

Date: 15 September 2021

Item: Freedom of Information Update

This paper will be considered in public

1. Summary

1.1 The Freedom of Information (FOI) Act provides public access to information held by public authorities. The Environmental Information Regulations (EIR) provide a similar right of access to information which relates to the environment. This legislation is overseen by the Information Commissioner's Office (ICO), the independent regulator enforcing the effective processing of requests by public authorities. This paper provides an overview of our performance in processing FOI and EIR requests in 2020/21, as well as 2021/22 to date.

2. Recommendation

2.1 **The Committee is asked to note the paper.**

3. Background

3.1 The ICO currently expects public authorities to reply to at least 90 per cent of all FOI and EIR requests within the statutory deadline (usually 20 working days – the deadline can be extended for FOI requests in the event more time is required to assess whether the public interest favours using an exemption, to withhold information, or for complex EIR requests). TfL has exceeded this target annually since meeting it for the first time in 2017/18.

4. Current Performance

4.1 In 2020/21 TfL replied to 2,202 requests within the statutory deadline from a total of 2,203 received. This provides a response rate of 99.95 per cent of replies being made within the statutory deadline (including 65 replies which were on time but where the deadline was extended). This figure is the highest percentage of requests replied to on time within a financial year by TfL since the FOI Act and EIR came fully into force in 2005, and a 0.55 per cent increase on the previous year which was the previous highest, at 99.4 per cent.

4.2 Due to the effect of the coronavirus pandemic, the overall number of requests received in 2020/21 showed a 30 per cent decrease on the preceding year (2,203 compared to 3,169). Despite the significant pressures the pandemic placed on TfL only one reply was not issued within the statutory deadline, a reduction of 19 from the previous year.

4.3 Appendix 1 provides the response rate broken down by period since 2018/19, as well as the periods within 2021/22 for which we have complete figures so far.

- 4.4 Appendix 2 shows the number of FOI and EIR requests received in each period since 2018/19, along with a breakdown of cases categorised as complex and non-complex. Requests are classed as 'complex' when they have potential to create media or political interest.
- 4.5 Around 74 per cent of all FOI and EIR requests are responded to in full, with 12 per cent relying on a partial exemption and 14 per cent being refused in full due to an applicable exemption. The most common reasons for refusals are because the information is or will be published (29 per cent of all exemptions) or because the time needed to respond to the request exceeds the applicable limit of 18 hours (also 29 per cent of all exemptions). A further eight per cent of all exemptions apply to protect the personal data of individuals.

5. FOI Caseload

- 5.1 FOI requests are made about the full range of TfL's responsibilities, and perhaps the most striking aspect of the caseload is its variety. In 2020/21 examples of notable clusters of requests included those around the Streetspace Programme and Low Traffic Neighbourhoods in particular, changes to Congestion Charging, face covering enforcement and the impact of coronavirus on TfL and our response to it.
- 5.2 In order to support TfL in prioritising its operational resources on managing the coronavirus response and then restart and recovery, across 2020/21 we asked people to consider not making FOI or EIR requests. This messaging (which is no longer being used), along with the reduced passenger count across the network, led to a significant drop in request volumes.
- 5.3 2020/21 saw an average of 169 FOI/EIR requests per period compared with an average of 240 over the three years previous, a drop of 29.5 per cent. In line with the reduction in passenger levels, requests relating to London Underground experienced the biggest reduction in volume with a drop of 58 per cent in requests across 2020/21, compared with the previous year.
- 5.4 Current volumes in 2021/22 are 40 per cent higher than those from the first quarter of 2020/21 and we can expect this to increase further as more passengers return to the network and make use of our services. However, volumes are currently around 21 per cent below the figure for the first quarter of 2019/20. Despite the increase in volumes and the continued pressure on TfL as a result of the pandemic, we continue to respond to all of these requests within the statutory deadline, having responded on time to 100 per cent of the 833 requests we have processed this financial year, up to 6 September 2021.
- 5.5 Appendix 3 directly compares the difference in volumes both cumulatively and by period across the first four periods of 2019/20 to 2021/22.
- 5.6 Replies to all requests received in 2020/21 were published on the TfL website, which supports the Transparency Strategy, and we have been able to answer more requests by simply referring to previously published replies, or other information published on the website. Approximately 30 per cent of all exemptions

applied are because the information is already published, or intended for future publication.

6. Reviews and Appeals

- 6.1 The progress made in achieving a consistently high response rate across all areas of TfL has required a sustained effort and we maintain a commitment and focus across the organisation on access to information legislation to keep this going.
- 6.2 Should a requester be unhappy with a response to their FOI or EIR request, they have the right to request an internal review into the handling of their request. As a result of the improvements highlighted above, and despite the severe pressures the pandemic placed on TfL, we have reduced both the number and proportion of these complaints – 123 (3.9 per cent of 2019/20 caseload) to 71 (3.2 per cent of 2020/21 caseload).
- 6.3 Of the 71 internal review requests into the handling of an FOI or EIR request, three (4.2 per cent, or 0.13 per cent of the total caseload) were escalated to the ICO by the requester for further consideration. However, we did not receive any Decision Notices from the ICO in 2020/21 recording their formal conclusion on our compliance as two of the cases escalated to the ICO were resolved informally and one was withdrawn.
- 6.4 The three requests referred to the ICO in 2020/21 is the lowest on record for TfL since the FOI Act and EIR came fully into force in 2005. This is also the first time we have not had a single Decision Notice issued in relation to our compliance. This, along with the reduction in the proportion of internal review requests, appears to suggest that requesters are increasingly satisfied with the way TfL has approached their request and, specifically, complied with the legislation. This goes some way to improving how open and transparent TfL is considered to be.

List of appendices to this report:

Appendix 1 – FOI/EIR response rate by period 2018 to 2021

Appendix 2 – FOI/EIR request volumes by period 2018 to 2021

Appendix 3 – Comparison of Periods 1 to 4 FOI/EIR request volumes 2019 to 2021

List of Background Papers:

None

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