

# Decision Notice

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## **Decision 152/2016: Mr Peter Bennet and Strathclyde Partnership for Transport**

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### **Glasgow Subway – working timetable and track circuit lengths**

Reference No: 201501494

Decision Date: 7 July 2016



Scottish Information  
Commissioner

## Summary

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On 21 June 2015, Mr Bennet asked Strathclyde Partnership for Transport (SPT) for information regarding the Glasgow Subway.

SPT responded, disclosing some information, and withholding the remainder as it considered disclosure would compromise the safety and security of the Subway trains, depot, staff and passengers. Following a review, Mr Bennet remained dissatisfied and applied to the Commissioner for a decision.

The Commissioner investigated and found that SPT was entitled to withhold the remainder of the information requested, on the basis that its disclosure would be likely to endanger the health or safety of individuals.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 39(1) (Health, safety and the environment)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

## Background

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1. On 21 June 2015, Mr Bennet made a request to SPT for information relating to the Glasgow Subway, specifically prior to any work on the current modernisation program. The information requested was as follows:
  - (i) Please provide me with a copy of the working timetable for the trains (weekdays and weekend).
  - (ii) What is the line speed of the trains when running in service between stations and on the lines to and within the depot?
  - (iii) Please provide me with a scale plan of the track circuit layout. I assume you have similar scale plans to those Network Rail and LUL [London Underground] have. Alternatively, please provide me with a list of all track circuit lengths.
2. SPT responded on 16 July 2015:
  - (i) SPT informed Mr Bennet that information on the Subway service, including times of the first and last trains and service frequency at peak periods, was available on its website. It provided the corresponding weblink. SPT withheld operational information, specifying the timetable for movement of trains in and out of the system, under section 39(1) of FOISA. It considered disclosure would compromise the safety and security of the trains and the depot.
  - (ii) SPT provided Mr Bennet with the information requested on line speeds.

- (iii) SPT informed Mr Bennet it was withholding information on the track circuit layout and track lengths under section 39(1) of FOISA, as it believed disclosure would compromise the safety and security of the Subway system.

Applying the public interest test, SPT stated its preliminary concern was for the safety and security of staff and passengers. On balance, it concluded the public interest lay in withholding the information sought in parts (i) and (iii).

- 3. On 16 July 2015, Mr Bennet wrote to SPT, requiring a review of its decision on the basis that it had failed to explain why it considered section 39(1) applied: it was not apparent to him how disclosure of the information could have the effects claimed by SPT. Mr Bennet gave examples of working timetables published by similar organisations to support his argument for disclosure. Referring to other information already in the public domain concerning the track circuit, Mr Bennet believed this diminished SPT's arguments for withholding the information.
- 4. SPT notified Mr Bennet of the outcome of its review on 13 August 2015, upholding its original decision in full. It acknowledged some information relating to the Subway might be publicly available, but this was not official SPT information and it refused to confirm the accuracy of the data. SPT confirmed the information requested was not otherwise publicly available, considering this information to be of a secure nature.
- 5. On 15 August 2015, Mr Bennet wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. Mr Bennet stated he was dissatisfied with the outcome of SPT's review because it had not adequately explained why the exemption in section 39(1) applied: it was not apparent to him how disclosure of the information requested would have the effects claimed.

## Investigation

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- 6. The application was accepted as valid. The Commissioner confirmed that Mr Bennet made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
- 7. On 20 August 2015, SPT was notified in writing that Mr Bennet had made a valid application. SPT was asked to send the Commissioner the information withheld from Mr Bennet. SPT provided the information and the case was allocated to an investigating officer.
- 8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. SPT was invited to comment on this application and answer specific questions, with particular reference to the steps taken to identify and locate what information it held, and any provisions of FOISA it considered applicable to the withheld information. SPT was also asked to comment on whether some of the withheld information actually met the terms of Mr Bennet's request, and on information which, in Mr Bennet's view, was already in the public domain.
- 9. SPT provided submissions to the investigating officer. Clarification of aspects of these was sought, and obtained, during the investigation, including through a meeting with SPT. Mr Bennet also provided submissions on why he believed it was in the public interest for the information to be disclosed.

## Commissioner's analysis and findings

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10. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to her by both Mr Bennet and SPT. She is satisfied that no matter of relevance has been overlooked.

### Information held

11. In order to ascertain whether SPT had identified and located all relevant information falling within the scope of the request, it was asked to provide an explanation of the searches it had undertaken to identify, locate and retrieve that information.
12. In addition, from examination of the information withheld for part (iii) of Mr Bennet's request, it was apparent to the investigating officer that this information did not satisfy the terms of his request: it was not a scale plan and did not show track circuit lengths. SPT was therefore invited to explain why it believed this information satisfied this part of the request, and to confirm whether it held any information that actually met the criteria Mr Bennet had stipulated. SPT was also asked to provide the investigating officer with any relevant information it found.
13. For part (i), SPT explained that enquiries had been made with its Senior Director (Projects) and its Operations and Security Manager. It was established that the working timetable was held on a database managed by its Senior Operations Officer. SPT submitted that no other searches were considered necessary for this information.
14. For part (iii), SPT confirmed that it undertook searches of its database and hard copy records relevant to Subway infrastructure, to identify any track circuit information held. These identified a "Location Area and Cable Route Plan" which gave details of the track circuit layout in the yard and the Subway system. SPT submitted this was the only overview that appeared to be held on the system, and was not to scale.
15. SPT acknowledged that identifying this information as relevant to Mr Bennet's request was an oversight.
16. SPT explained its searches confirmed that it held information relating to the line track circuit lengths, but not the track circuit lengths in the yard. Additional enquiries with the Subway system's designer (for the modernisation in the 1970s) established that the existing distances and measurements were used for all track circuits and only the technology changed: the designer confirmed it held no records showing detail of lengths.
17. In conclusion, SPT confirmed it did not hold a scale plan of the track circuit layout, or information relating to all track circuit lengths (only line track circuit lengths). The investigating officer again asked SPT to provide the line track circuit information it did hold. This was duly provided, together with an explanation of the data (considered further below).
18. Having considered SPT's submissions and the terms of the request, the Commissioner is satisfied that the additional searches undertaken by SPT during the investigation were sufficient to identify any information relevant to the request. She is satisfied that for part (iii) of Mr Bennet's request, SPT does not hold a scale plan of the track circuit layout, and holds information on line track circuit lengths only.
19. SPT submitted to the Commissioner that the information it was withholding for both parts (i) and (iii) was exempt under sections 39(1) and 31(1) of FOISA. The Commissioner will first of all consider the application of section 39(1).

## Section 39(1) – Health, safety and the environment

20. Section 39(1) of FOISA states that information is exempt information if its disclosure under FOISA would, or would be likely to, endanger the physical or mental health or the safety of an individual. This is a qualified exemption and is subject to the public interest test required by section 2(1)(b) of FOISA.
21. In the Commissioner's briefing<sup>1</sup> on this exemption, it is noted that section 39(1) does not contain the usual harm test. Instead of the "substantial prejudice" test found in various other exemptions contained in Part 2 of FOISA, this exemption refers to the "endangerment" of health or safety. The briefing also notes that the test of "endangerment" is less demanding than the "substantial prejudice" test applied in other exemptions.
22. The Commissioner's view is that the term "endanger" is broad enough to apply where there is a (direct or indirect) threat to the safety of a person which would foreseeably arise in the future, as well as immediate harm, since the exemption does not specify that any threat should be imminent before it applies. The Commissioner believes that for endangerment to be considered likely, however, there must be some well-founded apprehension of danger, such that the prospect of harm could be regarded as a distinct possibility.

### *Security standards*

23. SPT explained it was subject to the railway security standards set out and enforced by the Secretary of State for the Department for Transport (DfT), whose powers are provided under the Railways Act 1993. In line with DfT regulation, SPT explained it operated under a strict security regime imposed and inspected by the DfT, to maintain the security and integrity of the system, and to ensure protection against acts of violence. As part of this regime, DfT could issue instructions to SPT, to protect the Subway, and persons or property there, against acts of violence.
24. SPT further submitted that the Subway was also subject to the United Kingdom's Strategy for Countering Terrorism (CONTEST), the aim of which is "to reduce the risk to the UK and its interests overseas from terrorism so that people can go about their lives freely and with confidence". It explained that the "Protect" objective therein was particularly relevant to the Subway infrastructure and operations, in aiming to protect against terrorist attack by reducing the vulnerability of the transport network, increasing resilience and improving protective security.
25. SPT explained that it had arrangements with both British Transport Police (BTP) and private security firms, to maintain security on the Subway. It referred to information on BTP's website<sup>2</sup>, reinforcing the message that trespass and vandalism on railway infrastructure has not only a monetary cost, but also puts lives in danger.
26. Security, SPT submitted, was of paramount importance to its operation and, as a public body, it had a responsibility to ensure the safety and security of the travelling public. It explained security threat levels were continually under review within the national context, influencing its response to day-to-day activities. It stated that the Glasgow Subway was acknowledged as one of the safest train operating systems in the country, although it was a target of groups intent on causing harm.

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<sup>1</sup> <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/section39/Section39.aspx>

<sup>2</sup> [http://www.btp.police.uk/advice\\_and\\_info/how\\_we\\_tackle\\_crime/trespass\\_and\\_vandalism.aspx](http://www.btp.police.uk/advice_and_info/how_we_tackle_crime/trespass_and_vandalism.aspx)

### *Working Timetable*

27. SPT explained that the Subway trains were marshalled and positioned to enter the underground system from the rail yard at Broomloan at set frequencies and times, depending on the time of day and the timetable in operation (i.e. summer or winter).
28. SPT explained the difference between the publicly available timetable and the working timetable. The timetable publicly available on SPT's website showed the times of the first and last trains, and the frequency of service dependent on the time of day. This was public information.
29. The working timetable, on the other hand, provided information on train movements within the yard in preparation for entering public service, and at Govan Station. This included the times when trains entered and left the system. SPT provided further explanation of how the working timetable operated in practice, however due to the confidential nature of this information, the Commissioner is unable to go into any further detail on this point within this Decision Notice.
30. SPT submitted that the information in the working timetable served no purpose for the travelling public: it did not relate to normal operations, but to the movement of trains out of public view.
31. There had been past occasions, SPT explained, where intruders had entered the yard and vandalised trains preparing to enter service, resulting in additional costs and disruption to the advertised (publicly available) timetable. SPT stated there was nothing to indicate whether these acts of vandalism were opportunistic or planned. As the yard environment had live rail throughout, SPT also submitted that there was a serious health and safety risk to unauthorised persons: in any event, vandalism to trains or infrastructure could also endanger the health and safety of staff and passengers.
32. SPT submitted that disclosure of the details in the Working Timetable would advantage those individuals intent on causing damage or disruption, by providing an additional layer of information to that already in the public domain. This would assist them to gauge the timing and positioning of trains when they were at their most vulnerable, i.e. before entering service, and determine points of particular vulnerability to maximise such damage or disruption. SPT maintained that disclosure of this information could make the success of any attack more likely and therefore more attractive to a would-be attacker. SPT argued this presented an unacceptable risk to the safety and security of staff and the travelling public.

### *Working Timetable information published by other parties*

33. Commenting on the public availability of working timetables for other, similar, transport systems, SPT submitted that it held no information surrounding the decisions taken by these other operators to publish information of this nature. SPT emphasised that, unlike other transport operators such as Network Rail and Lothian Buses, the Glasgow Subway operated wholly underground.

### *Track circuit lengths*

34. SPT submitted that disclosure of the track circuit lengths could potentially jeopardise the safe running of the Subway system, endangering staff and passengers. It argued that it had no control over the use or availability of the information, once it reached a third party. Knowledge of the technical detail would potentially advantage anyone intent on planning disruption or an attack on the network. Noting the current UK threat level sat at "severe", meaning an attack was highly likely, SPT submitted that it must demonstrate to the DfT that it



had taken all possible steps to protect the travelling public and minimise any possible advantage to those intent on causing disruption to the service.

35. SPT explained that the track and the signalling infrastructure were one and the same. It considered disclosure of the information would allow individuals to make accurate predictions about train movements and positions, increasing the likelihood of effective attack and maximum disruption (which, in the current environment, it considered to be a real risk).
36. Referring to a decision notice for a similar case issued by the UK Information Commissioner<sup>3</sup>, and the subsequent decision on appeal to the First Tier Tribunal<sup>4</sup>, SPT submitted that, given the increased risk of attack in recent years and previous attacks on metropolitan railways across the world, the risk of terrorist attack on the Glasgow Subway was far from remote or hypothetical.
37. SPT was asked how the endangerment to the physical or mental health or the safety of an individual would manifest itself, and the nature of the endangerment that would result from disclosure of the information. SPT submitted the endangerment in this case would manifest itself as an attack on individuals using and/or working in the Subway system, resulting in damage to their physical or mental health, and possibly loss of life.
38. SPT further submitted that this was an additional strand of information, not in the public domain, which might advantage anyone so inclined to commit a malicious act. It would allow the identification of exactly where trains were at a particular time, and of points of particular vulnerability. It would allow an incident to be more targeted or focused. It highlighted the Commissioner's *Decision 055/2005 Russ McLean, Chief Executive of Argyll Group plc, and Caledonian MacBrayne Limited*<sup>5</sup>, where section 39(1) was upheld in relation to detailed plans for a ferry. It also noted the possibility of remote access to non-public areas.

#### *Track circuit lengths published by other parties*

39. Commenting on a plan of the Subway showing the track circuits that Mr Bennet had described as already being publicly available (having been published by a third party organisation), SPT stated this was not an official SPT document and contained only part of the information requested. SPT commented it had taken account of the fact that the security threat level and environment had significantly changed since the timing of that publication.
40. Referring to the publication by Network Rail of details of track layouts and infrastructure, SPT commented it held no information surrounding the decisions taken by other transport operators to publish such information. Unlike Network Rail, whose track layouts and infrastructure were surface-based and visible (and in many instances accessible, albeit illegally, to the public), SPT submitted that Glasgow Subway operated wholly underground and this detail was not readily seen by the public. Given its underground environment, SPT considered the impact of any attack, whether based on any technical knowledge or not, was greatly increased.

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<sup>3</sup> [https://ico.org.uk/media/action-weve-taken/decision-notice/2012/726770/fs\\_50421919.pdf](https://ico.org.uk/media/action-weve-taken/decision-notice/2012/726770/fs_50421919.pdf)

<sup>4</sup> [http://www.informationtribunal.gov.uk/DBFiles/Decision/i968/2013\\_02\\_28;%20Decision;%20EA.2012.0127.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i968/2013_02_28;%20Decision;%20EA.2012.0127.pdf)

<sup>5</sup> <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2005/200501603.aspx>

### *Further submissions from SPT*

41. SPT submitted that the information, taken either in isolation or together, would allow would-be attackers to work out, with relative accuracy, the positioning of a train at any particular time.
42. While it recognised that any individual so disposed would be able to glean similar, albeit less accurate, information from that already available in the public domain, SPT contended that disclosure of the detailed information under consideration here would speed up the planning process of any potential attack and provide precise information, advantageous to any would-be attacker, that was not already publicly available.
43. SPT argued that individuals intent on any such attack (which would, or would be likely to, result in endangerment of Subway users) were less likely to conduct hostile reconnaissance in person, as the likelihood of any suspicious behaviour being identified and detected by security staff was greater. It was more difficult to detect remote reconnaissance, so it was necessary to limit the amount of information publicly available more remotely, e.g. via the internet or in response to an information request.
44. SPT explained that it had consulted with the DfT's Land Transport Security Policy Team on this matter, and provided the Commissioner with the opportunity to do so. The DfT considered disclosure of the information requested would put the Glasgow Subway in breach of its security regime, under which the Subway was required to operate. SPT provided the Commissioner with confidential, sensitive documentation to support its arguments in terms of the requirement to adhere to the DfT's security measures, the risk of these being breached by disclosure and the likelihood of attack. Given the sensitive and confidential nature of the submissions provided by SPT on this point, the Commissioner is unable to comment on this further within this Decision Notice.
45. As rail travel is "open" (in terms of passenger security checks), SPT argued that there are limited opportunities to protect the rail network. It submitted that there is therefore a requirement to be more sophisticated in terms of preventative measures, limiting the amount of information publicly available, and forcing those intent on attack and disruption to obtain their information in person, where they are more likely to be detected by security staff. SPT maintained that the greatest chance of preventing any potential attack is in the planning stages, so it is important (given the risk of remote reconnaissance highlighted above) to minimise the amount of information available via the internet.
46. Due to the security measures in place, SPT believed that the likelihood of attack resulting in endangerment to the health and safety of Subway users was generally low. It recognised, however, that it was easier to demonstrate the likelihood of attack after something had happened, or if there was evidence suggesting any such likelihood. Again, given the sensitive and confidential nature of the submissions provided by SPT on this point, the Commissioner is unable to comment on this further within this Decision Notice.

### *Commissioner's conclusions*

47. In considering SPT's submissions, the Commissioner has to be satisfied that SPT has evidenced threats to the physical health or safety of Subway users, resulting *directly from disclosure of the information sought*. She needs to be persuaded that such instances would be made more likely as a result of disclosing the information.
48. It is clear to the Commissioner, from SPT's submissions, that there have been past instances of vandalism to trains within the yard (when the trains are above ground), without knowledge



of the working timetable or the track circuit information sought in this case. SPT appears to acknowledge that intruders enter the yard already, notwithstanding the attendant risks to their own safety. It is also evident that train movements in the yard happen in the open already where trains enter and leave the system, from and to the yard, frequently. The question for the Commissioner is whether SPT has demonstrated that disclosure of the withheld information would have, or would be likely to have, the effect of making such events easier for the perpetrators, or more frequent.

49. The Commissioner acknowledges SPT's efforts to minimise attacks on trains in the yard. She also notes SPT's arguments that disclosure of the information requested would enhance the accuracy of the information already publicly available, and speed up the planning of any potential attack, thereby making the prospect of such incidents more attractive to a would-be attacker, and therefore more likely.
50. The Commissioner recognises that once information is placed into the public domain, control of that information diminishes. She acknowledges that detection of any prospective attack, in the planning stages, is more difficult when reconnaissance is being carried out remotely, as opposed to forcing would-be attackers to gather intelligence in person, where detection is more likely. She notes the security regime under which the Glasgow Subway operates, and that SPT has demonstrated it has security measures in place to detect hostile reconnaissance.
51. Following full consideration of SPT's submissions, the Commissioner is satisfied that SPT has sufficiently evidenced threats to the Subway system and its trains, which would be likely to result directly from disclosure of the information sought in parts (i) and (iii) of Mr Bennet's request, either taken in isolation or used together, or with other information already available in the public domain. She is satisfied that these would be likely to endanger the health or safety of individuals.
52. The Commissioner is satisfied that SPT's submissions have demonstrated how access to the information it holds, taken either by itself or with other information in the public domain, would (or would be likely to) bring about the harm suggested. She is satisfied that by disclosing accurate information which is not currently publicly available, it would thereby increase the risk of targeted attack that would endanger the physical or mental health or the safety of any person using or working in the Subway environment. She recognises that disclosing information which enhances the accuracy of that already available is likely to contribute to speeding up the planning process of any such attack, thereby making it more attractive and therefore a more likely prospect.
53. In all the circumstances, therefore, the Commissioner is satisfied that disclosure of this information would be likely to endanger the health or safety of any individual. Consequently, she must conclude that the exemption in section 39(1) of FOISA was correctly applied by SPT to the withheld information sought in parts (i) and (iii) of Mr Bennet's request, either taken together or in isolation. Having reached this conclusion, the Commissioner is required to consider the public interest test in relation to this information.

#### *The public interest*

54. Section 39(1) is a qualified exemption, which means that its application is subject to the public interest test in section 2(1)(b) of FOISA. Therefore, having decided that the information is exempt under section 39(1), the Commissioner must go on to consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.

55. In its submissions to the Commissioner, SPT recognised that openness, transparency and accountability were relevant factors in favour of disclosing the information. SPT also submitted that sufficient timetable and layout information for the travelling public was already published.
56. In considering the issues it believed to favour maintaining the exemption, SPT submitted that it had a responsibility, and staff and passengers had an expectation, that the Subway would be run in a manner which protected their safety and security, and minimised risk of endangerment. SPT submitted that, as the current UK threat level sat at severe, this meant a terrorist attack was highly likely: disclosure of the detailed information requested would increase the vulnerability of the Subway to attack, as control of that information would be lost.
57. On balance, SPT concluded that, taking account of the current security environment and advice on threat levels, there was no public interest in disclosing information which might lead to the health, safety and/or security of the Subway system, its staff and passengers, being compromised.
58. In his submissions to the Commissioner, Mr Bennet explained his reasons for requesting the information. He believed that, in relation to the working timetable, it was in the public interest for the actual times of trains to be known. He argued that most forms of urban transport run to some sort of timetable, even where the frequency is such that it is not apparent. He maintained that the working timetable simply reflected the aspirations of the provider in delivering the service and included details of when trains entered or left the service, and thus their frequency. He believed it was in the public interest to know this information, arguing that other transport providers had accepted this.
59. In relation to security concerns, Mr Bennet speculated that, given the frequency of service the Subway offers, and the possibility of trains not running to time, the working timetable information would be irrelevant to individuals intent on terrorist attack.
60. In relation to the track circuit information, it was not apparent to Mr Bennet how knowledge of this information could pose a security risk. Recognising that the track circuit and the signalling system were interconnected, he did not believe that knowledge of this information would be required to interfere with the system, or that it would inform individuals intent on attack of such a possibility, if they did not already know. Mr Bennet provided examples of signalling data, showing real-time train tracking publicly available from other rail networks, to support his arguments.
61. Mr Bennet accepted that, were actual track plans available for the Glasgow Subway, these might have the potential to reveal further, potentially harmful, information, but he contended that such information was not strictly necessary for his purposes.

*The Commissioner's conclusions – public interest*

62. The Commissioner recognises there is a public interest in openness and transparency by public authorities. In this case, while she notes that Mr Bennet has a personal interest in the information she requested, she accepts that there is a wider public interest in members of the public having accurate information.
63. The Commissioner must also consider the potential effects that disclosure of the information would have on the safety and security of Subway users and staff. As rehearsed above, due to the confidentiality and sensitivity of some of SPT's submissions, the Commissioner is limited in the level of detail she is able to record within this Decision Notice.

64. The Commissioner notes the security requirements under which the Subway operates, and that it has a duty to protect the safety its users and staff against incidents, of any magnitude, that would have a resulting negative impact on their health or safety.
65. Given the open nature of rail travel, and the limitations this presents, the Commissioner accepts that there is need for security measures to be sophisticated. In this regard, she also accepts the requirement to limit, to a safe level, the amount of information publicly available that could be used to advantage by those intent on attack. She has recognised above the threat presented by attack on the system to the health and safety of Subway staff and users.
66. The Commissioner has considered carefully all the public interest arguments she has received by both SPT and Mr Bennet. She does not accept that disclosure of the working timetable would enhance significantly the accuracy of information already publicly available. She notes that SPT already publishes timetable information showing the first and last times, and frequency of trains. The Commissioner considers the wider public interest is met by the provision of this information.
67. In relation to track circuit information, the Commissioner recognises Mr Bennet's personal interest in this information but can see no wider public interest in its disclosure.
68. In all of the circumstances of the case, the Commissioner finds that the public interest in maintaining the exemption outweighs that in making the information available. She therefore concludes that SPT was entitled to withhold the information sought in parts (i) and (iii) of Mr Bennet's request, under section 39(1) of FOISA.
69. As the Commissioner has determined that the information has been correctly withheld under section 39(1), she is not required to go on to consider the application of section 31(1).

### **Commissioner's observations**

70. The following observations are not part of the Commissioner's findings on compliance with FOISA, but cover practice issues the Commissioner has identified during this investigation and about which she has concerns.
71. The Commissioner has concerns about SPT's approach to this investigation. While these concerns do not amount to breaches of FOISA, SPT's actions had the effect of delaying the investigation, adding costs to both her office and SPT in meeting statutory duties and, ultimately, delaying the outcome of the investigation to which Mr Bennet is entitled. She would ask SPT to reflect on the following practice issues which, she hopes, are helpful to all Scottish public authorities and requesters.

#### *Searching for, locating and retrieving information*

72. At the start of the investigation, SPT failed to identify the relevant information falling within the scope of part (iii) of Mr Bennet's request when it conducted its initial searches, resulting in delays due to further searches and explanation being required during the investigation.
73. Section 6 of Part 2 of the Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the Environmental Information (Scotland) Regulations 2004<sup>6</sup> provides good practice advice on searching for information, advising on factors to be considered in relation to the scope and focus of searches, and on maintaining records of searches carried out.

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<sup>6</sup> <http://www.gov.scot/Resource/0046/00465757.pdf>

74. Conducting thorough and focused searches, identifying and retrieving all relevant information at an early stage, and providing context to explain any technical information where necessary, all reduce the amount of work required during the Commissioner's investigation.
75. The Commissioner would draw SPT's attention (and that of all Scottish public authorities) to Module 2 of the Self-Assessment Toolkit "Searching for, Locating and Retrieving Information"<sup>7</sup>. This resource is intended to assist authorities by giving them a tool which they can use to evaluate and, where necessary, improve practice in searching for, locating, identifying and retrieving information.

#### *Standard of submissions*

76. During this investigation, it is evident to the Commissioner that SPT repeatedly failed to provide submissions of the standard she expects, particularly in relation to demonstrating why the disclosure of the specific information being withheld would have the effects claimed. Concerns about the potential for endangerment to public safety resulted in the Commissioner repeatedly having to seek additional submissions and explanations from SPT, culminating in a meeting making considerable demands on the resources of both SPT and the Commissioner. All of this caused substantial delays in the investigation.
77. The Commissioner cannot stress enough the importance of public authorities providing adequate and focussed submissions when being asked to do so during an investigation. It should be apparent what is required by now, more than a decade after the introduction of FOISA: whatever the specific test under consideration, actual or likely harm must be evidenced and must be linked to the information being withheld.
78. Providing submissions of the required standard, from the outset, not only reduces the amount of time and work required by the public authority (and the corresponding costs) but also the resources the Commissioner's own staff require to invest in the investigation. It also ensures delays in the investigation are minimised, and that applicants are provided with an outcome, as is their right, at the earliest opportunity. Assuming the public authority has considered the relevant exemption(s) adequately when responding to the applicant, providing the Commissioner with submissions of the right standard should not be a challenge.
79. The Commissioner encourages SPT to reflect on these matters.

## **Decision**

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The Commissioner finds that Strathclyde Partnership for Transport (SPT) complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Bennet.

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<sup>7</sup> <http://www.itspublicknowledge.info/ScottishPublicAuthorities/Self-AssessmentToolkit/1Self-AssessmentToolkit.aspx>

## **Appeal**

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Should either Mr Bennet or Strathclyde Partnership for Transport wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

**Rosemary Agnew**  
**Scottish Information Commissioner**

**7 July 2016**

### Freedom of Information (Scotland) Act 2002

#### 1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

#### 2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

...

- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

...

#### 39 Health, safety and the environment

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to, endanger the physical or mental health or the safety of an individual.

...



**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**