

TRANSPORT FOR LONDON

AUDIT COMMITTEE

**SUBJECT: REQUESTS FOR INFORMATION MADE TO TFL UNDER THE FREEDOM OF INFORMATION ACT AND THE ENVIRONMENTAL INFORMATION REGULATIONS**

**DATE: 15 JUNE 2011**

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**1 PURPOSE AND DECISION REQUIRED**

- 1.1 The purpose of this paper is to update the Audit Committee on TfL's compliance with the Freedom of Information (FOI) Act 2000 and the Environmental Information Regulations 2004 (EIR) and the outcome of the assessment by the Information Commissioner's Office (ICO) of TfL's compliance with the timescales for replying to requests made under the FOI Act and the EIR.
- 1.2 The Committee is asked to note the paper.

**2 BACKGROUND**

- 2.1 TfL routinely publishes and distributes a substantial volume of information for customers, stakeholders and the general public, which covers all aspects of TfL's activities and performance, planning and the investment programme. In addition, the FOI Act gives individuals a general right to request access to all types of recorded information held by public authorities, including TfL and all its subsidiaries. The EIR grant similar rights but in respect of environmental information, which is broadly defined in the Regulations and encompasses information on measures and activities affecting, or likely to affect, the environment. The ICO is the regulatory body responsible for monitoring and enforcing compliance with the FOI Act and the EIR.
- 2.2 There is only a limited range of exemptions which permit the withholding of information in response to these requests and most of the exemptions are subject to a public interest test, which limits their use to situations when the public interest in applying the exemption outweighs the public interest in disclosure. The exemptions can be used to withhold, among other things, information which is personal, prejudicial to commercial interests, health and safety or law enforcement or which was provided in confidence or is subject to legal privilege.
- 2.3 FOI and EIR requests made to TfL (except for those relating to London Underground and Crossrail) are managed by the Information Access and Compliance Team (IACT) within the Corporate Governance Directorate of General Counsel. This arrangement was established in November 2010. Requests relating to LU are managed by LU Customer Services, in liaison with IACT.

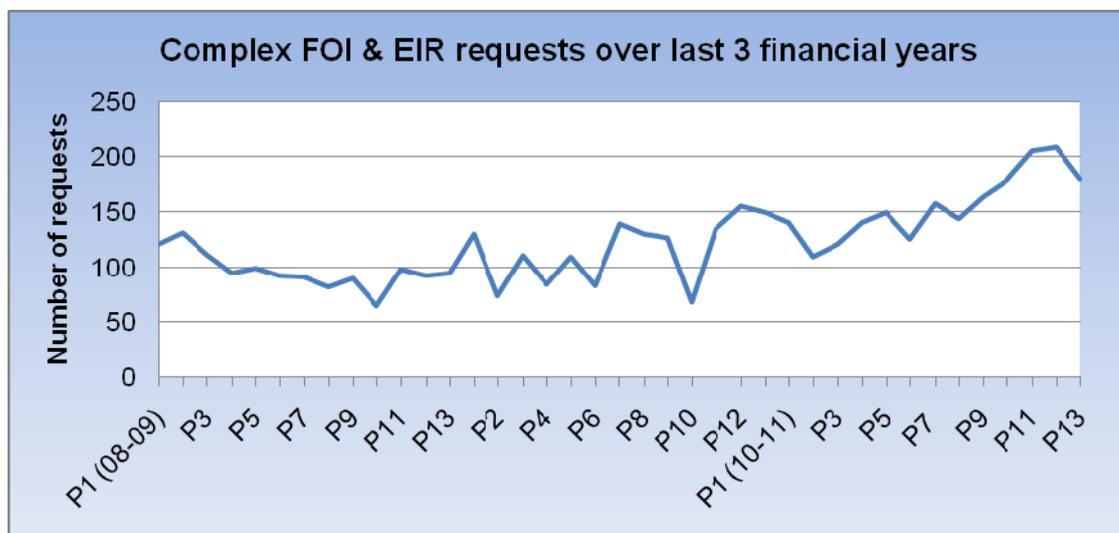
- 2.4 As the Committee is aware, the ICO advised TfL on 24 August 2010 that it would be undertaking an assessment, over three months from 1 September, of TfL's compliance with the requirement in both the FOI Act and the EIR for requests for information to be responded to within 20 working days. The ICO initiated this action in relation to TfL following six complaints that it received from members of the public who made FOI requests to TfL between December 2009 and March 2010.
- 2.5 The ICO has stated that it is likely to initiate an assessment if it receives more than six complaints of delay within a six month period, if the organisation has exceeded the time for compliance by a significant margin or if fewer than 85 per cent of requests are receiving a response within the appropriate timescales (for those authorities which publish data on timeliness).
- 2.6 Alongside the assessment of TfL's compliance, the ICO monitored 33 other public bodies, including the Cabinet Office, the Home Office, the Department for Work and Pensions, the Ministry of Defence, the Metropolitan Police Service and seven London Boroughs.

### **3 THE INFORMATION COMMISSIONER'S ASSESSMENT OF TFL**

- 3.1 During the three month period of the ICO's assessment TfL received 438 FOI and EIR requests. Over that period, 375 requests (85.6 per cent) were replied to within the statutory deadline and the percentage replied to on time increased from 73 per cent for requests received in September to 94 per cent for requests received in November.
- 3.2 In response, the ICO informed TfL on 31 January 2011 that 'in view of the improved performance displayed by TfL across the monitoring period we are satisfied that there is no need for the Commissioner to pursue regulatory action at this time'. This was announced by the ICO in a press release on 12 April that listed TfL as one of the 26 bodies whose compliance with FOI timescales had improved to the extent that 'no action is being taken against them'. The remaining seven bodies (including the Cabinet Office, the Ministry of Defence and Birmingham City Council) are facing regulatory action, in some form.
- 3.3 The Information Commissioner made it clear in this press release that he continues to pay close attention to FOI performance and announced a new list of 18 more authorities (including the Highways Agency, the City of London Police, the Department for Education and Southwark and Kingston Borough Councils) which he is currently monitoring for timeliness. He expects to publish a further list later in the year.
- 3.4 This represents a step-change in the ICO's monitoring of compliance with the timescales in the FOI Act and the EIR and is the first systematic attempt by the ICO to use its enforcement powers to bring about an improvement in public authorities' performance.
- 3.5 Since the end of the ICO's assessment, over 90 per cent of the requests received by TfL each period have been replied to on time.

## 4 FOI AND EIR REQUESTS RECEIVED BY TFL

- 4.1 FOI requests are received from members of the public, customers, journalists, stakeholders (including MPs, Assembly Members and union representatives) and staff. Between 1 November 2010 and 31 March 2011, 80 requests (13 per cent) were received from the media, 26 requests (four per cent) from staff and union officials or representatives and nine requests (one per cent) from Assembly Members and MPs or their researchers. The requests ask for the disclosure of information on virtually the whole range of TfL's responsibilities. As well as many requests about TfL's services and operations, requests are received for the disclosure of information on HR issues (salaries, organisational structures and staff performance), procurement and contract management and planning and project delivery.
- 4.2 An increasing trend is for replies to requests to be published by recipients, either through blogs or, more often, through the use of a website ([www.whatdotheyknow.com](http://www.whatdotheyknow.com)) dedicated to enabling members of the public to make FOI requests to any public authority. All correspondence with an applicant who makes a request through this website, including the final reply, is automatically published on the website. Between 1 November 2010 and 31 March 2011 TfL received 26 requests (four per cent) made in this way.
- 4.3 In 2010/11 TfL received 2008 requests, an average per period of 154. This is the highest annual volume of requests recorded by TfL since the legislation was implemented in January 2005 and a 33 per cent increase from 2009/10 and a 58 percent increase from 2008/09. Request volumes varied throughout the year with a peak of 209 requests recorded in Period 12 and a low of 110 recorded in Period 2. The trend in the number of requests received per period in the last three years is shown in the table below.



- 4.4 The total number of FOI and EIR requests recorded by each of TfL's FOI case management teams during 2010/11 is shown in the following table.

Case Management Team	FOI requests	EIR requests	Total
Group Customer Services (prior to November 2010)	668	16	684
FOI Case Management Team	580	44	624
London Underground Customer Services	657	6	663
Crossrail	37	0	37
<b>Total</b>	<b>1,942</b>	<b>66</b>	<b>2,008</b>

- 4.5 An exemption under the FOI Act or an exception under the EIR was used to withhold information in response to 129 requests, either in full or in part, and a further 78 FOI requests were refused because the time involved in answering them would have incurred a cost in excess of the statutory limit provided for in the FOI Fees Regulations. In total, therefore, ten per cent of the requests received by TfL were refused on these grounds in 2010/11.
- 4.6 If applicants are dissatisfied with the response to their request they have the right to request an internal review of how their request was handled, prior to making a complaint to the Information Commissioner if they remain dissatisfied. In 2010/11, 107 requests were made for an internal review of the response which had been provided to an FOI or EIR request, meaning five per cent of FOI and EIR requests resulted in a request for internal review.
- 4.7 In 2010/11 the ICO notified TfL of 23 complaints it had received in relation to TfL's handling of FOI or EIR requests, of which five remain open. The ICO is required to investigate all complaints it receives and consider whether enforcement action is required. Fourteen of the complaints were resolved informally and four resulted in the ICO issuing a Decision Notice to formally record the outcome of their investigation. One Decision Notice upheld TfL's decision to deem a series of FOI requests as vexatious. Two Decision Notices identified a breach of the FOI Act because of a failure to respond to a request within 20 working days (but required no further action) and one Decision Notice issued in relation to a request received in 2009/10 found that TfL should have considered the request under the EIR rather than the FOI Act. The outcome of ICO investigations is reported routinely to senior management and to the Audit Committee in the Legal Compliance report.

## 5 RECOMMENDATION

- 5.1 The Audit Committee is asked to NOTE this paper.

## 6 CONTACT

- 6.1 Contact: Ellen Howard, Director of Corporate Governance  
 Number: 020 7126 4221  
 Email: [EllenHoward@tfl.gov.uk](mailto:EllenHoward@tfl.gov.uk)