

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 February 2023

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

Decision (including any steps ordered)

1. The complainant requested information from Transport for London (the public authority). The Commissioner's decision is that the public authority is entitled to rely on section 40(2) of FOIA to withhold some of the requested information.
2. The Commissioner requires the public authority to take the following step:
 - Provide a fresh response to the complainant regarding question 5 of the request which does not rely on section 40(2) of FOIA to withhold the information.
3. The public authority 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 FOIA and may be dealt with as a contempt of court.

Request and response

4. On 7 April 2021, the complainant made the following request for information to the public authority:
 - "1) How many referrals have been made by DAATS to residential rehab services at [name redacted] since 2018?

- 2) How many of the people referred to [name redacted] completed their stay?
 - 3) Of those who did not complete their stay, please state the reasons
 - 4) How many of those who did not complete their stay were referred to another rehab? How many were discharged from DAATS?
 - 5) Have any complaints been made about the rehab, whether upheld or not?
 - 6) How many of the people referred to the rehab by DAATS were not White British?
 - 7) How many of the people who did not complete their stay were not White British?"
5. The public authority refused to provide all of the requested information citing section 40(2) (personal information) of FOIA as its basis for doing so.

Reasons for decision

Section 40 - personal information

6. This reasoning covers whether the public authority was correct to apply section 40(2) of FOIA to the request.¹
7. Section 40(2) says that information is exempt information if it is the personal data of another individual and disclosure would contravene one of the data protection principles. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
8. In this case, the Commissioner is satisfied that the withheld information is personal data because it relates to stays at a rehabilitation centre and the level of detail requested could be used to identify individuals.

¹ <https://www.legislation.gov.uk/ukpga/2000/36/section/40>

9. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
10. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary and whether these interests override the rights and freedoms of the individuals whose personal information it is.
11. The Commissioner considers that the complainant is pursuing a legitimate interest and that disclosure of the requested information is necessary to meet that legitimate interest.
12. However, the public authority has confirmed that whilst it holds the information, disclosure of the information, at the level of detail for the information requested will disclose third party personal data. Therefore, the Commissioner considers that the third party/parties would have a strong and reasonable expectation that their information relating to their residential care placement will remain confidential.
13. The Commissioner acknowledges that the public authority has reviewed its position and stated that it can provide a response to question 5 of the request as this does not deal with personal data.
14. The Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the third party. Therefore, he considers that there is no legal basis for the public authority to disclose the requested information and to do so would contravene a data protection principle; that set out under Article 5(1)(a) of the UK General Data Protection Regulation.
15. The Commissioner's decision is that the public authority is entitled to rely on section 40(2) of FOIA to refuse to provide the requested information that concerns personal data.
16. The Commissioner requires the public authority to provide a response to question 5 of the request which does not rely on section 40(2) of FOIA.

Right of appeal

17. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

18. 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.
19. 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

Michael Lea
Team Manager
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Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF