

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 November 2022

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

Decision (including any steps ordered)

1. The complainant has requested information in relation to 60+ London Oyster photocard holders. Transport for London (TfL) responded to all parts of the request. The complainant remained dissatisfied with the information provided in relation to part h of the request. TfL applied section 12 FOIA as it said it would exceed the cost limit to comply with part h of the request.
2. The Commissioner's decision is that section 12 FOIA was correctly applied to part h of the request. TfL breached section 16 FOIA in its handling of this request.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 25 August 2022 the complainant made the following request for information under the FOIA for:

Please would you kindly provide the following information in relation to 60+ London Oyster photocard holders:-

- a) the total number of card holders;

- b) the number of card holders that are required to undergo an annual address check by TfL in order to continue using their cards;
 - c) the number of card holders that are required to pay a fee for an annual address check by TfL in order to continue using their cards;
 - d) the number of card holders that are not required to pay an annual fee for an annual address check by TfL in order to continue using their cards;
 - e) the reasons for setting the annual address check fee at £10.00;
 - f) whether any income received by TfL from the card holders who are required to pay the annual address check fee is used towards administering any annual address checks for cardholders that are not required to pay the fee;
 - g) the legal powers upon which TfL relied for the introduction of the annual address check fee in August 2019;
 - h) any recorded information relating to the making of the decision by TfL to introduce the annual address check fee from August 2019 such as reports, legal advice, minutes and decision records.
5. TfL provided a response to the request. On 15 September 2022 the complainant requested an internal review:

"I am writing to clarify your response. In relation to my requests numbered (b), (c) and (d) of my 25 August request, I asked for various numbers. Although your response confirmed that TfL does hold the information which I requested, it has not been provided.

Also, with regard to my request (h) which asked for “any recorded information relating to the making of the decision by TfL to introduce the annual address check fee from August 2019 such as reports, legal advice, minutes and decision records”, you have provided only one document, namely a Mayoral Briefing from May 2019. Are you saying that there is no other recorded information held by TfL within the scope of my request? I ask because it seems unlikely that, for example, there was no record of any decision made by TfL’s Board (or under delegated powers), following the Mayoral Briefing which you have sent to me.”

6. TfL provided the internal review. It provided further information in relation to parts b, c and d of the request. With regards to part h it confirmed that all the documentation that TfL holds had been provided to the complainant.
7. The complainant wrote again to TfL to confirm he remained dissatisfied with TfL’s response to part h of the request as he considered further information was held by TfL. TfL applied section 12 FOIA as it said it would exceed the cost limit to determine if any further information was held.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way the request for information had been handled, in particular TfL’s application of section 12 FOIA to part h of the request.
9. The Commissioner has considered whether TfL was correct to refuse to comply with part h of the request under section 12 FOIA.

Reasons for decision

Section 12 – cost of compliance

10. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the “appropriate limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).

11. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the TfL is £450.
12. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for TfL.
13. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - 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.
14. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence". The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
15. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
16. Where a public authority claims that section 12 of 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 or confirm that this is not possible, in line with section 16 of FOIA.
17. TfL said that the information being sought isn't held in any meaningfully retrievable way and the only formal 'decision' document that it has available had already provided to the complainant (the briefing note).

18. TfL explained that it had been unable to source any further information within the scope of the request direct from the appropriate business area. It said that it does not have a facility to search any and every single type of document that has been recorded. Furthermore the information relates to a decision made over three years ago. Therefore the only other avenue it has available to try and identify if any documentation is held with regards to "the making of the decision by TfL to introduce the annual address check fee from August 2019" would be a company wide email search using a tool called eDiscovery.
19. TfL carried out the following searches –
 - emails between 1/8/18 and 1/8/19 for emails containing the words "60+ Oyster" AND "address check fee" and this produced 12 hits and from a review, none of these were related to the actual decision making to which the complainant is seeking documentation on.
 - emails between 1/8/18 and 1/8/19 for emails containing the words "60+ Oyster" AND "fee" AND "decision" and this produced 7,105 hits.
20. TfL said that these could be some emails relevant to the scope of the request within the 7,105 hits caught by the above search, or it could be that none are relevant. However it simply can't know what is contained within the 7,105 email results without reviewing each individually. It said that this is clearly a huge amount of information and would greatly exceed the appropriate limit as set out in accordance with section 12 FOIA.
21. TfL confirmed that the briefing note provided is a record of the decision being taken. It hasn't been able to obtain any further documentation or legal advice because to do that would require it to review such an extensive amount of information.
22. Based upon the fact that the only way to determine whether any further information is held other than the briefing note provided would require a review of 7,105 emails, only allowing 30 seconds per email would still require over 59 hours work. On this basis the Commissioner therefore considers the section 12 FOIA was correctly applied in this case.

Section 16 – advice and assistance

23. TfL provided the following advice and assistance in this case:

"...the panel suggest that if you wish to make a new FOI request, you greatly narrow the scope of the information you seek. It is a far better

use of the resources available to you under the FOI Act to be as narrow and specific as you are able to allow a focused search for the information you are interested in and allow us to assist you.”

24. TfL has attempted to provide some advice and assistance to the complainant by suggesting the request is narrowed. However it doesn't provide the complaint with any specific advice as to how the request could be refined. In the circumstances, given TfL has provided the briefing note which is a record of the decision and as it cannot determine whether any further information is held within the cost limit, TfL should have confirmed that more detailed advice and assistance would not be possible in this case. Whilst technically it has not therefore complied with its obligations under section 16 FOIA, as it is unlikely any meaningful advice and assistance could be provided in this case, the Commissioner has not ordered any steps to be taken.

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@justice.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.....

Gemma Garvey
Senior Case Officer

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