

Date: 20 September 2023

Item: Freedom of Information Update

This paper will be considered in public

1 Summary

- 1.1 The Freedom of Information (FOI) Act 2000 provides public access to information held by public authorities. The Environmental Information Regulations 2004 (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.
- 1.2 This paper provides an overview of our performance in processing FOI and EIR requests in 2022/23 (1 April 2022 to 31 March 2023), as well as 2023/24 to date (1 April to 11 September 2023).

2 Recommendation

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

3 Background

- 3.1 The ICO currently expects public authorities to achieve a good level of compliance by replying to at least 95 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 on an annual basis since achieving it for the first time in 2017/18.

4 Current Performance

- 4.1 In 2022/23 TfL replied to 3,374 requests within the statutory deadline from a total of 3,376 received. This provides a response rate of 99.94 per cent of replies being within the statutory deadline. This figure is just 0.01 per cent below 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.
- 4.2 Request volumes are now at their highest since the FOI Act and EIR came into force. Despite this significant rise in requests, we have been able to successfully respond within the statutory deadline to 9,814 (99.92 per cent) of the 9,821 FOI/EIR requests we have received between 1 April 2020 and 11 September 2023.

- 4.3 Appendix 1 provides the request volumes broken down by the 13 periods of each financial year (1 April to 31 March) since 2018/19, as well as the five periods of 2023/24 for which we have complete figures so far (1 April to 11 September 2023).
- 4.4 Around 70 per cent of all FOI and EIR requests are responded to in full, with 11 per cent relying on a partial exemption and 19 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 (27.5 per cent of all exemptions) or because the time needed to respond to the request exceeds the applicable limit of 18 hours (27 per cent of all exemptions). A further nine per cent of all exemptions apply to protect the personal data of individuals.

5 FOI Caseload

- 5.1 In 2022/23 there was a significant increase in requests relating to the Ultra Low Emission Zone (ULEZ) following the announcement in November 2022 that the ULEZ is to be expanded (205 cases in 2021/22 to 385 in 2022/23). As well as this, requests around advertising, cycling infrastructure, air quality and public transport reliability all feature as frequent topics of interest.
- 5.2 Following the significant (30 per cent) drop in request volumes during the height of the coronavirus pandemic in 2020/21, we have seen a continual increase in volume which has now led to request numbers exceeding any previous year on record.
- 5.3 The overall number of requests received in 2022/23 showed a 21.8 per cent increase on the preceding year (3,376 compared to 2,771). 2022/23 saw an average of 259 FOI/EIR requests per period compared with an average of 213 over the previous year.
- 5.4 Current volumes in 2023/24 (an average of 312 requests have been received per period) are 34.3 per cent higher than those from the first five periods of 2022/23 which currently stands as the busiest ever year for requests. Based on current request volumes we project that we will exceed 3,500 requests in a year for the first time ever. Despite the increase in volumes and the continued pressure on TfL we continue to respond to almost all of these requests within the statutory deadline, having responded on time to 1,469 (99.8 per cent) of the 1,471 requests we have processed this financial year, up to 11 September 2023.
- 5.5 Replies to all requests received in 2022/23 were published on the TfL website, which supports the Transparency Strategy, and we have been able to answer over a quarter of our requests by simply referring to previously published replies, other information published on the website or by explaining that the information requested is due to be published in the near future.

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. We keep internal processes under review to ensure known risks to compliance, including inadvertent disclosure, are mitigated.
- 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 performance highlighted above, and despite the additional pressures that increased request volumes have placed on TfL, we have maintained a low, albeit slightly increased, proportion of requests resulting in complaints – 128 (3.8 per cent of 2022/23 caseload) against 81 (2.9 per cent of 2021/22 caseload).
- 6.3 Of the 128 internal review requests into the handling of an FOI or EIR request, 10 (7.8 per cent, or 0.3 per cent of the total caseload) were escalated in 2022/23 to the ICO by the requester for further consideration. Six of the 10 cases considered by the Information Commissioner upheld our position and found in our favour, two were resolved in our favour informally, one decision found that, in the ICO's view, our interpretation of a request had been too broad and one other is awaiting a decision by the ICO.
- 6.4 The positive outcome in decision notices mark a continuation of our excellent record where cases are escalated to the Information Commissioner which appears to suggest that the Information Commissioner and requesters recognise the commitment behind TfL's approach to FOI and our compliance with the legislation. This goes some way to improving how open and transparent TfL is considered to be and enhancing the reputation of the organisation more generally.

List of appendices to this report:

Appendix 1: FOI/EIR request volumes by period since 2018/19

List of Background Papers:

None

Contact Officer: Howard Carter, General Counsel
Email: howardcarter@tfl.gov.uk