

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 October 2011

Public Authority: Driving Standards Agency
Address: The Axis
112 Upper Parliament Street
Nottingham
Nottinghamshire
NG1 6LP

Decision (including any steps ordered)

1. The complainant has requested the practical driving test route for Reading test centre.
2. The Commissioner's decision is that the Driving Standards Agency ("DSA") was correct to withhold this information on the basis that disclosure would prejudice the effective conduct of public affairs (section 36(2)(c)). The Commissioner considered the public interest favours maintaining the exemption.

Request and response

3. On 7 March 2011, the complainant wrote to DSA and requested information in the following terms:
"Would you please provide me with the practical test (car) routes for the Reading test centre".
4. DSA responded on 18 March 2011. It stated that this information was no longer provided.
5. Following an internal review and an extension to consider the public interest test, DSA wrote to the complainant on 13 May 2011. It stated that to disclose the information would prejudice the effective conduct of public affairs (section 36(2)(c) of the FOIA) and the public interest favoured withholding the information.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
7. The complainant does not believe this information should be withheld because this information used to be routinely provided and approved driving instructors (“ADI’s”) can sit in on tests so the routes will become known over time.
8. The Commissioner considers the scope of the investigation to be DSA’s application of the exemption to the request on the basis that disclosure would prejudice the effective conduct of public affairs.

Background

9. Before 2003 practical driving test routes were not disclosed. Following an Ombudsman ruling under the “Code of Practice on Access to Government Information” DSA began to publish routes.
10. On 4 October 2010 driving tests were changed to include an independent driving element (a section of the test where candidates are expected to drive without step-by-step instructions but by following signs). As a result DSA stopped routinely publishing driving test routes and withdrew all previously published test routes from publication, although some still remain on the National Archives website.

Reasons for decision

11. Section 36(2)(c) of FOIA states that information is exempt if, in the reasonable opinion of a qualified person, disclosure of the information would, or would be likely to, prejudice the effective conduct of public affairs. This is a qualified exemption so is subject to a public interest test. However, before considering the public interest the Information Commissioner (“the Commissioner”) must first consider whether the exemption is engaged.
12. The first step in determining whether the exemption is engaged is to consider whether the qualified person’s opinion that disclosure would, or would be likely to, prejudice the conduct of public affairs is a reasonable opinion.

13. To do this the Commissioner has taken into account the arguments put forward by the DSA and the comments from the Information Tribunal in the case of *McIntyre v the Information Commissioner* (EA/2007/0068). This set out that the intention behind this exemption was for cases where it would be necessary to withhold information because it would prejudice a public authority's ability to offer an effective public service or to meet its wider objectives or purposes due to the disruption caused by the disclosure or the diversion of resources in managing the impact of the disclosure.
14. In order to establish whether this exemption is engaged the Commissioner must:
 - Ascertain who the qualified person is;
 - Establish that an opinion was given;
 - Ascertain when the opinion was given; and
 - Consider whether the opinion was objectively reasonable and reasonably arrived at.
15. The Commissioner has established that the 'qualified person' is the Road Safety Minister, Mike Penning.
16. A submission was put to the qualified person on 18 April 2011 asking for his opinion. The qualified person provided his opinion on 11 May 2011. However, at this time the DSA had several outstanding requests for the same information at different test centres across the country. When seeking the qualified person's opinion DSA asked the qualified person to provide one opinion for all of the outstanding requests. Following contact from the Commissioner DSA sent a new submission to the qualified person on 14 September asking for his opinion in this particular case. The qualified person provided his opinion on 21 September.
17. In both of these submissions officials explained the potential prejudice disclosure would lead to and advised that, in their view, the information held should be exempt from disclosure by virtue of section 36(2)(c). DSA explained the impact and risk disclosure would have and made reference to previous opinions provided by the qualified person on requests relating to the Hazard Perception part of the theory tests and the question bank used for large goods vehicles and buses.
18. On this basis the Commissioner is satisfied that the qualified person was approached for their opinion and provided this to DSA. The Commissioner has then gone on to consider whether the opinion was reasonable. To do this the Commission has considered the Information Tribunal's decision in the case of *Guardian & Brooke v Information*

Commissioner & the BBC (EA/2006/0011 and 0013). In this case the Tribunal stated that "the opinion must be reasonable in substance and reasonably arrived at". The Commissioner will consider these in order below:

Reasonable in substance

19. In relation the issue of whether the opinion was reasonable in substance, the Tribunal indicated in paragraph 60 of *Guardian & Brooke* that "the opinion must be objectively reasonable"
20. In order to determine whether the opinion was objectively reasonable, it is important to understand what the qualified person meant when he gave his opinion. There are two possible limbs of the exemption on which the reasonable opinion could have been sought:
 - Where disclosure "would prejudice" the effective conduct of public affairs; and
 - Where disclosure "would be likely to prejudice" the effective conduct of public affairs.
21. DSA has confirmed it is relying on the higher threshold that disclosure "would prejudice" the effective conduct of public affairs. This means that the opinion has been given on the basis that the prejudice would be more probable than not and there was a real and significant risk. The Commissioner has therefore considered whether the opinion was reasonable on the basis of this higher threshold.
22. The submission provided by DSA contained arguments about the prejudice DSA considers would be experienced. The arguments the Commissioner feels are relevant are noted below:
 - 1) That should the independent driving test route be published this would prejudice DSA's ability to deliver independent driving practical tests as the information would be in the public domain and available for candidates to learn the test routes.
 - 2) The independent driving test was introduced following the 'Learning to Drive' public consultation as the public favoured a test which would better prepare new drivers and reduce the number of accidents involving new drivers. DSA put this to the qualified person as a reason why disclosure would prejudice the effective conduct of public affairs, particularly in light of the DSA's ability to contribute to the government's objective of improving road safety and reducing the number of road users killed or seriously injured.

23. DSA also submitted that they were in the initial stages of planning research into the impact of the new driving test on road safety which it is anticipated will provide further evidence that the new test is helping DSA achieve the government's objective of improving road safety. The Commissioner has placed little weight on this argument as the impact of the new driving test has not been measured at this point.
24. The Commissioner has also considered the complainant's arguments. It is also important to note that disclosure under the FOIA should be regarded as disclosure to the world at large. The motivations of the complainant are therefore irrelevant.
25. The complainant has argued that driving test routes can become known over time as ADI's can sit in on all tests and the information will then be publicly known. The Commissioner has considered this and accepts that should ADI's sit in on all tests from a test centre then, eventually, an ADI could learn a particular test route. However, there a number of practical test routes used at any driving test centre (in the case of Reading test centre there are 12 routes) so the chances of an ADI learning a route is minimised as any one of twelve routes could be taken. In any event the Commissioner must consider disclosure to the world at large as set out in paragraph 24. An ADI could potentially learn one route over time but the Commissioner must consider whether disclosure should be made to the world at large so that any ADI would know that test route. For this reason the Commissioner has not placed much weight on this counter argument.
26. Taking into account the adverse effects highlighted by the DSA and the counter arguments provided by the complainants the Commissioner is satisfied the qualified person's opinion was reasonable in substance for the purposes of this exemption.

Reasonably arrived at

27. In determining whether an opinion had been reasonably arrived at, the Tribunal in *Guardian & Brooke* confirmed that the qualified person must form an opinion in good faith and not on a prejudiced basis. The qualified person should only take into account issues relevant to the requested information and the process of reaching a reasonable opinion should be supported by evidence. From the evidence considered in this case, the Commissioner is satisfied the qualified person appears to have taken into account relevant considerations and does not appear to have been influenced by irrelevant ones. This supports the contention that the qualified person's opinion was reasonably arrived at.
28. The Commissioner has analysed the complainant's arguments but does not consider they are strong enough to conclude the opinion was not

reasonably arrived at. The Commissioner has therefore found that the qualified person's opinion was reasonably arrived at.

29. The Commissioner has concluded that the opinion of the qualified person appears to be both reasonable in substance and reasonably arrived at, and he therefore accepts that the exemption is engaged.

The public interest test

30. The exemption from disclosure where this would prejudice the effective conduct of public affairs is qualified exemption. Once a qualified exemption is engaged the disclosure of the information is subject to the public interest test. The test involves balancing factors for and against disclosure to decide whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
31. The Commissioner will begin his analysis by considering those factors that favour disclosure. He will then consider those that favour the maintenance of the exemption, before concluding where the balance lies.

Public interest arguments in favour of disclosure

32. The Commissioner is aware that should test routes be disclosed candidates will have more of an awareness of what is expected from them on a test. The purpose of the driving test is to establish candidates have an acceptable level of driving ability and as such should not be able to simply memorise a route, if test routes were made publicly available then candidates would be able to have a greater understanding of what is expected of them.
33. The Commissioner has considered whether it is possible for this information to become publicly available otherwise than by disclosure under the FOIA. The complainant has particularly asked the Commissioner to consider the fact that instructors can sit in on driving tests and therefore could, over a period of time, become familiar with routes. This could impact on the confidential aspect of the test route and mean that this information would become known to instructors and candidates anyway.
34. As instructors can sit in on tests, over a period of time, this could impact the confidential aspect of the test route as instructors may become familiar with the test routes therefore becoming known to instructors and candidates over time anyway. The Commissioner accepts this argument and the possibility that test routes could be learned over time. Similarly, the Commissioner also accepts that this scenario is unlikely as there are 12 different test routes from Reading test centre so the

chances of all of these routes being learned, particularly when routes are also refreshed, would seem to be minimal.

35. The Commissioner is aware that driving test routes from 2009 (prior to the introduction of the independent driving element) are still publicly available on The National Archive website¹. The Commissioner accepts that whilst some of these routes have been changed or refreshed there will be some which have remained largely the same as in 2009 except for the inclusion of the independent driving element. The Commissioner also accepts that this information in conjunction with the fact that instructors can sit in on tests may increase the likelihood of test routes being memorised.
36. Finally, the Commissioner has considered the more general public interest factors that favour disclosure, specifically the public interest in ensuring transparency in the activities of public authorities. The Commissioner notes that transparency is the fundamental objective of the FOIA. He therefore accepts that this is another public interest factor that favours disclosure in most cases.

Public interest arguments in favour of maintaining the exemption

37. In providing its public interest arguments DSA has focused on the independent driving element of the tests as being key to the decision to withhold the test routes. The Commissioner has considered the submissions of the DSA that the driving test was changed in response to a public consultation and that:

"The introduction of independent driving into the driving test aims to ensure learner drivers are taught how to make their own decisions whilst interacting with other road users in different types of road and traffic conditions. This will increase newly qualified drivers all round abilities in 'real driving' and help to reduce the number of collisions new drivers are involved in (currently 1 in 5), and thus withholding the test routes used at Reading test centre ought to lead to safer roads and fewer accidents.

38. DSA maintain that should the independent driving sections of test routes become publicly known this would negate the purpose of this section of the test and therefore hinder DSA's work towards achieving government

¹ Accessible via:

http://webarchive.nationalarchives.gov.uk/20090705141338/http://www.dsa.gov.uk/AddressDetails_Bannered.asp?id=2334&Cat=-1&Type=17&ShowRoute=0

objectives on road safety. The Commissioner accepts this is a valid argument and adds weight to the public interest that favours maintenance of the exemption.

39. The Commissioner has taken into account DSA's assertion that publication:

"Could lead to some driving instructors making heavy use of the test routes when teaching their pupils, leading to an increase in traffic on those routes and higher noise and emission levels which impacts on residents of those areas".

The Commissioner accepts this is a possibility but the likelihood and impact of this cannot be predicted at this stage.

Balance of the public interest arguments

40. When considering the balance of the public interest arguments, the Commissioner is mindful that the public interest test as set out in the FOIA relates to what is in the best interests of the public as a whole, as opposed to interested individuals or groups.
41. In this case the Commissioner considers there is very little weight to the arguments in favour of disclosure. The Commissioner has accepted that test routes could be learned over time by instructors sitting in on tests and obtaining previous routes from The National Archives, the Commissioner considers this to be unlikely to occur in most cases. In any event the Commissioner does not accept that this means there is a public interest in the information being disclosed.
42. By accepting the exemption is engaged, there is an acknowledgement that the disclosure of this information would prejudice the effective conduct of public affairs. In this case, the DSA is required to improve road safety and make sure high and consistent standards are used in assessing drivers and driving instructors. The Commissioner considers therefore there is a strong public interest in maintaining the exemption as to disclose would prejudice the DSA's functions in this area by negating the impact of the new driving tests, therefore potentially impacting on DSA's aim of improving road safety.
43. In conclusion the Commissioner is satisfied that the requested information was correctly withheld by the DSA and upholds the application of section 36(2)(c).

Other matters

44. The Commissioner has taken into account the fact that the original submission to, and opinion provided by, the qualified person related to several requests for the same information for different test centres. At this stage, DSA asked the qualified person to provide a 'blanket' certificate to use in all such requests. Following the Commissioner's involvement in this case DSA resubmitted arguments to the qualified person who provided his opinion that the exemption was engaged with regards to this particular request.
45. Although the opinion of the qualified person in relation to this specific case was not provided at the time the internal review was conducted, the Commissioner is satisfied the opinion was reasonable in substance and reasonably arrived at albeit that the process by which it was reached was flawed.

Right of appeal

46. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

47. If you wish to appeal against a Decision Notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
48. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Signed

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