



**First-tier Tribunal
(General Regulatory Chamber)**

Appeal Reference: EA.2018.0254

INFORMATION RIGHTS

Before

REGISTRAR REBECCA WORTH

Between

MR JOHN BEAMAN

Appellant

and

INFORMATION COMMISSIONER

Respondent

DECISION AND REASONS

Decision notice under appeal

1. The decision notice under appeal is FS50734755, issued on 19 October 2018 which found that requests by Mr Beaman to the DVSA for information were, within the terms of the Freedom of Information Act 2000 (FOIA), vexatious.
2. From reading the whole of the decision notice it seems that the Information Commissioner's Office believed the request was made on 12 March 2018 (see decision notice paragraph 25), although Mr Beaman indicates in his documents that the 12 March 2018 email was chasing a previous request (or previous requests) made in February 2018.

The FOIA regime

3. In the case of *Information Commissioner v (1) E Malnick and (2) ACOBA [2018]UKUT 72 (AAC)*¹, the Upper Tribunal explained that the FOIA regime is a "clear statutory structure which is three sequential stages of decision-making with a clear progression from one to the next" (paragraph 85). The three stages are:

¹ <https://www.gov.uk/administrative-appeals-tribunal-decisions/information-commissioner-v-e-malnick-and-the-advisory-committee-on-business-appointments-2018-ukut-72-aac>

Appellant: Mr John Beaman

Date: 04 January 2019

- 3.1 Stage 1 – the Public Authority: “The first decision-maker in the statutory process is the public authority. Its duties are found in Part 1 of FOIA.” (paragraph 74) and “Once the authority has complied with its obligations under sections 1 and 17, it has fulfilled its duties in relation to that request, save for compliance with a decision notice of the IC or a decision of the FTT. Section 17(7).” (paragraph 76);
- 3.2 Stage 2 – the Information Commissioner’s Office: “.. once the Commissioner has issued a decision notice stating that the authority has complied with section 1 (...), the Commissioner has entirely discharged her functions under section 50.” (paragraph 81) and “As we have explained [the nature of the duty under section 50] is a narrower requirement to consider whether the authority has acted in accordance with its Part 1 obligations.” (paragraph 83);
- 3.3 Stage 3 is the Tribunal which considers appeals by the complaint and/or the public authority about the Information Commissioner’s Office decision notice issued under section 50 and can, if an appeal is allowed, substitute the original decision notice.

Applying that 3-stage process to Mr Beaman’s position

4. Request on 26 September 2017:

- 4.1 Mr Beaman requested information on 26 September 2017. On 20 October 2017, DVSA refused to provide the information citing section 36 FOIA.
- 4.2 There was an amount of correspondence about the original request, not least because Mr Beaman believes DVSA misunderstood his request. During the correspondence, DVSA refused to tell Mr Beaman how many questions there are on the database of questions and refused to tell him what those questions were. DVSA also explained that the questions are not allocated certain numbers, but chosen at random for each theory test when it is set up.
- 4.3 On 25 January 2018 DVSA issued a review of the 20 October 2017 refusal, DVSA continued to apply section 36 FOIA to the request made on 26 September 2017.
- 4.4 That, for the request made on 26 September 2017, completed Stage 1. Mr Beaman was entitled to progress to stage 2, complaining to the Information Commissioner’s Office under section 50 FOIA about how the request had been dealt with; there was no need for Mr Beaman to further engage in correspondence with DVSA about the 26 September 2017 request.

5. Request on 26 January 2018:

Appellant: Mr John Beaman

Date: 04 January 2019

- 5.1 On 26 January 2018 (following a suggestion by DVSA) Mr Beaman requested to have anonymised information showing the “10 best-performing theory test questions and the 10 poorest-performing theory test questions (in terms of the proportion of candidates that get the questions right).”.
 - 5.2 That information was provided to him on 21 February 2018, completing stage 1 for the request made on 26 January 2018.
6. Requests on 21, 22 and 28 February 2018 and 12 March 2018 email:
- 6.1 On 21 February 2018 Mr Beaman asked DVSA to provide him with information about the financial contract they have with the test provider.
 - 6.2 Mr Beaman says that on 22 February 2018 he asked for the redacted data for all questions (i.e. a repeat of his 26 September 2017 request).
 - 6.3 The Information Commissioner’s response records that Mr Beaman informed the Information Commissioner’s Office that on 28 February 2018 Mr Beaman asked to be provided with at “least the unredacted 10 best/worst questions and also an informal request as to who designs and approves the Test questions”.
 - 6.4 Mr Beaman did not provide the Tribunal with a copy of the email he sent on 12 March 2018 but it is said to be an email chasing for a “response” from DVSA.
 - 6.5 The requests made on the above February dates (and, if also a request, the one made on 12 March 2018) were, it seems, rolled up and responded to by DVSA in their correspondence of 16 March 2018, where they refused to answer the requests citing section 14 FOIA – vexatious requests.
7. Investigation and decision notice (stage 2):
- 7.1 Irrespective of what Mr Beaman applied for, the Information Commissioner’s Office investigation was only about section 14 FOIA – the February 2018 and (unless just a chasing email) March 2018 requests.
 - 7.2 The decision notice, issued on 19 October 2018, therefore deals only with the requests made in February 2018 and (unless it was just a chasing email) March 2018.
8. These proceedings (stage 3):
- 8.1 This Tribunal can only deal with the decision notice and whether it is, or is not, wrong in law – see section 58 FOIA. These proceedings, therefore, can

Appellant: Mr John Beaman

Date: 04 January 2019

deal only with the requests made in February 2018 (and, if relevant, March 2018) – those are the only requests which have reached stage 3.

8.2 If Mr Beaman were successful in this appeal, it is likely that the Tribunal would substitute the decision notice placing Mr Beaman back in stage 1 (DVSA required to either provide the information or to issue a section 17 FOIA notice explaining on which exemption(s) they rely). Having read the documents provided I find:

8.2.1. 21 February 2018 request – information about the financial contract with the test provider: it is not possible to make any definite finding what DVSA’s approach would be.

8.2.2. 22 February 2018 request – repeat of the 26 September 2017 request: DVSA would refuse to provide the information, saying that section 36 of FOIA exempts it from disclosure.

8.2.3. 28 February 2018 request – for the unredacted questions where answer rates were provided: DVSA would refuse to provide the information, probably again relying on section 36 of FOIA.

Application by the Information Commissioner for the Tribunal to strike out the appeal

9. The Information Commissioner’s application was addressing the grounds of appeal which sought to argue about the request made on 26 September 2017 and DVSA’s response to that – reliance on section 36 FOIA. Following receipt of Mr Beaman’s representations I did not consider it necessary to ask her representative for further submissions.

Representations from Mr Beaman

10. Mr Beaman recognises that the DVSA responses were two separate matters: (1) the application of section 36 to his 26 September 2017 request, and (2) the application of section 14 to his more recent requests: at paragraph 6 of his representations, Mr Beaman states that he appealed the “section 14 and 36 Decision notices to the Information Commissioners (sic) Office”.

11. Mr Beaman objects to the Information Commissioner’s Office finding that the amount of communication he had with DVSA supported a finding of vexatious request because, he says, the amount of communication was not his fault it was because DVSA did not properly understand his request.

12. Mr Beaman has also informed the Tribunal that, since the issue of the decision notice, he has made a fresh request to DVSA for the information originally sought and received a response invoking section 14. That is a matter in which this Tribunal cannot (at least for the present time) get involved: no Information

Appellant: Mr John Beaman

Date: 04 January 2019

Commissioner's Office section 50 investigation has taken place and no decision notice has been issued about that matter.

Tribunal's power

13. This Tribunal, in this appeal, only has jurisdiction to deal with the decision notice which, as explained above, is about the February / March 2018 requests.
14. This Tribunal has no power to require the Information Commissioner's Office to re-start (or even just start) an investigation into Mr Beaman's complaint about DVSA's response to his 26 September 2017 request or post-decision notice request.

Consideration

15. Overall, I conclude that there is no reasonable prospect of a Tribunal Panel finding that DVSA were wrong to use section 14 FOIA in relation to the requests Mr Beaman made on 22 and 28 February 2018:
 - 15.1 DVSA had refused the request relying on section 36 (email sent by Rajan Dahwan on 20 October 2017) and offered a review; the review took place and Vasim Choudhary (email sent on 26 January 2018 at 10:13) also found that section 36 applied to the information and refused to provide it. Mr Choudhary's email gave Mr Beaman the Information Commissioner's Office as the next step of progress.
 - 15.2 Over the course of the correspondence, and irrespective of why there was so much correspondence, DVSA were very clear that they considered section 36 FOIA applied to the actual questions.
 - 15.3 Mr Beaman's repeated request for the questions was inappropriate, not least because he could (and probably should) have stopped his communication with DVSA and lodged his complaint – solely on section 36 FOIA – with the Information Commissioner's Office.
16. The position about Mr Beaman's request of 21 February 2018 (information about the DVSA/Test provider contract) is less clear. However, Mr Beaman has not really mentioned this request in his grounds of appeal and representations against strike out and therefore has not put forward a cogent argument about why that request – even on its own – was not vexatious. Putting the request in context alongside the lack of argument about it, I conclude there is no reasonable prospect of a Tribunal Panel finding that the Information Commissioner's Office was wrong to conclude that the 21 February 2018 could be rolled up with the other February (and if relevant March) requests and section 14 FOIA invoked.

Appellant: Mr John Beaman

Date: 04 January 2019

Decision

17. It is for Mr Beaman to persuade the Tribunal that the decision notice was wrong in law. The arguments put thus far fall short of even beginning to do so. I do, however, remind myself that the striking out of an appeal is a draconian measure which should not be lightly used.
18. For all the above reasons, pursuant to rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, and despite it being a draconian measure I strike out Mr Beaman's appeal against decision notice FS50734755 as having no reasonable prospect of success.

Signed *Mrs R Worth*

Registrar of the First-tier Tribunal General
Regulatory Chamber

Date: 04 January 2019

This decision was made by the Tribunal Registrar. A party is entitled to apply in writing within 14 calendar days of the date this document is sent for this decision to be considered afresh.