



Department for Transport

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By e-mail

13 October 2017

To: Doug Paulley [<mailto:request-425127-64a1a0f6@whatdotheyknow.com>]

Dear Mr Paulley

Re: FOI Request F015105 - Internal Review

I am writing in response to your email of 15 September 2017 in which you requested an internal review of the Department for Transport's (DfT) handling of your request for information. This review will look at whether your information request was handled in compliance with the requirements of the Freedom of Information Act 2000 (FOIA). I have conducted this review as a member of the Department's Information & Security Division who was not involved in the original consideration of your request and my findings are set out below.

Background

On 14 August 2017, you requested the following information in relation to the Night Riviera Sleeper service:

1) Please provide recorded information that explains why you granted dispensation from the requirement that sleepers of the size of the Night Riviera must have two sleeper berths.

2) Please show which organisations you consulted on this dispensation, why you chose those organisations, and how the organisations responded to the consultation.

3) Please provide your Equality Impact Assessment of your decision to award this dispensation.

If the above is unlikely to provide me with the information I am seeking, please exercise your S16 obligation to assist me to formulate a request that is more likely to come up with the information I am after.

4) Please provide a link to the version of the PRM-TSI document you use for your dispensation spreadsheets and letters. The one I have, and every version I can find online, puts the wheelchair berth requirement at 4.2.2.10(2) but your dispensation refers to 4.2.2.11 instead.

On 12 September 2017, DfT responded as follows:

The dispensation granted to Great Western Railway (GWR) for the operation of the Riviera Sleeper in December 2016 represents the conclusion of a dialogue between the Department and GWR dating back to 2012. We have estimated that the cost of complying with your request to find all relevant recorded information in that 5 year period would exceed £600. Section 12 of the Act (the full text of which is attached) does not oblige the Department to comply with requests that exceed this limit, and we are therefore refusing your request.

We are unable to answer your request within the cost limit because we do not keep a central record of all of this information. We would need to carry out a manual search of paper and electronic records to determine what information we hold, then to locate, retrieve and extract it.

Where part of a request would exceed the cost limit, the correct approach, as confirmed by the ICO guidance, is to refuse all parts of a request. You asked for assistance to specify your request further, in the event that the questions you have submitted will not provide the information you're seeking on the reasons for Night Riviera dispensation. To assist you in specifying any further requests you may have, information on dispensation policy may be useful for you.

The Department's policy when reviewing dispensation requests for vehicles built prior to modern accessibility standards is to consider the constraints imposed on the ability to meet the standards of the PRM-TSI by the technical and physical limitations of the existing vehicle's construction. This policy is referred to as 'targeted compliance' and was developed in consultation with the Disabled Persons Transport Advisory Committee (DPTAC). It is designed to facilitate the delivery of accessibility improvements to keep older vehicles operating whilst retaining a pragmatic approach on what is deliverable.

With regard to consultation on dispensation request, as a minimum, we consult DPTAC, the Office of Rail and Road and Transport Focus. The Secretary of State's powers to grant a dispensation allows the disapplication of an accessibility standard, set for newly built rail vehicles, to older vehicles that are still in operation. By the nature of the request, the central focus of the consideration of the impact of permitting the request is on disabled passengers and those with reduced mobility.

I can provide you with the link to the version of the PRM-TSI which the vehicles have been assessed against and upgraded to. This is the 2008 version and can be found here:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008D0164&from=EN>

The establishment of the European standard is designed to cater for all types of sleeper train operated across Europe and has no requirement to be applied retrospectively to any trains in operation before 2008. The regulations which transpose the requirements of the Interoperability Directive

(<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:191:0001:0045:EN:PDF>) into UK law (the Railways (Interoperability) Directive 2011

<http://www.legislation.gov.uk/ukxi/2011/3066/contents/made>) included an end date by which all non-regulated vehicles must become regulated in order to harmonise requirements between existing domestic accessibility standards established under the Disability Discrimination Act 1995. After 1 January 2020 no further dispensations for vehicles built prior to 1999 should be required.

Please note, I cannot guarantee that Section 12 or any other exemption of the FOIA will not apply to any future requests for information.

The response went on to provide details of the complaints process and the exemption at section 12 FOIA.

On 15 September 2017, you complained about the response DfT provided you with on the basis that:

- you did not request ‘all relevant recorded information’ for the past five years; rather you asked for *‘recorded information that explains why you granted dispensation from the requirement that sleepers of the size of the Night Riviera must have two sleeper berths’*;
- no guidance was provided to you on refining your request so that it could be handled within the appropriate limit;
- the request was not responded to promptly;
- you were not provided with the requested Equality Impact Assessment, not was a suitable exemption applied.

I will address the points you raise below.

Timeliness

DfT received your request on 14 August 2017 and responded to it on 12 September 2017. This period of time was used to give proper consideration to the questions raised and to seek internal advice and guidance on the applicable procedures for handling the request. I note that you also received notice that your request had been accepted and were advised when you could expect to receive a response. As DfT responded to your request within the time limit of twenty working days stipulated by section 10(1) FOIA, I am satisfied that it was responded to promptly.

Section 12 and section 16 FOIA

Was section 12 FOIA engaged?

DfT provided you with information in relation to the final part of your request, but advised that otherwise section 12 FOIA was engaged and that it would be too costly to provide you with recorded information in relation to the first three questions raised.

At question one, your original request asked for ‘recorded information that explains why [DfT] granted a dispensation’ as well as information to ‘show which organisations [you] consulted on this dispensation, why [you] chose those organisations, and how the organisations responded to the consultation’. You also asked to see the Equality Impact Assessment associated with the decision to award the dispensation.

It might be helpful if I clarify that, to be able to provide recorded information which explains why a decision was made to grant a dispensation, DfT would need to provide not just the outcome but all information relating to the considerations and deliberations that led to that final decision. As such, it would need to locate, retrieve and extract records that date back

to 2012, a process which would exceed the £600 cost limit for central government, which equates to over 24 hours of work.¹

I am satisfied that section 12 was engaged in relation to your request. It was appropriate for DfT to not disclose recorded information explaining the dispensation decision, information which shows who DfT consulted, what their response was and why DfT chose to consult them and also any equality analysis that DfT may have carried out.

However, in the circumstances, DfT should have refused to disclose all of the information you requested, including the PRM TSI information. The reason for this is that when section 12 is engaged, it should be applied to the whole of the request. This is to give you the opportunity to decide whether and how to refine your request in order to focus it on the precise information that you would like within the costs limit. I hope that the disclosure of this information was helpful, nonetheless, and has provided you with some useful background.

I will now go on to consider whether DfT met its obligations in terms of providing adequate aid and assistance to you in terms of helping you to refine your request.

Section 16 – aid and assistance

It is correct that you were not advised what information could be provided to you within the cost limit. I have consulted with the relevant officials who have explained that they felt it most appropriate in this case to provide you with background information on the dispensation consideration process, including details of who is consulted and why dispensations are granted, in order to assist you with refining your request. You were also provided with guidance on where to find relevant information in the public domain.

Information Commissioner guidance on section 16 states that a public authority must:

- *either indicate if it is not able to provide any information at all within the appropriate limit; or*
- *provide an indication of what information could be provided within the appropriate limit; and*
- *provide advice and assistance to enable the requestor to make a refined request.*

While DfT did provide you with aid and assistance which would enable you to make a refined request, it did not explicitly indicate what information, if any, could be provided within the cost limit. While I believe it broadly met its section 16 obligations in providing you with background information which it believed would be helpful to you, it could have gone further in explaining what information could have been disclosed within the appropriate limit. This review response will go on to provide you with more detailed guidance on what information could be provided to you.

What information could be provided?

I can confirm that it would be possible to disclose information relevant to the request within the cost limit, provided the request is further refined. The widest part of your request is at question 1, where the time and cost associated with fully answering this question exceeds

¹ See regulation 3 of The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, available online at: <http://www.legislation.gov.uk/uksi/2004/3244/contents/made>

the appropriate limit for responding to requests under FOIA. If you were to refine this part of the request it is likely that DfT would be able to comply with your entire request within the appropriate limit. You could, for example, refine the scope of the first question to ask to see the record of the decision to grant a dispensation for the Riviera Sleeper vehicles, which could be readily provided. This also includes a statement on considerations of the Equality Duty which applies to public authorities, which you may find useful in response to your question regarding an Equality Impact Assessment. To be clear, no separate Equality Impact Assessment document was prepared. Additionally, DfT could provide the stakeholder consultation responses, if you were to ask for these as part of your refined request.

It would also be possible to provide you with the record of the decision to grant dispensation, which comprises a 'signature minute', or a summary request to grant dispensation as submitted to the Head of Interoperability. However, this is a statement of the final decision, rather than all recorded information which explains how that decision was reached as originally requested.

Please let us know if you would like to refine your request as set out above or otherwise. I should also advise that it is possible that other exemptions may apply in relation to information covered by a revised request.

Conclusion

Overall, I have concluded that while DfT ought not to have disclosed the PRM TSI information to you when applying section 12, your request was dealt with in a legally compliant manner. I do not uphold your complaint.

Outside the scope of this review, policy officials have asked me to relay to you that they would be happy to have a conversation or meeting with you in order to find a way to provide you with the information you are interested in. If you would like to take up this offer, please let us know. The rolling stock team email address is:
railvehicleaccess@dft.gsi.gov.uk.

If you are not content with the outcome of this internal review, you have the right to apply to the Information Commissioner for a decision. The contact details are:

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

Yours sincerely

Aimee Gasston
FOI Advice Manager