

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 17 April 2023

**Public Authority:** North East Combined Authority  
**Address:** c/o South Tyneside Council  
Town Hall & Civic Offices  
Westoe Road  
South Shields  
NE33 2RL

#### **Decision (including any steps ordered)**

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1. The complainant requested information from North East Combined Authority ("the public authority"). The Commissioner's decision is that the public authority was entitled to refuse to comply with the request in accordance with section 12(1) (cost limit) of FOIA. The Commissioner also finds that the public authority complied with its obligations under section 16 of FOIA to offer advice and assistance.
2. The Commissioner does not require the public authority to take any steps.

#### **Request and response**

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3. On 10 January 2023, the complainant made the following request for information to the public authority:  
  
"Please could you specify:  
  
(a) the number of "Unpaid Toll Charge Notices" issued to people who traveled by motor vehicle through the Tyne Tunnel on December 22nd 2022.

(b) How many of these "Unpaid" Toll Charge Notices were dated at least one day after a toll payment had been made for the vehicle in question."

4. The public authority responded to the request on 6 February 2023, providing an "estimated" figure for part (a) and refusing to provide the requested information in respect of part (b) of the request, citing section 12 (cost limit) as its basis for doing so.
5. On 7 February 2023, the complainant requested an internal review.
6. The internal review outcome was provided on 1 March 2023 and advised the complainant:

- that the answer to part (a) of their request was an:

"estimate with a good degree of confidence in its accuracy. Here, the Combined Authority and TT2 were mindful that confirming the absolute accuracy of the number in question would require officer time in addition to what would be required to answer your second question, and so would have been likely to have resulted in both questions being refused under Section 12(1) of the FOI Act".

- of a more detailed explanation about how the "Unpaid Toll Charge Notices" are generated and advised:

"At present, no business need has been identified to report on numbers of cases that would meet the criteria set out in your question and so the information you seek was not held by or on behalf of the Combined Authority, either at the time of your request or at the present time. To this extent, the Combined Authority confirms that the information you seek in question (b) is not held in a substantive form for the purposes of the Act (FOI Section 1(1a) refers).

While it may be possible to derive the information you seek from data in Tolling, Payment and UTCN systems, the organisational separation between UTCN and Tolling & Payment systems and processes means that this would require –

- The extraction and compilation of the date on each of the 1,755 UTCNs issued in relation to 22/12/2022 journeys, and
- The identification, extraction and compilation of every VRN covering the 1,775 UTCNs issued in relation to 22/12/2022 journeys, followed by–

The examination of Payment systems records to determine –

- Whether any payment had been received in relation to a VRN linked to a UTCN (i.e. "payment made for the vehicle in question"), and
- Whether such payments had been made one or more days prior to the date on the UTCN.

The Tunnels operator has advised that there is no report that would allow the requirements above to be undertaken electronically / automatically by (for example) filtering and cross-referencing and, as such, the necessary tasks would require manual examination and cross-referencing of the datasets in question."

### **Scope of the case and the Commissioner's decision**

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7. The complainant contacted the Commissioner on 4 March 2023, to complain about the way their request for information had been handled. The complainant was dissatisfied that an "estimated" figure had been provided in response to part (a) of the request and, with regard to part (b) of the request, disagree with the public authority's application of section 12 of FOIA.
8. This reasoning covers whether the public authority is correct to apply section 12(1) (cost limit) of FOIA to the request.<sup>1</sup> The appropriate limit<sup>2</sup> for the public authority in this case is £450 (calculated at a flat rate of £25, equating to 18 hours of work).
9. By way of back ground, a third party concessionaire (TT2) operate the system on behalf of the public authority and the public authority advises that, with regard to part (a) of the request, there is no contractual requirement for TT2 to provide the public authority with daily numbers of how many Unpaid Toll Charge Notices (UTCNs) have been issued. Rather, TT2 provide the public authority with a monthly services report. However, the public authority have advised that:

"TT2 (NECA's Concessionaire in relation to the Tunnels) was able to interrogate UTCN systems for the number that [redacted] had requested, and this number was provided accordingly. While there was a good degree of confidence in the accuracy of the number, it was supplied with the caveat of an estimate as the systems interrogation

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2000/36/section/12>

<sup>2</sup> <https://www.legislation.gov.uk/uksi/2004/3244/regulation/4/made>

needed was an ad-hoc exercise, outside of normal contractually-established enquiries or reporting, prompted solely by the FOI request received from [redacted]."

10. With regard to part (b) of the request, the public authority has advised the Commissioner that:

"At the time of asking (and at present) there is no contractual requirement to report numbers of cases where UTCNs "were dated at least one day after a toll payment had been made for the vehicle in question" per [redacted] request (see reporting requirements above).

It is relevant here to confirm that the UTCN process is triggered only where a Tunnel Journey has been made, but any toll payment applicable to that journey has not been paid by the published payment deadline (i.e. by midnight the day after the journey in question).

There is an inevitable short administrative gap between a payment deadline being missed by a customer, triggering a UTCN, and the resulting Notice being issued to the person responsible for toll payment.

It is likely that some Tunnels Users will make payments in respect of "vehicles in question" within this gap: some Tunnel Users may be topping up a PrePay account or paying for journeys in advance through the Tunnels' Pay For Passage facility, while others may attempt a payment in order to cover off a payment deadline that has already elapsed. However, as a non-payment event has already occurred this last scenario does not retrospectively pay the past-due amount. In any of these cases, it should be noted that TT2's web and mobile systems state (before a User proceeds to a payment page) quite clearly –

"Pay in advance for your journey or by midnight the day after your travel

Do not use this option if you are trying to pay for a journey that is now outside of the payment period. Any late payment(s) made in this way will be used to pay for future journeys.

(source - <https://account.tt2.co.uk/guests/passages/pay>)"

- which is a clear confirmation that any payment made after a particular journey's payment deadline has been missed will not be applied to that journey."

11. The public authority further advised the Commissioner that:

"Question (b) information was not held at the time of [redacted] request, is not currently held in a discrete disclosable form, and (to the extent that data in Tolling and UTCN systems could constitute relevant 'building blocks') the work required to generate a discrete, disclosable number in response to the request would exceed the fees limit."

12. The public authority has calculated the cost of responding to part (b) of the request, in relation to each of the 1,775 UTCN records, as follows:

". Open UTCN Record – Each UTCN record needs to be checked for the related VRM information. Approx 2 minutes.

. Confirm account exists and Type – VRM's can then be validated as being part of a pre-paid or guest account – note if no account then data is not held. Approx 2 minutes.

. If pre-paid account – Check the system for account top-ups between the UTCN initiation date and the postage date – Approx 2 minutes.

. If guest account – Check transactions system for guest payments between UTCN initiation date and the postage date – Approx 2 minutes."

13. The Commissioner is satisfied that the public authority's arguments above are justified because it has reasonably estimated the cost and this is clearly in excess of the cost limit. Even if the length of time to review the UTCN's was halved, the request would still be well in excess of the cost limit under FOIA.

14. The Commissioner's decision is that the public authority was correct to apply section 12(1) of FOIA to the request.

### **Section 16(1) – The duty to provide advice and assistance**

15. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice<sup>3</sup> in providing advice and assistance, it will have complied with section 16(1).

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<sup>3</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

16. The public authority advised the Commissioner that:

“It was and remains difficult to identify any scope for advice / assistance in this case. [redacted] questions were felt to be clear enough. Information has been provided which was hoped to have been sufficient to address what we believe may be misconceptions with regard to how the payment systems work.”

17. The Commissioner notes that in addition to explaining how the system worked and although it was under no obligation to do so (as the application of section 12 applies to the whole of a request), the public authority also provided the complainant with a response to part (a) of the request, which, it has confirmed, was based on recorded information extracted specifically to respond to that part of the request. The Commissioner is therefore satisfied that the public authority met its obligations under section 16 of FOIA.

## Right of appeal

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

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

19. 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.
20. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**