



Department for Transport

S Marr

[By email: request-304994-6ca08e61@whatdotheyknow.com]

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Our Ref: F0013086

25th January 2016

Dear S Marr,

Freedom of Information Act Request – F0013086 – Internal Review

I am writing with regard to your FOI request which you originally made to the Department for Transport on the 29th November 2015. Specifically you asked the Department:

'I am writing to request the following for each of the Train Operating Companies currently operating services:

- A copy the penalty fares scheme approved by the Department that is currently in force

- Any appendixes and attached documents

- A copy of the instructions given to authorised collectors

- For those train operating companies that do not have a penalty fares scheme in place, confirmation that they do not operate a penalty fares scheme

Each of these documents has been disclosed after passing a public interest test in other applications before now. As examples, relevant disclosures were made to the following requests on whatdotheyknow.com:

P0011886 -

https://www.whatdotheyknow.com/request/south_west_trains_penalty_fares#incoming-610966

https://www.whatdotheyknow.com/request/penalty_fares_3#incoming-406123

F0010124 -

https://www.whatdotheyknow.com/request/penalty_fares_3#incoming-406123

8268 -

https://www.whatdotheyknow.com/request/copy_of_written_instructions_and

The Department responded to you on the 23rd December 2015.

The Department's response provided copies of the penalty fares schemes for those train operating companies (TOCs) that have them as well as providing a list of TOCs that do not operate penalty fares. With regard to the instructions given to authorised collectors the Department advised that if it held information it has been disclosed as part of the schemes. If there were no staff instructions then information is not held or has been redacted. Junior official's names were withheld in reliance on the third party personal information exemption at section 40(2)&(3) of the Act. A small amount of information was also withheld from the schemes in reliance on the exemption at section 43(2) which covers commercial interests and a public interest test was included in the reply as the exemption is qualified.

On the same day you emailed the Department to request an internal review of its handling of your request. The basis of your complaint was as follows:

'Thank you for providing the Penalty Fare Schemes as asked for. Unfortunately, your response appears to be missing the 'Instructions for Collectors'. These are documents that must be submitted by the Train Operating Company when having their scheme authorised as specified in paragraph 4.28 of Strategic Rail Authority (2002) Penalty Fares Policy May 2002. SRA: London.

You are now acting as the Authority with regard to Penalty Fares Schemes so you should be able to provide copies of these documents. Should you need to refer to, a previous successful request for a single operators instructions was given the reference number 8268.

I am therefore requesting an internal review of this response as a large part of the information asked for has not been provided.'

As a member of the Department's Information & Security Division who was not involved in the handling of your original request I have carried out an independent review. I set out my findings below.

I have concentrated my internal review on the part of your original request that asked for ***'A copy of the instructions given to authorised collectors'*** and not considered any other part of the Department's original response as your internal review just focusses on this specific point. I have considered two issues – first, whether the information you requested is indeed held by the DfT, and second whether your original request was handled in accordance with the requirements of the Act.

Instructions Given to Authorised Collectors

As part of my review I contacted the policy team and asked them to explain to me exactly what information was disclosed for this part of your request. They have confirmed that where a TOC operates a penalty fare scheme there is a section in the scheme which provides some information on written instructions to authorised collectors. For example this is contained at section 8 of the Southeastern scheme. This is the information that was released to you where it was held but for some minor redactions under the s43(2) exemption covering commercial interests. However, I have established from speaking to the policy team that this is different to the instructions that the TOCs issue to their collectors which is what I believe you are seeking.

I asked the policy team to carry out a further search of the Department's paper and electronic records for the actual instructions that the TOCs issue to their authorised collectors. They have confirmed to me that the Department does not hold this information nor do they any longer hold a copy of the South West Trains 'Revenue Protection Handbook' which was disclosed via the 'What do they Know' website under case reference number F0011886 in Jan 2015 as highlighted in your request.

In your internal review request you stated that, '***These are documents that must be submitted by the Train Operating Company when having their scheme authorised as specified in paragraph 4.28 of Strategic Rail Authority (2002) Penalty Fares Policy May 2002. SRA: London.***

You are now acting as the Authority with regard to Penalty Fares Schemes so you should be able to provide copies of these documents.

As I'm sure you are aware the Strategic Rail Authority (SRA) was abolished in 2006. Some of its functions transferred to the Department for Transport Rail Group, some to Network Rail and some to the Office of Rail Regulation.

I have been advised that the DfT have not authorised the introduction of any new Penalty Fares Schemes since taking over this role from the SRA, therefore the Department has not had a business need to see copies of the instructions for those train operators which operate such schemes.

You'll notice that some of the penalty fares schemes disclosed to you post date the abolition of the SRA. When operators apply to the Department to *modify an existing scheme*, they are not obligated to provide the 'Instructions for Authorised Collectors' in their application. Therefore, again, I am satisfied that the DfT does not have copies of such instructions for those train operators who have modified their schemes.

Handling of Request F0013086

Section 16(1) of the Act states:

"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it."

In my view, the original response you received on whether or not the Department held any information on the instructions issued to authorised collectors was confusing and did not fully provide the assistance it might have done.

It is clear to me that the response to you whilst materially correct, did not clearly explain what the information the Department held actually related to, nor did it explain why the specific information that you seek is not held. I would like to apologise for this omission.

Further Correspondence

On the 7th January 2016 you sent an additional email to the Department as follows:

'I am writing to ask that the internal review also address another point:

With regards to the Essex Thameside franchise, c2c Rail Ltd gave up the franchise to their successor NXET Trains Ltd. The scheme also makes reference to 'permit to travel' machines that were removed some years ago. Can you confirm that this scheme is still the one that is in operation, and if so that it has not been updated to reflect the changes to ticket facilities at stations run by NXET trains.'

The Department acknowledged receipt on the same day and advised you they considered this to be a fresh request for information and logged it under reference number F0013199.

You replied on the same day as follows:

'Respectfully, I disagree with your policy team. This is not a request for new information, but a request that as part of your internal review you confirm that the scheme you have provided for the Essex Thameside franchise in response to my request for 'every penalty fares scheme currently in force' is actually current, given that it relates to the previous franchise holder c2c Rail Ltd rather than the current franchise holder NXET Trains Ltd.

It is reasonable for me to ask you to review this, as I have good reason to believe that the information you have provided is not current for the reason stated above.

Please can you reconsider your decision.'

Having carefully considered your two emails and spoken to the policy team I have decided to uphold their decision to treat your follow up correspondence as a fresh request for information.

Your complaint focussed on the 'missing' instructions given to authorised collectors not to the penalty fares schemes themselves which of course you were not in receipt of when you submitted your original request. Therefore I consider any follow-up query about the penalty fares schemes that the Department disclosed to you as part of their reply must be a fresh request for information. I have also taken into consideration the fact that your request of the 7th Jan was made 8 working days after your initial request for an internal review. An independent reviewer needs to be able to review a complaint without the distraction of having to consider additional representations nearly half way through the process.

I have been advised that you will receive a reply to case F0013199 on or before the 4th February 2016.

Conclusions

Having carefully consider your complaint I believe that the Department's original reply should have been clearer in explaining what information the Department holds with regard to the instructions given to authorised collectors and made it clear that it does not hold the actual instructions issued to its staff by the TOCs. It should have gone on to explain why this was the case.

If you haven't already done so you may wish to consider contacting each of the TOCs and asking them for a copy of this information although they are not subject to the FOI Act so any disclosure would be on a voluntary basis.

If you are not content with the outcome of this Internal Review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Yours sincerely,

Ivan Pocock
Information & Security Division