

Date: 8 October 2014

Item 14: Freedom of Information and Transparency

This paper will be considered in public

1 Summary

1.1 This paper provides a review of compliance with the Freedom of Information Act and the Environmental Information Regulations and an update on related transparency initiatives.

2 Recommendation

2.1 **That the Committee note the paper.**

3 Background

3.1 The Freedom of Information (FOI) Act 2000, and the Environmental Information Regulations (EIR) 2004 give anyone anywhere in the world the right to request access to any recorded information held by TfL (or held on its behalf), without having to give a reason. Public authorities are generally required to respond to requests for information within 20 working days and provide the requested information unless an exemption applies. If the request is for recorded information about the environment, or factors likely to affect the environment, then it is handled under the EIR, which implement an EU Directive. The EIR are similar to the FOI Act though there are some minor differences in the rules for withholding information and the Regulations have a clearer inbuilt presumption that disclosure of official information is in the public interest.

4 FOI and EIR Performance

4.1 TfL receives a substantial volume of FOI and EIR requests. 2648 requests were received in 2013/14, the highest annual total recorded, and a 13 per cent increase on 2012/13. So far this year there are indications that the upward trend in request volumes may be levelling off or even reversing. In 2013/14, 87.3 per cent were answered on time and 82.3 per cent of all requests resulted in full disclosure of the information requested. In the year to date, 87.4 per cent of replies have been sent within the statutory deadline (at the end of Period 5). Data on FOI and EIR performance is routinely published on the TfL website.

4.2 Requests are made from a variety of sources – members of the public, transport enthusiasts, staff and union representatives, the media, bloggers and Assembly Members and MPs. Approximately a fifth of all requests received in 2013/14 were made through What Do They Know.com, a website to facilitate the process of making requests to any public authority which publishes all requests and replies,

as well as associated correspondence, in real time. Six per cent of all requests were considered under the EIR rather than the FOI Act.

- 4.3 FOI requests are managed centrally (except for those relating to Crossrail) by a team of 7FTE. Across TfL, it is estimated that it costs approximately £1.1m per year to manage these requests. Instructions and guidance on the management of requests is communicated through the TfL Management System, with a focus on ensuring that requests are identified quickly and processed efficiently – this includes instructions for the pro-active publication of information, which can provide an alternative to making requests or help ensure that replies are seen in their wider context.

5 Enforcement

- 5.1 Applicants under the FOI Act and the EIR who are dissatisfied with the response they receive to a request are entitled to an internal review of the way their request was handled. 105 requests for an internal review were received in 2013/14 (meaning 3.9 per cent of all requests resulted in an internal review). If the applicant is dissatisfied with the outcome of the internal review, the Information Commissioner (IC) will investigate alleged instances of non-compliance with the FOI Act and the EIR. Any person who has made a request to a public authority for the disclosure of information under the FOI Act or the EIR can apply to the IC for a decision on whether a request has been dealt with in accordance with the Act or the Regulations. Appeals against the IC's decisions are heard by the First-Tier Tribunal (Information Rights).
- 5.2 In 2013/14, the IC took formal regulatory action, by issuing a Decision Notice (DN), in response to four complaints about the handling of FOI and EIR requests received by TfL. Two of these DNs found that the FOI Act had been applied correctly, one found that the Act's statutory deadline had not been complied with, though the refusal of the request concerned was correct and one found that the EIR required the disclosure of information which had been withheld in response to a request.
- 5.3 In the case of eleven further complaints, the IC closed their investigation without taking formal action, generally when informed that an overdue reply to an FOI or EIR request had been sent. In 2013/14 the First-Tier Tribunal (Information Rights) heard one Appeal by an FOI applicant against a DN that had been issued in TfL's favour. The Tribunal dismissed the Appeal on 3 December 2013, though leave to make a further appeal, to the Upper Tribunal, has recently been granted.
- 5.4 The Information Commissioner has a stated policy of considering enforcement action against public bodies if they reply to fewer than 85 per cent of requests within the statutory deadline or if six or more complaints are made to the IC about late replies within a six month period. As the latter position appears to apply irrespective of the number of requests a public authority receives, it exposes authorities such as TfL to a greater risk of enforcement action.
- 5.5 Such action usually involves a period of close performance monitoring by the Information Commissioner prior to a decision on whether to issue a formal direction requiring improvement. .

6 Transparency

- 6.1 Alongside the requirement to answer requests for information, the FOI Act requires the pro-active publication of information (the FOI 'Publication Scheme'). The IC requires these Schemes to follow model schemes he has developed for specific groups of public authorities. Building on this approach, TfL has taken significant steps to expand the quality and quantity of information that is routinely published, recognising the benefits this offers customers, stakeholders and ourselves.
- 6.2 Pro-active publication helps customers use TfL services more effectively, for example through the provision of live information on network performance, and helps the public and stakeholders hold TfL to account and scrutinise activities and decisions, for example through the publication of contracts and data on expenditure. An increasing range of data on operations and performance is being published, including in areas that have been the subject of a high volume of FOI requests. This either directly addresses the FOI demand or at least enables requests to be dealt with more efficiently - in 2013/14, replies to 204 requests relied, at least in part, on information already published, or planned for publication. This was a 40 per cent increase on 2012/13.
- 6.3 A Transparency Strategy is being developed, which will set out a commitment to the pro-active publication of information and explain the approach TfL is taking to promote further progress. It is proposed to hold a public consultation to inform the development of the Strategy, ensuring that it reflects the views of customers and stakeholders on what more we can do.

List of appendices

None

List of Background Papers:

None

Contact Officer: Howard Carter, General Counsel
Number: 020 3054 7832
Email: HowardCarter@tfl.gov.uk