>2</sup>
12. Both reports were commissioned by the Department for Transport (DfT) with the aim of reviewing the Mott MacDonald's assessments (the withheld information) of the bridge.
13. TfL confirmed that the reports differ to those that fall within the scope of the request but also contain information relating to the condition of the bridge and the refurbishments that it requires.
14. On 23 June 2021 the complainant rejected this alternative disclosure.

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<sup>2</sup> <https://www.gov.uk/government/publications/hammersmith-bridge-engineering-reports>

## Scope of the case

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15. The complainant contacted the Commissioner on 3 November 2020 to complain about the way that their request for information had been handled.
16. At the time of raising their concern with the Commissioner, the complainant wrote: *'I wish to suggest that this may be a possible over use, or blanket use, of such a national security justification, and request that a suitably redacted document is released as required under FOI regulations.'*
17. As part of her investigation into this matter, TfL has provided the Commissioner its submissions relating to section 24 and section 38. TfL also provided the Commissioner with a reasonable sample, 500 pages, of the withheld information. TfL explained that it considered the exemptions applied to the information in its entirety.
18. During the course of the Commissioner's investigation it became apparent that the exemptions would not apply to the withheld information in its entirety. Therefore TfL changed its position to rely upon section 14.
19. The Commissioner invited the complainant to comment on TfL's change in stance and they stated *'Presently the public has been given the assurance that this decision was justified based on the engineering reports. The information revealed will be of value to both me (as a resident impacted by the bridge closure) and the wider London public, as it will allow all to understand and scrutinise the engineering basis for the closure decision.'*
20. The Commissioner therefore considers the scope of her investigation to be to determine if TfL is entitled to rely upon section 14(1) as a basis for refusing to comply with the request

## Reasons for decision

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### Section 14 (1) – vexatious requests

21. Section 12 of the FOIA provides an exemption from the duty to comply with a request where doing so would exceed the appropriate limit.<sup>3</sup> This

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<sup>3</sup> [costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf \(ico.org.uk\)](#)

is £600 for a central government department such as TfL. This equates to 24 hours of work at approximately £25 per hour. This limit is laid down by The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.<sup>4</sup>

22. The following activities may be taken into account to determine whether compliance with a request would exceed the appropriate limit:
- determining whether the information is held;
  - locating the information, or a document containing it;
  - retrieving the information, or a document containing it; and
  - extracting the information from a document containing it.
23. The Commissioner's guidance '*Cost of compliance exceeds appropriate limit*' states<sup>5</sup>, '*An authority cannot claim section 12 for the cost and effort associated with considering exemptions or redacting exempt information.*'
24. For such circumstances a public authority may apply section 14(1) of the FOIA which provides an exemption from the duty to comply with a request if the request is vexatious.
25. The Commissioner's guidance '*Dealing with vexatious requests*'<sup>6</sup> states that a public authority '*may apply section 14(1) where it can make a case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden on the organisation.*'
26. The Commissioner considers the threshold for such a refusal to be high and she considers it appropriate where:
- The requester has asked for a substantial volume of information *and*
  - The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO *and*

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<sup>4</sup> [The Freedom of Information and Data Protection \(Appropriate Limit and Fees\) Regulations 2004 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>5</sup> [costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf \(ico.org.uk\)](https://ico.org.uk)

<sup>6</sup> [dealing-with-vexatious-requests.pdf \(ico.org.uk\)](https://ico.org.uk)

- Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.
27. TfL has stated that *'the entirety of the material that is subject to this request stretches beyond 50,000 pages of material... it would require detailed manual reviewing by several specialist individuals from our Infrastructure, FOI and Security Teams.'*
  28. TfL has gone onto clarify that *'Clearly, reviewing such a significant amount of highly technical and detailed information that we have serious concerns would be likely to endanger public safety and national security would constitute a significant burden as it would divert the attention of very limited but very specialist personnel away from their core functions to dedicate their time and resource to this single request.'*
  29. TfL has indicated that *'Essentially these reports are a guidebook on all of the areas of the bridge that are vulnerable and weakened.'* TfL is concerned that disclosure of the withheld information *'could be used by persons with nefarious intentions.'*
  30. Mott MacDonald's inspections, and subsequent reports, were carried out with the express purpose of identifying the defects and vulnerabilities of the bridge. TfL is concerned that, since the bridge has been the target of three separate bomb attacks<sup>7</sup> within 61 years (1939, 1996 and 2000<sup>8</sup>) and the current threat level in the UK is substantial, disclosure of such detailed information may pose a risk to national security and thus the health and safety of the public.
  31. TfL has also explained that *'we would need to review every page to consider whether there is anything that we could disclose and, more specifically, anything that requires consideration of the two exemptions cited along with an explanation of the causal link between disclosure and the harms described. That causal link will differ depending on the content and will often be interlinked with other material within the documentation and so this would not be a straightforward process.'*
  32. In the Commissioner's guidance on vexatious requests it states *'we would expect the authority to provide us with clear evidence to substantiate its claim that the request is grossly oppressive.'*
  33. TfL has provided evidence in the form of a calculation, stating that *'in the extremely unlikely event we were able to successfully review one*

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<sup>7</sup> [Attack was third on bridge that has become strategic target | UK news | The Guardian](#)

<sup>8</sup> [Bomb explodes on Hammersmith bridge | UK news | The Guardian](#)

*page every minute this would still constitute over 800 hours work for each of the relevant parties required to input into this in order to consider the information for disclosure.'*

34. The Commissioner has reviewed the sample of withheld information that she has been provided and considers TfL's estimation of a minute per page, and therefore 833 hours of work, to be an appropriate estimate. Some pages, such as the title page will take less and others, taking into account the level of technical detail, calculations and specialist information contained within will take significantly longer.
35. The Commissioner's guidance states *'Where an authority believes that complying with the request will impose a grossly oppressive burden, it is good practice to talk to the requester before claiming section 14(1), to see if they are willing to submit a less burdensome request.'*
36. Returning to paragraph 11, the Commissioner is satisfied that TfL has offered the requestor an alternative disclosure which would not impose such a burden to produce.
37. In circumstances where a public authority wishes to apply section 14(1) based on the grossly oppressive burden that compliance with a request would cause, it must balance the impact of the request against its purpose and value to determine whether the effect on the authority would be disproportionate.
38. When considering the purpose and value of the request in question, TfL has drawn the Commissioner's attention to the engineering reports that are referred to within paragraph 11 which *'provide a significant amount of technical detail that, in our view, provides more than sufficient detail as to the issues that are affecting the bridge.'* The Commissioner notes that the reports referred to within paragraph 11 have been produced to scrutinise the withheld information and therefore the Commissioner is of the opinion that this information goes some way in assuring the public that continued closure of the bridge is justified.
39. TfL has recognised the disruption that the continued closure of the bridge causes, and this is evident by the information that TfL, alongside other public authorities, has proactively placed into the public domain, which includes Hammersmith Bridge Taskforce meetings.<sup>9</sup>

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<sup>9</sup> [Hammersmith Bridge updates - GOV.UK \(www.gov.uk\)](http://www.gov.uk); [Baroness Vere of Norbiton - GOV.UK \(www.gov.uk\)](http://www.gov.uk);

## **The Commissioner's view**

40. The Commissioner is satisfied that TfL would need to consider the exemptions provided by section 24 and section 38 in the event that it complied with the request.
41. The Commissioner is further satisfied that, due to the nature of the information contained within the withheld reports, the potentially exempt information cannot be easily isolated, and that the information would need to be manually reviewed by specialised officers, familiar with engineering terminology and its practical applications, to consider any causal links between the information and the prejudice cited.
42. The Commissioner recognises the inconvenience caused by the bridge's closure and subsequent concerns that this has generated. The Commissioner recognises that disclosure of the withheld information would help to corroborate the information already placed in the public domain relating to the bridge's closure.
43. However, keeping in mind the information already in the public domain which is designed to allay the public's concerns, the Commissioner does not consider the substantial burden that preparation of this withheld information would require as justified in this instance.
44. Whilst section 14 is separate to section 12, the Commissioner must be guided by the parameters outlined in the Appropriate Limits and Fees Regulations and notes that the time for compliance with this request grossly exceeds these standards.
45. Having considered the above factors, the Commissioner is satisfied that the TfL is entitled to refuse the request on the basis of section 14(1).

## **Section 17 – Refusal of request**

46. Section 17 requires that where a public authority is relying upon a claim that section 12 or 14 applies to a request, a notice is issued stating that fact within 20 working days.
47. In this case TfL only introduced its reliance on section 14(1) to the Commissioner when this matter was put before her as a complaint; significantly outside the time for compliance. On this basis the Commissioner finds a breach of section 17.

## **Right of appeal**

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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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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**

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**