

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 23 October 2006

Public Authority: Driver and Vehicle Licensing Agency (DVLA)
an executive agency of the Department for Transport
Address: Swansea
SA6 7JL

Summary

The complainant made a request for legislation applying to a particular situation. The public authority responded by detailing the legislation that applied and advising the complainant where he could obtain access to copies of this information. The complainant was dissatisfied with the public authority's response and complained about this on two occasions. Within these complaints he also made two further requests for information. The public authority reviewed their response to the original request but did not provide any information in relation to the later requests. Following the Commissioner's intervention the public authority responded to the later requests and refused to release some information under the section 42 exemption for legal professional privilege. The Commissioner's decision is that the public authority breached section 17 and section 10 of the Act, and that the section 42 exemption is upheld.

The Commissioner's Role

1. 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

2. The complainant made a request on 5 January 2006 for "the relevant legislation which states the DVLA can insist the transfer of the above JON 391 registration must also be accompanied by the donor vehicle with a current tax and MOT. Yet also sell, and authorise for sale through various agencies, registrations upon which no such stringent conditions exist."

3. The public authority responded on the 3 February 2006 listing relevant legislation and how explaining how copies of this could be accessed.
4. The complainant wrote to the public authority again on 11 February 2006 expressing his dissatisfaction with the public authority's response. Within this letter he asked for "sight of the rules for this administrative requirement" referring to an administrative requirement that he had been advised was not covered by legislation, and also restated his original request.
5. The public authority treated this as a request for an internal review of its original response and wrote to the complainant on 10 March 2006 upholding its previous response and listing some further relevant legislation in relation to the original request. It did not specifically address the complainant's further request for "sight of the rules of this administrative requirement".
6. The complainant then wrote to the Department for Transport on 14 March 2006 expressing his dissatisfaction with the public authority's response and saying that he wanted the public authority to confirm whether its position was lawful or not. This letter was passed to the public authority for a response.
7. The public authority responded to the complainant on 18 April 2006 providing further explanation and referring the complainant to its previous decision.

The Investigation

Scope of the case

8. On 21 April 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider that the DVLA had not provided a copy of the internal rules that he had requested and had not confirmed whether its position was lawful.
9. The Commissioner noted that these specific issues related to questions raised in correspondence with the public authority after the original request and that the public authority had dealt with this correspondence as part of its internal review procedure. The Commissioner has considered all this correspondence in his investigation of the complaint.
10. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

11. The Commissioner wrote to the complainant on 16 June 2006. He asked the complainant to confirm that his request for a copy of the internal rules remained outstanding and explained that the Freedom of Information Act only covered "recorded information".

12. The complainant replied on 17 June 2006 confirming that the request for the internal rules remained outstanding and indicating that he believed his original request had not been answered as the public authority had not confirmed that its affairs were conducted strictly in accordance with the law.
13. The Commissioner wrote to the public authority on 28 June 2006, asking it to confirm whether it held any recorded information about its legal position and stating that if it did then it should either release the information or issue a refusal notice to the complainant. He also wrote to the complainant to advise him of this course of action.
14. The public authority then wrote to the complainant on 31 July 2006. With regard to the complainant's request for sight of the rules it provided this information, although it also stated that this was exempt under section 21 of the Act as it was available elsewhere. With regard to recorded information about its legal position it confirmed that information was held and stated that this was exempt under section 42 of the Act as it was subject to legal professional privilege.
15. On 4 August 2006 the Commissioner wrote to the complainant providing guidance about how the section 42 exemption works and asking if he was satisfied with the public authority's response.
16. On 9 August 2006 the complainant advised the Commissioner that he wished to appeal against the section 42 exemption.
17. On 24 August the Commissioner wrote to the public authority asking for a copy of the withheld information.
18. On 07 September 2006 the public authority provided the Commissioner with a copy of the withheld information.

Analysis

Procedural matters

19. In reaching his decision in this case the Commissioner has firstly considered the complainant's framing of his requests and whether each of the requests detailed in this notice were valid requests under the Act. He has considered this matter because the complainant has specifically complained about not receiving information detailed in his later requests, and the public authority did not treat these as separate FOI requests.
20. In considering this matter the Commissioner has taken into account the public authority's obligations under section 16 of the Act. Section 16 provides that public authorities have a duty to provide advice and assistance to applicants. The Commissioner's guidance on this subject states that "In simple terms the provision of advice and assistance can be seen as the means by which a public authority engages with an applicant in order to establish what it is that the

applicant wants and where possible assists him in obtaining this, maintaining a dialogue with the applicant throughout the process.”

21. The original request of 5 January 2006 was regarded as an FOI request by both the complainant and the public authority.
22. With regard to the second request of 11 February 2006 the Commissioner considers that as well as appealing against the public authority's original response of 3 February 2006 this letter also contained a new Freedom of Information request for “sight of the rules for this administrative requirement”. The Commissioner acknowledges that practical difficulties may arise where a complainant asks for further information as part of an appeal against an earlier response. However this does not mean that the requirements of the Act do not apply to further requests.
23. With regard to the third request of 14 March 2006 this was worded as “what I would like to ask is if this is lawful”. The Commissioner notes that this request was worded as a request for an opinion rather than specifying particular information that was required. The Commissioner considers that although in isolation this might not be considered as a valid FOI request, in the context of the ongoing correspondence between the between the two parties it was a clear indication that information in addition to that already requested was required. He therefore considers that it would be reasonable to expect the public authority to treat this as an attempt to make a Freedom of Information request and to consider whether it held any relevant recorded information. He further considers that if the public authority was unclear about what information was required then it would have had a duty under section 16 of the Act to try and clarify this with the complainant. The Commissioner therefore considers this a further valid FOI request.
24. The Commissioner has then considered how each individual request was dealt with.
25. With regard to the initial request of 5 January 2006 the complainant indicated to the Information Commissioner that he believed this request had not been answered as the public authority had not specifically confirmed whether its position was lawful or not. However the Commissioner considers that at this stage the complainant had not asked for this information and so the public authority had no obligation to address this matter.
26. The public authority responded to the request of 5 January 2006 on 3 February 2006 by listing the relevant legislation and advising the complainant that full copies of this legislation were available from the central library service. After it completed an internal review of this response it advised the complainant of further relevant legislation, also available from the central library service, in its letter of 10 March 2006.
27. The Commissioner considers that in taking this action the public authority were effectively applying the exemption available at section 21 of the Act for

information reasonably accessible to the applicant by other means. However in order to comply with the Act the public authority should have advised the complainant that this exemption applied and they failed to do this. The public authority has therefore breached section 17 of the Act.

28. With regard to the complainant's request of 11 February 2006 the Commissioner considers that after his intervention the public authority responded to this appropriately by providing a copy of the information in its letter of 31 July 2006. However as this was more than twenty working days after the request was made this breached the time limit provided at section 10 of the Act.
29. With regard to the complainant's request of 14 March 2006 the Commissioner considers that after his intervention the public authority provided an appropriate response to this request in its letter of 31 July 2006 in which it refused to provide the information it held citing the exemption provided at section 42 of the Act for legal professional privilege. However as this was more than twenty working days after the original request was made this breached the time limit provided at section 10 of the Act.

Exemption

30. In its response of 31 July 2006 the public authority refused to release information that it held about the legality of its position citing the exemption provided at section 42 of the Act for legal professional privilege.
31. The Commissioner has reviewed the information in question and is satisfied that it qualifies as communications between a professional legal adviser and their client and is provision of legal advice. The exemption at section 42 is therefore engaged.

The Public Interest Test

32. The exemption for legal professional privilege is a qualified exemption. This means that information is only exempt from release under this section of the Act if the public interest in maintaining the exemption outweighs the public interest in disclosing the requested information.
33. The Commissioner considers that the following factor may favour releasing the withheld information:
34. There is an inherent public interest that public authorities are transparent in the decisions they make in order to promote accountability and improve the quality of their decision making. Placing an obligation on authorities to provide reasoned explanations for decisions made improves the quality of decisions and administration.

35. The Commissioner considers that the following factor favours upholding the exemption:
36. There is a strong public interest in protecting the established principle of confidentiality in communications between professional legal advisers and their clients. This is so that public authorities are able to obtain full and frank legal advice and so ensure effectiveness in carrying out their statutory obligations. Without a reasonable degree of certainty that communications will remain confidential clients might fail to put all the facts of a case before their adviser for fear of later disclosure. This could lead to advice being given on only partial knowledge of circumstances thus leading to poorer quality advice being given.
37. In the case of *Bellamy v the Information Commissioner and the DTI* the Information Tribunal stated with regard to the exemption for legal professional privilege that “there is a strong element of public interest in built into the privilege itself. At least equally strong counter-vailing considerations would need to be adduced to override that inbuilt public interest”. In this case the Commissioner finds that the public interest in releasing the information is not strong enough to override the inbuilt public interest in the exemption for legal professional privilege. He therefore upholds the application of the section 42 exemption.

The Decision

38. The Commissioner’s decision is that the public authority dealt with the request in accordance with the requirements of the Act, to the extent that it correctly applied the section 42 exemption.
39. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

In failing to cite a relevant exemption in its refusal notice the public authority failed to comply with Section 17 of the Act when responding to the request of 5 January 2006.

In failing to provide an appropriate response within twenty working days the public authority has failed to comply with Section 10 of the Act when responding to the requests of 11 February 2006 and 14 March 2006.

Steps Required

40. The Commissioner requires no steps to be taken.

Right of Appeal

41. 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

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 23rd day of October 2006

Signed

**Richard Thomas
Information Commissioner**

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

Legal Annex

Relevant Extracts from the Freedom of Information Act 2000 :-

Section 10 - Time for compliance with request

10. – (1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

Section 17 – Refusal of request

17. – (1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1 (1), give the applicant a notice which-
- (a) states that fact,
 - (b) specifies the exemption in question, and
 - (c) states (if that would not otherwise be apparent) why the exemption applies.

Section 21 - Information accessible to the applicant by other means

21. - (1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.
- (2) For the purposes of subsection (1)-
- (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
 - (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.

(3) For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2) (b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.

Section 42 - Legal Professional Privilege

42. - (1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.

(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1) (a) would involve the disclosure of any information (whether or not already recorded) in respect of which such a claim could be maintained in legal proceedings.