



## Freedom of Information request 0996-17

1. Has British Transport Police interviewed anyone under caution for using e-cigarettes (commonly known as vaping) on trains, railway stations, or other property owned by either Network Rail or a train operating company?
2. If the answer to question 1 is yes, please give me a breakdown of the location of each incident since 1 January 2015. To be specific, please include the date, time, the location (for example, a station platform or on a train), the name of the train operating company, and if those interviewed were prosecuted, released without charge, or given a formal caution.

## RESPONSE

Section 1 of the Freedom of Information Act 2000 (FOIA) places two duties on public authorities. Unless exemptions apply, the first duty at Section 1(1)(a) is to confirm or deny whether the information specified in a request is held. The second duty at Section 1(1)(b) is to disclose information that has been confirmed as being held. Where exemptions are relied upon Section 17 of the FOIA requires that we provide the applicant with a notice which:

- a) states that fact
- b) specifies the exemption(s) in question and
- c) states (if that would not otherwise be apparent) why the exemption applies.

In relation to your particular request, the following exemption applies:

### **Section 12 - Exemption where cost of compliance exceeds appropriate limit**

Section 12 of the FOIA provides an exemption from a public authority's obligation to comply with a request for information where the cost of compliance is estimated to exceed the *appropriate limit*.

In relation to your request for the details of the numbers and details of interviews under caution carried out by British Transport Police officers, the information you have requested cannot be easily retrieved. There is no central record of individuals who have been interviewed under caution and therefore the only way to retrieve the information requested would be to conduct a manual trawl through the pocket notebooks of every current British Transport Police officer as well as any who have left the force since January 2015. At time of writing, British Transport Police has just under 3000 police officers, so this would require thousands of hours of work as well as the retrieval from archive of numerous pocket notebooks. The search in this case would be complicated as there is no offence of 'vaping' so it would not be possible to identify what offence the person may have been interviewed for to allow a more focussed search.

It is estimated that the cost of providing you with the information is above the amount to which we are legally required to respond i.e. the cost of locating and retrieving the information exceeds the “appropriate level” as stated in the Freedom of Information (Fees and Appropriate Limit) Regulations 2004. In the case of the police service, the appropriate limit is £450 which has been calculated to equate to a total of 18 hours of work. If any part of the request exceeds the fees limit then Section 12 applies to the whole request.

This letter acts as a refusal notice under section 17(5) of the Freedom of Information Act 2000.

Although excess cost removes the force’s obligations under the Freedom of Information Act, and we are not able to answer the questions asked, I have reproduced below guidance issued to officers on dealing with complaints about a person vaping on the railway which may be of interest.

### **Use of e-cigarettes on the railway**

A number of Train Operating Companies issue guidance that the use of e-cigarettes is prohibited on the railway. It *may* be that the TOCs’ Conditions of Carriage prohibit the use of electronic cigarettes however BTP are not responsible for enforcing conditions of carriage. Under normal circumstances, the use of an e-cigarette on a train or in any enclosed railway building is **not** a criminal offence.

### **Is the use of an e-cigarette a Byelaw offence?**

Byelaw 3 - No person shall smoke or carry a lighted pipe, cigar, cigarette, match, lighter or other lighted item on any part of the railway on or near which there is a notice indicating that smoking is not allowed.

**An e-cigarette does not fall within the definition of a lighted item and so would not be covered by Bvelaw 3**

Byelaw 6(8) - No person shall molest or wilfully interfere with the comfort or convenience of any person on the railway.

**The use of an e-cigarette would not normally be covered by Byelaw 6(8) unless we can evidence that the interference is wilful. For example, where after a complaint from another passenger, the individual continues to use the e-cigarette. We would need to ensure we are able to obtain sufficient evidence to support the prosecution.**

Where TOC staff or a member of public complains to BTP about an individual using an e-cigarette, the individual should be issued words of guidance on the impact their behaviour is having and that continued use of the device in the light of the complaint may result in the commission of a Byelaw offence.