
APPELLANT'S WRITTEN SUBMISSIONS

Following the hearing of 1 August 2024

References are to pages of the Mini Bundle [MB/] provided with this response.*

1. These written submissions follow the hearing of 1 August 2024 and focus primarily on the witness evidence of Ms H (abbreviated, TfL witness). Please separately see the Appellant's skeleton argument of 25 July 2024 and the Appellant's response to the 2nd respondent's written submissions of 24 May 2024. In the first instance, the Appellant thanks Ms H for her attendance, oral evidence and explanations given during the hearing.

The Appellant's understanding of Ms H's arguments

2. On the issue of a causal relationship, Ms H stated that she believed that disclosing the requested information would be likely to cause TfL the envisioned prejudice.
3. The Appellant understands that Ms H lends support for her view from a previous year where the British Transport Police (BTP) launched 'Operation Silverback'. As part of this, the Appellant understands that messages were posted in the media just before Christmas day, warning graffiti offenders of the penalties for graffiti and an operation targeting graffiti. The Appellant understands that Ms H stated 'Operation Silverback' had been deployed because the railways are relatively empty on Christmas day.
4. The Appellant understands that Ms H stated that, in that particular year, Camden Town station was targeted by graffiti vandals on Christmas day. Ms H stated that Camden Town station is located in close proximity to BTP's headquarters. The Appellant understands that Ms H believes it likely that BTP's media messaging directly caused graffiti vandals to target Camden Town station on Christmas day, being the station close to BTP's headquarters.
5. The Appellant questioned Ms H at the hearing as to why she believed that BTP's media messaging directly caused graffiti offenders to damage Camden Town station on Christmas day. The Appellant put it to Ms H that the mere fact that media messaging about penalties and the operation had been put out, did not mean that such messaging had likely **caused** increased graffiti vandalism on Christmas day. After all, as the Appellant put to Ms H, it seemed more likely to him that graffiti offenders would be more likely to engage in vandalism around Christmas Day anyway, due to the railways being relatively empty and there thus being less chance of being detected.
6. The Appellant does not recall Ms H substantially addressing the Appellant's point further beyond what she had stated previously, although the hearing was on a tight schedule at that specific time. The Appellant notes from the 'gist' of the closed hearing that this point may have been addressed further during the Closed part of the hearing, but the Appellant is not aware of the specifics of what was said in this respect.
7. The Appellant notes that Ms H provided no details about 'Operation Silverback' and the particular incident of graffiti vandalism at Camden Town station in her (open) written witness statement. The Appellant bases his understanding of Ms H's oral evidence on his best

recollection of her oral evidence at the hearing, as well as his written notes.

Operation Silverback and Camden Town station incident: BBC articles

8. Following the hearing, the Appellant has sought further information about 'Operation Silverback' and the vandalism incident at Camden Town station. The Appellant has found two BBC articles which appear to report on these matters dating back to 2006: "Officers target railway vandals" dated 24 December 2006 (see MB/2) and "Graffiti gang defaces Tube stop" dated 28 December 2006 (see MB/4).
9. The first article describes Operation Silverback as including a "national day of action" before the Christmas period. It also states: "extra patrols of Scotland's rail network are to be carried out over the festive period in a bid to combat graffiti vandals." It also "will see officers from the British Transport Police checking on depots."
10. The first article also helpfully provides some statistics about the year prior to Operation Silverback being commenced. It states: "Last year [2005], 31 graffiti attacks were recorded on Christmas Day across the UK, compared with 11 on 25 November. From Christmas Eve to Boxing Day, 63 attacks were recorded compared with 20 over the same three days in November."
11. The first article also quotes Detective Chief Inspector Jim McKelvie, of the Scottish area of British Transport Police, who said: "There are virtually no train movements on Christmas Day, but we know these vandals will try to take advantage of the hiatus on the rail system to commit criminal damage that costs rail companies thousands of pounds."
12. The second article describes graffiti vandalism taking place on Christmas day of 2005 at Camden Town station. It states: "The vandals are thought to have entered the station by walking along the tracks when the network was shut down on Christmas Day. [...] The attack came after pre-emptive arrests were made by British Transport Police in an attempt to prevent major vandalism attacks. Four people were arrested in London."

The Appellant submits that there is insufficient evidence of a causal relationship between Operation Silverback and an increased level of graffiti vandalism

13. According to the first article, in 2005 (the year before Operation Silverback started), graffiti attacks from Christmas Eve to Boxing Day were already **215%** (!) higher than the same 3-day period in November.
14. From the figures in the articles, it is therefore obvious that graffiti vandalism has traditionally increased over the Christmas period, even before the year that Operation Silverback was commenced. The Appellant therefore considers that there is no evidence of a causal relationship between Operation Silverback's messaging and an increased level of graffiti vandalism occurring. The Appellant submits that the real cause is the relative emptiness of the railways, reducing the risk of graffiti vandals being caught.

15. The Appellant further submits that Camden Town station is not the station located in closest proximity to BTP's headquarters at 25 Camden Rd, London, NW1 9LN. According to Google Maps, Camden Road station is located closer to BTP's headquarters than Camden Town station, specified as follows:
 - a. Camden **Road** station is located 0.07 miles (2-minute walk) from BTP's headquarters.
 - b. Camden **Town** station is located 0.2 miles (4-minute walk) from BTP's headquarters.
16. This further weakens TfL's submission that Camden Town station was targeted specifically. Additionally, the Appellant notes that Operation Silverback was a national BTP operation (including, at least, Scotland): it was not connected specifically to BTP's headquarters.
17. The Appellant is unable to say for certain whether or not there is a causal link between Operation Silverback and the specific location of the Camden Town station graffiti. This is because of the absence of further evidence on this point. However, it appears to the Appellant to be more likely that the station was simply targeted as part of the traditional increase in graffiti vandalism over the Christmas period.
18. Furthermore, the Appellant considers the question of whether there is a causal relationship between Operation Silverback and the specific location of one single graffiti attack from 2006 to be largely irrelevant to this appeal. The Appellant does not seek information about specific locations.
19. Operation Silverback included media messaging from BTP about pre-emptive arrests and increased patrols of the railway network over the Christmas period. TfL appears to suggest that this may have caused graffiti offenders to carry out attacks because they want to take risks and challenge BTP's authority.
20. However, the requested information in this appeal is not comparable with Operation Silverback's messaging and pre-emptive arrest action. The Appellant is not asking TfL to post press releases with warnings to graffiti vandals about increased patrols over a festive period in the future, nor about pre-emptive arrests, nor about criminal penalties. The Appellant merely seeks some straightforward information and annual figures of a period in the past.
21. For all these reasons, the Appellant submits that, in this appeal, there is no plausible causal relationship, nor is it likely that publication will cause the envisioned prejudice, in accordance with his Grounds III and IV.

TfL already publishes comparable fare evasion statistics and its full revenue enforcement & prosecutions policy

22. Ms H briefly mentioned fare evasion in her oral evidence, but sought to distinguish this from graffiti offences. The Appellant understands that this was because Ms H considered graffiti offenders to have different motivations compared to fare evaders, particularly in respect of the gaining of notoriety and kudos.

23. The Appellant submits that at least some fare evaders are committing the offence (partly) to gain notoriety and kudos. There are a number of online videos where fare evaders boast about their crimes and share their tips. See also MB/6, which contains a BBC article dated 5 December 2023. In that case, a TikToker who boasted about dodging train fares was caught and fined.
24. Fare evasion relates to similar prejudice under the FOIA as the information under consideration in this appeal. Fare evasion relates to criminal offences and TfL's commercial interests.
25. TfL has provided information about the revenue it recovers from fare evaders for certain periods, including in responses to FOI requests. For example, an FOI request response dated 25 April 2019 reveals that TfL prosecuted 26,164 irregularity reports and recovered £2,198,557 from prosecutions in the 2018/19 financial year (see MB/9). This is broadly similar to the annual information requested in Parts 3-5 in this appeal.
26. The Appellant notes that TfL has currently published its full Revenue Enforcement & Prosecutions Policy on its website at <https://content.tfl.gov.uk/revenue-enforcement-and-prosecutions-policy.pdf> See also MB/12.
27. The Appellant is merely seeking a yes/no answer as to whether civil recovery policies in respect of graffiti are held in this appeal (Part 1). The Appellant submits that such a yes/no answer is far less likely to cause any of the envisioned prejudice than TfL's ongoing publication of its full fare evasion enforcement & prosecution policy, regardless of offender motivation.
28. The Appellant submits that TfL's fare evasion publications are relevant to the question of whether a plausible causal relationship and sufficient likelihood of prejudice exist in this appeal. The Appellant submits this further supports his Grounds III and IV in this appeal, as well as demonstrating the considerable public interest in such publications (Ground V).

Ground I / Preliminary Point

29. From para 4(b) of the Gist of the closed part of the hearing, the Appellant notes that TfL made further submissions on Ground I / preliminary point. The Appellant primarily refers to his skeleton argument of 25 July 2024 and the Appellant's response to the 2nd respondent's written submissions of 24 May 2024 in this regard. The Appellant also repeats the following submissions he made orally at the hearing.
30. The Appellant submits that a reasonable person reading TfL's initial response to Part 1 of his FOI request would be more likely than not to conclude that TfL does hold the policies. Furthermore, this confirmation was published on TfL's website between November 2022 and April 2024. The Appellant also submits that a reasonable person reading that published response on TfL's website would, on the balance of probabilities, conclude that TfL held such policies.
31. However, TfL has provided no evidence that this has caused it any of the envisioned prejudice, despite this extended period of publication. The Appellant submits that this lends further support for his position that such envisioned prejudice is not likely to be caused by the requested confirmation in Part 1 (Grounds III and IV).

Conclusion

32. In conclusion, the Appellant considers that his appeal should still succeed on (any of) Grounds I, III, IV and V.

Dated: 5 August 2024