

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 4 December 2006

**Public Authority:** Vehicle & Operator Services Agency (an executive agency of the Department for Transport)

**Address:** Berkeley House  
Croydon Street  
Bristol  
BS5 0DA

### Summary

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1. The complainant submitted three similar requests to the public authority for information about its powers to stop drivers and inspect their vehicles. The public authority responded to these requests, but informed the complainant that it had calculated that the aggregated cost of replying to these requests had exceeded the appropriate cost limit. Consequently, the public authority informed the complainant that it would not respond to any similar requests the complainant decided to submit until 60 working days after the date of the first request. The Commissioner has established that the public authority incorrectly calculated the costs of responding to these requests and therefore the basis for refusing to answer any future requests was flawed. However, the Commissioner has decided that this error did not lead to a breach of the Act because the complainant did not actually submit a further request within the 60 working day period, and in order for a breach to occur an actual request, rather than a theoretical request, has to be incorrectly refused. The complainant also informed the Commissioner that the public authority had failed to fulfil two separate requests for information he had submitted. The Commissioner has decided that the public authority does not hold the information needed to fulfil these two separate requests, although in responding to one of these requests the Commissioner considers that the public authority breached section 1(1) of the Act.

### The Commissioner's Role

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2. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

## The Request

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3. The complainant submitted his requests to Vehicle & Operator Services Agency ('VOSA') rather than the Department for Transport ('DfT') and in investigating this case, the Commissioner has also directed all of his correspondence to VOSA . The Commissioner notes that under the Act VOSA is not a public authority itself, but is actually an executive agency of the Department for Transport and therefore, the public authority in this case is actually the DfT not VOSA. However, for sake of clarity, this decision notice refers to VOSA as if it were the public authority.
4. The complainant submitted a request (request number 1) in the attached request annex) to VOSA on 7 April 2005.
5. VOSA replied to the complainant on 13 April 2005 supplying him with the requested information.
6. On 14 April 2005 the complainant emailed VOSA a second request (request number 2). The complainant also emailed request number 2 to VOSA on 15 April 2005 this time to a different email address.
7. On 4 May 2005 the complainant contacted VOSA and informed it that despite submitting request number 2 twice, he had not received a response.
8. On 5 May 2005 VOSA contacted the complainant and advised him that he would receive a response to request number 2 in line with the timescales outlined in section 10 of the Act, and that response would therefore be provided by 13 May 2005.
9. On 13 May 2005 VOSA emailed the complainant and provided him with a response to request number 2.
10. The complainant submitted request number 3 to VOSA on 17 May 2005.
11. On 3 June 2005 VOSA provided the complainant with a response to request number 3. In this response VOSA also informed the complainant that it believed that his earlier requests had related to a very similar subject area and that the aggregated cost of complying with these requests was estimated to be over the appropriate cost limit of £600. Based upon the fact that the estimated aggregated cost exceeded the appropriate limit, VOSA informed the applicant that it did not intend to respond to any further questions relating to this topic until 10 August 2005, 60 working days after the first request. In this response to the complainant, VOSA noted that it had based its calculations on the cost of fulfilling the 'five requests for information to VOSA you have made since 7 April 2005'.
12. On 5 June 2005 the complainant contacted VOSA and asked for an internal review of its decision to apply section 12 to his requests. The complainant suggested to VOSA that he had only submitted three requests, not five as its letter of 3 June 2005 suggested. Furthermore, the complainant argued that the

- information he had requested should have been readily available to VOSA, and therefore, it should not have cost over £600 to fulfil his requests.
13. VOSA replied to the complainant on 17 June 2005 and informed him that a review into the handling of his requests had concluded that the application of section 12 was correct, and therefore, VOSA would not respond to any further requests on the same or similar theme until the timescale described in its letter of 3 June (i.e. the 10 August 2005). VOSA's response of the 17 June also informed the complainant that in estimating the cost of fulfilling with his requests, it had charged for 'the number of hours various members of staff in VOSA and the Department for Transport have spent considering and constructing replies to those requests multiplied by £25 per hour'.
  14. The complainant contacted VOSA once again on 27 June 2005 and suggested that the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations') did not allow public authorities to charge for 'considering and constructing replies'. The complainant also reiterated his view that the information he had requested should have been 'readily available' to VOSA and therefore, the costs of responding to his requests should not have exceeded the appropriate cost limit.
  15. On the 19 July 2005 VOSA emailed the complainant and confirmed to him that it believed that its application of section 12 was correct and if he disagreed he should contact the Information Commissioner.
  16. On 26 September 2005, the complainant contacted VOSA again and submitted request number 4.
  17. VOSA wrote to the complainant on 17 October 2005 and provided him with the information requested in part (c) of request number 4. In this letter VOSA also explained that its staff guidance on the Regulations (request 4(a) in the annex) was currently being created and would be available by the end of the year, at which point a copy would be forwarded to the complainant. VOSA also explained that it had estimated that 25 hours was the time spent on fulfilling the requests, but informed the complainant that 'the estimate is not sub-divided further so I cannot provide a breakdown of the estimate in the manner requested' (request 4(b) in the annex).
  18. On 6 February 2006 VOSA contacted the complainant again and informed him that unfortunately, the guidance he requested (request 4(a)) was still not available, but anticipated that the guidance would be ready at the end of March, at which point a copy would be forwarded to him.

## The Investigation

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### Scope of the case

19. On 9 January 2006 the complainant wrote to the Commissioner to complain about the way his requests for information had been handled. The complainant informed the Commissioner that he did not believe the Act had been correctly applied and asked the Commissioner to make a decision. The Commissioner understood the basis of the complaint to be the following:
- That VOSA had inaccurately estimated the cost of responding to his requests (numbers 1 to 3 in the annex) and consequently, VOSA had incorrectly applied section 12 of the Act in suggesting that it would not reply to any further requests the complainant may have chosen to submit.
  - That VOSA had failed to supply him with the information identified in the annex as 4(a).
  - That VOSA had failed to supply him with the information identified in the annex as 4(b).

### Chronology

20. The Commissioner wrote to VOSA on 6 June 2006 and asked for further information regarding how the cost estimate for answering requests 1-3 was formed. The Commissioner suggested to VOSA that this estimate should confirm whether the estimate was based upon the activities listed in section 4 of the Regulations, namely:
- determining whether the information is held
  - locating the information, or a document which may contain the information
  - retrieving the information or a document which may contain the information
  - extracting the information from a document containing it
21. The Commissioner also asked VOSA to confirm whether it held any further details relating to the formation of the cost estimate which could be supplied to the complainant.
22. On 23 June 2006 VOSA wrote to the Commissioner and informed him that one of the officers who had originally dealt with this case had recently retired, and if it became necessary to contact them, VOSA's response to the Commissioner may be delayed.
23. On 8 August 2006 a case officer from the Commissioner's Office called VOSA in order to establish when it would be sending a response to the letter of 6 June 2006. VOSA explained that it hoped to reply within a week.

24. The Commissioner received a substantive response from VOSA dated 25 August 2006.
25. In this response VOSA provided the Commissioner with a detailed explanation of how it dealt with the complainant's requests. VOSA conceded to the Commissioner 'that in this instance, VOSA may have incorrectly calculated its costs'. The public authority explained that the inaccuracies of the cost estimation were based upon two factors.
26. Firstly, VOSA confirmed that having reviewed the files on this case it had now established that the complainant had actually only submitted three requests on similar or related themes, not five as VOSA had originally thought. VOSA suggested that this mistake occurred because two of the complainant's requests were sent to different areas of the organisation and consequently were 'double counted'.
27. Secondly, VOSA acknowledged that when it had compiled a response to request number 2, it included in its cost estimation the time spent on activities that, under the Regulations, it was not entitled to charge for. The activities that VOSA incorrectly included in its cost estimation included locating the complainant's information request and the time spent in establishing why there had been a delay in responding to the complainant.
28. In its response of 25 August 2006, VOSA also provided the Commissioner with a copy of its cost calculations which it had undertaken in this case. The Commissioner noted that this calculation appeared only to be a list of individuals' names with the number of hours each person had spent on answering the requests. The cost estimate simply stated that ten individuals had spent a total of 26.5 hours on answering the complainant's requests numbered 1 to 3. At the chargeable rate of £25 per hour, 26.5 hours represented a total cost of £662.50.
29. On the 4 September 2006 a case worker from the Commissioner's Office called VOSA in order to clarify a number of issues. During this call the caseworker established with VOSA that the only information it held in relation to the cost estimation was the list which simply stated the number of hours spent on answering the complainant's request. The caseworker also established that VOSA did not compile a more detailed breakdown of the costs involved in answering these requests and, moreover, it does not hold a breakdown with reference to the chargeable activities listed in the Regulations.
30. During this telephone call, the case worker also established that VOSA had still not provided the complainant with the information identified as 4(a) in the request annex, despite the suggestion in its letter of 6 February 2006 that the guidance would be sent to the complainant by the end of March 2006. VOSA's representative explained that the delay in developing staff guidance on the Regulations was due to fact that the DfT had only recently provided VOSA with guidance lines on the Regulations. The guidance lines from the DfT were to form the basis of VOSA's guidance on the Regulations, but due to staffing levels within the VOSA's FOI department, their own guidance had not been drawn up and, at

- the time of the telephone call, VOSA was not in a position to say when their own guidance would be published.
31. The Commissioner wrote to VOSA on 7 September 2006 and explained that he was now satisfied that it was unable to fulfil the complainant's request 4(a), essentially because VOSA did not hold this information. However, the Commissioner suggested to VOSA that, to date, it had not categorically informed the complainant that it did not hold this information, only that he would be sent it when it was available. The Commissioner reminded VOSA that under section 1(1) of the Act it was obliged to confirm or deny to an applicant whether it held requested information.
32. Following receipt of the Commissioner's letter, VOSA wrote to the complainant on 13 September 2006 and informed him that VOSA was 'unable to supply you with a copy of our staff guidance on the Regulations, as we do not hold this information'. VOSA's letter also explained to the complainant the reasons why it did not hold this information, (i.e. those outlined in paragraph 28). The Commissioner understands that in this letter VOSA provided the complainant with a copy of the Department for Transport guidance on the Regulations.

## Analysis

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33. The Commissioner has considered VOSA's response to the complainant's requests for information.
34. The Commissioner considers that a number of the requests listed in the annex are not valid requests under the Act (e.g. request 1(b)). A number of the requests asked for an opinion or an explanation of VOSA's policies rather than seeking recorded information held by the public authority. However, the Commissioner notes that the public authority did provide a response to these questions.
35. The Commissioner has dealt with VOSA's use of section 12 in this case in the Other Matters of this decision notice rather than in the Analysis and Decision sections. The Commissioner's reasoning for handling the use of section 12 within the Other Matters section is outlined in the Other Matters section itself.

### Section 1

36. Section 1(1) of the Act states that:

*1(1) Any person making a request for information to a public authority is entitled-*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and  
(b) if that is the case, have that information communicated to him.*

37. The Commissioner is satisfied that VOSA dealt with request 4(b) in accordance with section 1(1) because it correctly informed the complainant that it does not hold this requested information.
38. However, the Commissioner considers that in dealing with request 4(a) VOSA did not comply with the requirements of section 1(1). This is because at the time of the request VOSA failed to confirm or deny to the applicant whether it held the information. It was not until the Commissioner reminded VOSA of its duty under section 1(1) of the Act that it contacted the complainant and confirmed that it did not hold the information covered by request 4(a).

## The Decision

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39. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
40. In line with its duty under section 1(1) of the Act, VOSA correctly informed the applicant that it did not hold the information covered by request 4(b).
41. However, the Commissioner has also decided that VOSA failed to comply with its duty under section 1(1) of the Act to confirm or deny to the complainant whether it held the information covered by request 4(a).

## Steps Required

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42. The Commissioner requires no steps to be taken.

## Other matters

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43. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
44. The Commissioner has carefully considered VOSA's decision to inform the applicant that on the basis of the estimated costs of replying to requests 1 to 3, it would not answer any similar requests until a 60 working day period had elapsed on 10 August 2005. The Commissioner has concluded that this decision did not



breach any section of the Act and the reasons for this conclusion are outlined in the following paragraphs.

45. In analysing VOSA's decision the Commissioner has considered section 12 of the Act which states that a public authority is not obliged to comply with a request for information if it estimates that the cost of fulfilling the request would exceed an appropriate limit. Section 12 also allows public authorities to aggregate the costs of requests for information where two or more requests are made by one person and these requests are on a similar or related topic.
46. The appropriate limit, as prescribed by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, is £600 for Central Government and £450 for other public authorities, with staff costs calculated at a rate of £25 per hour. When calculating whether the appropriate limit is exceeded, authorities can take account of the costs of determining whether the information is held, locating and retrieving the information, and extracting the information from other documents. The Regulations also state that public authorities can aggregate the costs of similar requests received from the same person when those requests are received within 60 consecutive working days.
47. The Commissioner has established that VOSA inaccurately calculated the aggregated costs of replying to requests 1 to 3 by including in its estimate activities not covered by the Regulations. Consequently, the Commissioner is satisfied that the cost estimate of £662.50 (26.5 hours x £25 per hour) was flawed. The Commissioner is also satisfied that if VOSA had correctly estimated the cost of fulfilling the requests numbered 1 to 3, the total cost would have been within the £600 appropriate limit.
48. A direct consequence of VOSA's miscalculation of the cost of fulfilling requests 1 to 3 led it to inform the applicant on 3 June 2005 that it would not respond to any further similar requests until 10 August 2005. It can be argued that VOSA's actions put the complainant at some disadvantage because he may have wanted to submit a similar request to VOSA before 10 August but was deterred from doing so. However, the Commissioner has established that the complainant did not submit any requests to VOSA before 10 August.
49. The Commissioner has decided that this miscalculation and VOSA's suggestion that it would not answer a potential request does not of itself constitute a breach of any section of the Act. A public authority does not breach the Act by suggesting that it would refuse a future request, even if the suggested grounds for refusing this potential request would in fact be a breach of the Act.
50. Consequently, although VOSA incorrectly calculated the cost of fulfilling request 1 to 3 and used this calculation as a basis for informing the applicant that under section 12 it would not answer any similar requests until August 2005, in doing so it did not breach any section of the Act.
51. However, the Commissioner is confident that if the complainant had submitted a similar request before the 10 August, VOSA would have been likely to breach



section 1(1) of the Act by refusing to answer this potential request on the basis of section 12.

52. During the course of his investigation the Commissioner became concerned that VOSA may have difficulties in interpreting the Regulations and that these difficulties could lead VOSA to committing further breaches of the Act when handling requests in the future.
53. However, the Commissioner has now established that VOSA has made a number of alterations and improvements to its process of handling freedom of information requests, and in particular how it logs the time spent on requests. VOSA have also informed the Commissioner that it has also established that VOSA is now using the DfT's guidance on the Regulations as a basis for dealing with requests where fees may become an issue. However, the Commissioner notes that in the course of this investigation he has not reviewed a copy of this guidance and passes no comment on how VOSA will process requests involving the application of the Regulations in the future.

## Right of Appeal

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54. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 4 day of December 2006**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Request Annex

### Request 1

- (a) Under which specific sections of the Police Reform Act 2002 are VOSA staff accredited with the power to stop vehicles?
- (b) Why does your website not mention that drivers may defer a roadside check in accordance with sections 67(6) of the Road Traffic Act 1988?
- (c) Is the VOSA warrant mentioned on the website an accreditation granted by the Chief Officer of Police and identifying the person accredited in accordance with the Police Reform Act 2002?

### Request 2

- (a) What categories of vehicle does the deferred roadside check under section 67(6) of the Road Traffic Act 1988 apply to and what categories of vehicle does the deferred roadside check not apply to?
- (b) What is the relevant law relating to these categories and whether or not the deferred roadside check applies?
- (c) When stopping an applicable category of vehicle for examination will VOSA examiners notify drivers that in accordance with section 67(6) of the Road Traffic Act 1988 they are entitled to defer a roadside check?
- (d) Although VOSA vehicle examiners must wear a uniform and badge as required by section 42(2) of the Police Reform Act 2002, under section 42(1) they are also required to produce an accreditation (issued under 41) when requested. Further, that person must be in the accreditation (in accordance with section 42(2)(b) of the Police Reform Act 2002) and such accreditation must specify that schedule 5 paragraph 8 of the Police Reform Act 2002 applies to that person. Please confirm that VOSA vehicle examiners will comply with section 42(1) by producing their accreditation when requested.

### Request 3

- (a) Please explain why it is VOSA policy for it's examiners not to tell drivers that they may defer a test.
- (b) With regard to VOSA examiners who are accredited under Police Reform Act 2002. Please confirm they comply with section 42(1) by producing, on request, their accreditation granted by the Chief of Police, identifying them and specifying that section 5, paragraph 8, of the Police Reform Act 2002 applies.

#### **Request 4**

(a) Copy of part of staff guidance concerning Regulation 4 of The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 to which you refer in your earlier letter.

(b) Please also send a copy of the costs in dealing with my requests...showing the information you supplied to me, where it was located, how it was retrieved and extracted together with the time and costs involved.

(c) I would also like a copy of that part of your Operating Manual giving instructions to your examiners in the procedure to be followed for inspections and the Human Rights Act to which you refer in your letter.