

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 November 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 all records of communications with a named individual about all FOIA requests received in the last 12 months. Transport Focus (TF) refused to disclose the requested information citing sections 40 and 42 of the FOIA.
2. During the Commissioner's investigation a considerable amount of information was disclosed. With regards the remaining withheld information under the FOIA, the Commissioner has decided that it is exempt from disclosure under section 40.
3. The Commissioner therefore does not require any further action to be taken.

Request and response

4. On 18 and 19 March 2017, the complainant wrote to TF and requested information in the following terms:

"Please disclose all records of communications (emails, letters, meeting notes etc) you have had with [name redacted] about all FOI Act requests TF have received in the last 12 months. Please treat this email as a request under the FOI Act."
5. TF responded on 17 April 2017. It refused to disclose the information citing section 42 and 40 of the FOIA.

6. The complainant requested an internal review on 17 April 2017.
7. TF carried out an internal review and notified the complainant of its findings on 30 May 2017. It upheld its previous application of the exemptions cited.

Scope of the case

8. The complainant contacted the Commissioner on 29 May 2017 to complain about the way his request for information had been handled. This was a day prior to the internal review response, so his complaint at this time was that TF was late in responding. By the time the complaint was allocated to a case officer the internal review had been completed. The complainant's concerns then were in relation to TF's application of section 42 and 40 of the FOIA.
9. During her investigation the Commissioner received a copy of the withheld information. She noted that the majority of this constituted the complainant's own personal data and she therefore asked TF to first consider the request as a subject access request under the Data Protection Act (DPA). TF proceeded to do so and released the majority of information to the complainant under the DPA. It only withheld references to two third parties and a limited company.
10. As an applicant's own personal data is automatically exempt under the FOIA by virtue of section 40(1) (as the DPA is the appropriate legislation to consider its access), the Commissioner's investigation then focussed on the redacted information. TF decided at this point to disclose the references to the limited company to the complainant. This then left the withheld information relating to two private individuals.
11. The Commissioner noted that the redacted information relating to one individual did not relate to an FOI request; instead it related to a formal complaint they had raised via TF's complaints procedure about another matter. As the complainant's request specifically asked for all communications with a named individual relating to FOI requests in the last 12 months, the Commissioner considers this particular information is outside the scope of the request.
12. The remainder of this notice will therefore address TF's application of section 42 and 40 to the remaining withheld information i.e. references to one third party within the bundle of information disclosed to the complainant, who had made a FOI request to TF and to which there had been correspondence with the person (name redacted from request) named in the request.

13. The Commissioner will first consider the application of section 40 of the FOIA. She will only go on to consider the application of section 42 if it is found that section 40 does not apply to this information.

Reasons for decision

14. Section 40 of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure would breach any of the data protection principles outlined in the Data Protection Act (DPA).

Personal data is defined as:

..."data which relate to a living individual who can be identified-

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

And includes any expression of opinion about that individual and any indication of the intentions of the data controller or any other person in respect of the individual..."

15. The Commissioner considers the first data protection principle is most relevant in this case. The first data protection principle states -

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless -

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."

16. The Commissioner must first consider whether the requested information is personal data. If she is satisfied that it is, she then needs to consider whether disclosure of this information would be unfair and unlawful. If she finds that disclosure would be unfair and unlawful the information should not be disclosed and the consideration of section 40 of the FOIA ends here. However, if she decides that disclosure would be fair and lawful on the data subject(s) concerned, the Commissioner then needs to go on to consider whether any of the conditions listed in schedule 2 and 3, (sensitive personal data) if appropriate, of the DPA are also met.

Is the requested information personal data?

17. The remaining withheld information in this case is the name and contact details of a third party who made an FOI request to TF during the time period specified in the request. As an individual can quite easily be identified by their name and contact details, the Commissioner is satisfied that the withheld information falls within the definition of personal data.

Would disclosure be unfair?

18. TF confirmed that it considered the following points when considering in this case whether disclosure would be unfair:

- the data subject's expectations both at the time the information was collected and at the time of the request;
- the nature of the information itself;
- the circumstances in which the information was obtained;
- whether the information has been or remains in the public domain;
- the FOIA principles of transparency and accountability; and
- whether there is a legitimate interest in the public or requestor having access to the information and the balance between this and the rights and freedoms of the data subjects.

19. TF concluded in this case that the most appropriate course of action was to refuse disclosure.

20. The Commissioner has considered the reasonable expectations of the data subject, the circumstances in which the information was obtained by TF and any distress or intrusion disclosure would cause to the data subject's private life and she has concluded in this case that disclosure would be unfair and in breach of the first data protection principle. She will now explain why.

21. The Commissioner notes that although the FOIA is essentially about public disclosure and whether information requested in a particular case can be released into the public domain this does not extend to personal data of the applicant themselves. It may be common practice amongst public authorities to publish a FOIA disclosure log on its website or for the Commissioner to publish decision notices outlining how a particular complaint to her has been considered. However, this information is

appropriately anonymised to protect the rights and freedoms of the applicant.

22. The Commissioner considers the data subject will hold a reasonable expectation that their name and contact details will remain private. They would generally expect their name and contact details to be used by TF as a means of communication in relation to the request they have made. However, they would not expect their name or contact details to be used for any other purpose or to be circulated more widely. As stated above, they may expect the details of their request, the public authority's response, any information disclosed and any decision notice issued by the Commissioner to be published. But they would not expect their personal data to be published to the world at large.
23. The Commissioner considers disclosure in this particular context would be an unwarranted intrusion into the private life of the data subject and could cause them distress and upset considering the reasonable expectations they will hold with regards to the use and distribution of this information.
24. The Commissioner cannot identify in this case any legitimate public interest or any legitimate interest of the complainant that would override the rights and freedoms of the data subject. She accepts that there is a legitimate public interest in openness and transparency and, for example, in advising members of the public of previous requests that have been made and what information was released if any, as this may prevent identical request being made unnecessarily. However, the Commissioner would consider that such interests would be best met by a disclosure log on TF's website for example (and the Commissioner understands from discussions with it that it is considering implementing one in the near future). The Commissioner is of the view that the disclosure of the applicant's name and contact details is not necessary to meet this interest.
25. The Commissioner notes the complainant has said that TF has already released the name of all FOIA applicants in a 12 month period in relation to a previous request. This information was already disclosed prior to a complaint being made about this earlier request to the Commissioner.
26. The Commissioner considers that each request should be considered on its own merits and while TF did disclose the surname of each applicant in response to an earlier request, this does not automatically mean that the same or similar should be disclosed in response to a later request. Similarly, if information was disclosed in error in response to one request, this would not warrant the disclosure of the same information if it was requested again.

27. The Commissioner's decision in this case is that it would be unfair and unlawful to disclose the name and contact details of the data subject for the reasons explained above and so section 40 of the FOIA applies.
28. As the Commissioner has decided that section 40 of the FOIA applies, there is no need or indeed requirement for her to go on to consider TF's application of section 42 of the FOIA.

Right of appeal

29. 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

30. 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.
31. 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

Samantha Coward
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