

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 April 2017

Public Authority: Transport for London
Address: Windsor House
42-50 Victoria House
London SW1H 0TL

Decision (including any steps ordered)

1. The complainant has requested information relating to a particular complaint submitted to Transport for London (TfL). TfL has withheld the information under section 40(2) of the FOIA as it says it is the personal data of a third person.
2. The Commissioner's decision is that TfL has correctly applied section 40(2) to the information it is withholding.
3. The Commissioner does not require TfL to take any steps.

Request and response

4. On 5 August 2016, the complainant wrote to TfL and requested information in the following terms:
"...under the Freedom of information act please pass me a copy of all communication and transcripts between TFL and [Passenger] regarding this matter."
5. TfL responded on 5 September 2016. It confirmed it holds the information the complainant has requested but said that it is exempt from disclosure under section 40(2) of the FOIA because it is the personal data of a third person.

6. Following an internal review TfL wrote to the complainant on 7 December 2016. It maintained its position that some of the information the complainant has requested is exempt under section 40(2). TfL said that some of the information could be categorised as the complainant's own personal data which is exempt from release under the FOIA, under section 40(1). TfL advised the complainant to submit a subject access request under the Data Protection Act (DPA) to access this particular information.

Scope of the case

7. The complainant initially contacted the Commissioner on 14 October 2016 to complain about the way his request for information had been handled. Following receipt of TfL's internal review, he remained dissatisfied with its application of section 40(2) to some of the information he has requested.
8. The Commissioner's investigation has focussed on whether TfL has correctly applied section 40(2) to this information.

Reasons for decision

Background

9. The complainant is a bus driver. It appears that there was an incident on a bus he was driving that resulted in a passenger telephoning TfL, whilst on the bus, to complain about the complainant. The information request concerns this complaint.
10. TfL has provided the Commissioner with an explanation of its complaints handling system. TfL records contact from the public on a Customer Relationship Management system called SAP. A single customer may have several Service Tickets in their SAP account, each relating to a different enquiry or complaint. Each instance will contain the information created and received in relation to that matter (including emails) and each has a unique reference number.
11. SAP is also used by bus operating companies. SAP allows a complaint to be transferred from TfL to a bus company under a process known as a 'hand off'. Transferring a complaint in this way creates a record of the hand off in SAP. TfL says that transferring complaints to bus companies in this way is necessary, because it does not deal with complaints against bus companies about incidents that take place on their buses.

TfL transfers the complaint to the bus company, which then manages the complaint itself.

12. On some occasions the bus operator will make a note on the Service Ticket advising what action they have taken, eg reviewed CCTV footage of incident or driver interviewed, however TfL says it does not receive any further information from the bus operator regarding the details or outcome of its investigation.
13. When a complaint is made to TfL Customer Experience about the conduct of a bus driver, an instruction via SAP Customer Relations Manager is issued to the bus operator to investigate the issue. A response will then usually be sent to the person making the complaint advising them that their complaint has been forwarded to the relevant operator for its investigation.
14. Under these circumstances, a staff/driving standards manager or equivalent, depending on the organisation of the garage, is responsible for carrying out the investigation. A 'fact-finding' process is initiated and a driver may be called in for an interview. Depending on the outcome and its severity, bus operating companies have recourse to a number of corrective measures, including 'buddying'/ pairing with other drivers, retraining the driver in question, and/or progressing disciplinary action in line with its own company policy.
15. The information held on the SAP account of the passenger in this case comprises notes made by the customer service advisor dealing with the complaint and one 'hand off' record from the advisor to the bus operator. TfL says that the phone call from the passenger was taken on 25 July 2016. The passenger did not require any further reply and the customer service advisor closed the Service Ticket.

Section 40(2) – third person personal data

16. Section 40(2) of the FOIA says that information is exempt from disclosure if it is the personal data of third persons, ie someone other than the requester, and the conditions under either section 40(3) or 40(4) are also satisfied.
17. The Commissioner has therefore first considered whether the requested information can be categorized as personal data.

Is the withheld information personal data?

18. The DPA says that for data to constitute personal data it must relate to a living individual and that individual must be identifiable.

19. Information can be said to 'relate to' an individual if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
20. TfL has provided the Commissioner with the information it is withholding and she has reviewed it. The information is a summary of a phone call the passenger in question made to TfL about the incident that occurred on a bus the complainant was driving, and the 'hand off' note.
21. The Commissioner is satisfied that some of the requested information does relate to a third person (the passenger) as it concerns a complaint they submitted to TfL and was used to inform a decision affecting them (ie whether and how to progress their complaint).
22. The complainant appears to know the name of the individual who submitted this complaint. In such cases, the 'mosaic argument' is relevant. The term 'mosaic argument' is used to refer to the argument that whilst it may not be prejudicial to disclose requested information in isolation, it would be prejudicial where the requested information can be combined with other information already in the public domain *or already known to the requester*.
23. Because the complainant knows the name of the passenger who complained, the Commissioner considers that that individual could be identified from the withheld information, even if their name was redacted from the information. She is satisfied that this particular information is therefore the personal data of that individual.
24. There is some dispute over how the complainant came to know the passenger's name. TfL hypothesises that the complainant could have overheard it when the passenger gave their details to TfL over the phone. The complainant says that TfL passed the passenger's name to him when it informed him of the complaint. The complainant provided the Commissioner with examples of other complaints that he says TfL has passed to him, which include the passengers' names. These date from 2008, 2009 and 2014 and do not include the complaint made by the passenger who is the focus of the request.

Is a condition under section 40(3) or 40(4) satisfied?

25. Section 40(3)(a) says that personal data is exempt from release if disclosing it would contravene any of the data protection principles, or would cause damage or distress and so breach section 10 of the DPA.
26. In its submission to the Commissioner, TfL has argued that the individual who submitted the complaint to TfL would not have the expectation that details of their complaint – which the Commissioner has

established is their personal data – would be released to the public under the FOIA. TfL's position is therefore that releasing the requested information would contravene the first data protection principle as it would not be lawful or fair to the individual concerned.

27. In assessing fairness, the Commissioner has considered whether the information relates to the individual's public or private life, whether they have consented to their personal data being released and their reasonable expectations about what will happen to their personal data.
28. The information relates to the individual's private life and no consent has been sought or given regarding releasing this information under the FOIA.
29. The Commissioner agrees with TfL that the individual who complained to TfL would have an expectation of privacy when they made their complaint, as would any member of the public when making a complaint about TfL's services. The Commissioner considers it would not be fair to that individual to release their personal data to the world at large and would be likely to cause them a degree of distress.
30. The complainant has referred the Commissioner to what he says is one example of a response to another FOIA request to TfL that has been published and which gives details of the complaint made to TfL. TfL has told the Commissioner that when it responded to this and other requests it removed the name of the complainant, or any other information that could be used to identify them in accordance with its obligations under the DPA.
31. This case differs in that the complainant has already identified the passenger who complained and so can make a direct link between that individual and the information that TfL is withholding.
32. Despite the factors above, the requested information may still be disclosed if there is compelling public interest in doing so that would outweigh the legitimate interests of the data subject (that is, the passenger who complained to TfL).
33. The complainant argues that there is a public interest in knowing whether TfL is using its complaint procedure to harass bus drivers, in order to cover up its inadequate service and safety standards, which have resulted through the number of bus staff being cut by 50%. The complainant considers that releasing the information he has requested would show the degree to which TfL 'encouraged' the passenger, or tried to explain TfL's service.

34. The Commissioner appreciates the complainant's concerns and that the requested information is of interest to him. He has made an assertion about TfL's service and safety standards and its use of its complaints procedure to distract from these, but has not provided evidence to support his assertion. Such evidence might have strengthened the public interest in releasing the requested information (or might not have), though it is difficult to see how the details of one, specific complaint would meaningfully support the complaint's claim. Moreover, the complainant could refer to the complaints to TfL that he has told the Commissioner are already published, if he chose. The Commissioner therefore does not consider that the requested information in this case is of such compelling public interest that it overrides the data subject's rights and freedoms.

35. The Commissioner is satisfied that TfL is correct to apply section 40(2) to the information it is withholding under this exemption. It is the personal data of a third person and a condition under section 40(3) is satisfied because releasing it would breach the first data protection principle as it would not be fair or lawful. Since a condition under section 40(3) has been met, it is not necessary to consider the condition under section 40(4).

Right of appeal

36. 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

37. 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.
38. 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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