

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 September 2018

Public Authority: DVSA

Address: The Axis Building
112 Upper Parliament Street
Nottingham
NG1 6LP

Decision (including any steps ordered)

1. The complainant has requested information relating to Terms and Conditions of employment, in particular relating to Enforcement Staff.
2. The Commissioner's decision is that the Driving and Vehicle Standards Agency (DVSA) has correctly cited section 14(1) (vexatious request).
3. The Commissioner does not require DVSA to take any steps as a result of this decision notice.

Request and response

4. The Commissioner notes that under the FOIA the DVSA is not a public authority itself, but is an executive agency of the Department for Transport which is responsible for the DVSA. The public authority in this case is actually therefore the Department for Transport not the DVSA.
5. However, for the sake of clarity, this decision notice refers to the DVSA as if it were the public authority.
6. On 1 November 2017 the complainant requested information of the following description:

"Please provide me with information concerning Terms and Conditions of Employment that were implemented or changed by the introduction of the "DfT modernising employment contract" (MEC) within the DVSA and in particular, and changes to Enforcement Staff 'normal working hours' within the meaning of the Employment Rights Act 1996. Please also

provide me with details of collective agreements in place since December 2014 concerning 'normal working hours' for DVSA Enforcement Staff, within the meaning of the Employment Rights Act 1996.

7. On 15 November DVSA responded and provided the information requested.
8. The complainant responded the same day stating:

"that there is no mention of any collective agreement details, as requested. Accordingly, is the Agency saying that there are no collective agreements in place "which directly affect the terms and conditions of the employment"? and made a further request for the following information:

"Please also provide me with all relevant documentation which states what 'contractual hours' and 'normal working hours' ACTUALLY are/have been for enforcement staff, since January 2015."

9. DVSA responded on 21 November and provided some further information. The same day the complainant further requested:

*"I am therefore seeking a copy of the **substantive MEC document** i.e. the collective agreement between the DVSA and the TUS that gave effect to MEC to prove the situation either way.*

*If MEC did **not** change contractual hours, was there any agreement in place prior to the introduction of MEC stating what contractual hours were, or, has there never been contractual hours? If so, I would like copies copy of the relevant documents."*

10. On 6 February 2018 DVSA responded and stated that it now considered that the requests were vexatious. It referred to requests dated 1 November 2017, 23 November 2017 and 15 January 2018.

Scope of the case

11. The complainant contacted the Commissioner on 9 February 2018 to complain about the way his request for information had been handled.
12. The Commissioner considers the scope of this case is to determine if DVSA has correctly cited section 14 of the FOIA.

Reasons for decision

Section 14 – vexatious requests

13. Section 14(1) of the FOIA states that:

"(a) Section 1(1) does not oblige a public authority to comply with a request for information is vexatious."

14. The term "vexatious" is not defined in the FOIA. In the Information Commissioner v Devon CC & Dransfield (2013)¹, the Upper Tribunal commented that the dictionary definition of the word vexatious is only of limited use and that the question of whether a request is vexatious ultimately depends upon the circumstances surrounding the request.

15. The Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure".

16. The decision establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.

17. The Upper Tribunal also considered four broad issues:

(1) the burden imposed by the request (on the public authority and its staff):

(2) the motive of the requester;

(3) the value or serious purpose of the request; and

(4) harassment or distress of and to staff.

18. The Upper Tribunal cautioned that these considerations were not meant to be exhaustive. Rather, it stressed the importance of:

"adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a

¹ <http://www.osscc.gov.uk/Aspx/view.aspx?id=3680>

previous course of dealings, the lack of proportionality that typically characterise vexatious requests”

19. The Commissioner therefore needs to consider whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.
20. The Commissioner has identified a number of “indicators” which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests². The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
21. DVSA explained that following the request of 1 November 2017, the complainant made four requests over a three-month period. All of these requests were regarding MEC, core hours and contractual working hours.
22. DVSA acknowledged that its first response to the complainant was inaccurate, as it had failed to provide the correct information in regards to a copy of the MEC. However, the complainant would have been provided with all information relevant to him from the MEC before it was implemented. In addition, DVSA stated it advised the complainant to contact HR should he require any further clarification. Over the same three-month period, the complainant sent in more than ten emails to various persons within DfT and Cabinet Office, regarding the same subject. These emails and requests overlapped.
23. DVSA considered that two of these emails can be deemed vexatious in their own right as they were designed to cause disruption and annoyance, also lacking any serious purpose or value. In the first email, dated 15 December 2017, the complainant says *'according to DVSA every day is a 'working day'. I have it in writing from them that there are 'no fixed hours or day' and that an employee can be required to work 'at any time, on any day'*. This email was sent in response to an email pointing out to the complainant that we are afforded 20 working days to respond to an information request from the receipt of the request.

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

24. The second email was received from the complainant, on 21 December 2017. In this email, he states *'It would appear that the DVSA FOI dept needs some advice on what good customer service is! Surely, your dept could have forwarded the outstanding queries to HRBP? And, surely, the DfT would have provided the information, had you asked them for it? How very obstructive the service you provide is'*.
25. This was sent in response to DVSA advice to the complainant, as part of its response of 20 December 2017. It advised that as his further emails of 15 and 21 November 2017 were not deemed as FOI requests he should contact the HR department. This was because he was seeking clarification regarding MEC and contracted working hours; hence, it would be responded to as business as usual.
26. Following DVSA's advice to the complainant to contact HR, it received two further FOI requests from the complainant, one dated 15 January 2018, the other 21 January 2018. Both were regarding MEC, core hours and changes to contracted working hours. At this point, the complainant had not contacted HR as advised.
27. DVSA went on to explain that to deal with his request would have had a detrimental impact on the team and agency as the complainant submitted FOI requests of the same or a similar nature to DVSA on 01 November 2017, 23 November 2017 and 15 January 2018.
28. The complainant also made a further FOI request directly to DfT on 21 December 2017; this request was not included in DVSA's letter to the complainant on 6 February, albeit DfT passed this to DVSA on 25 January 2018 as an FOI request, adding to DVSA burden and stress.
29. DVSA considered that by making repeated requests, which overlapped and were obsessive in nature, including the team providing responses to the ensuing supplementary questions, imposed a significant burden on the team. It was also unjustified and disproportionate, as the complainant had already been provided with the information relevant to him prior to MEC implementation.
30. DVSA further explained that the complainant was also in consultation with HRBP and HR Experts whilst submitting requests, therefore he was asking the same questions and seeking the same information from several different sources, including DfT and Cabinet Office, at the same time.
31. In order to provide the complainant with relevant information quickly, and to provide advice and assistance, on 20 December 2017 DVSA directed him to speak to the HRBP (which he did on 11 April 2018), however he continued to email the FOI team and make further requests of the same/similar nature. Additionally the complainant sent several emails, during the period of his requests, to members of the FOI team,

which were written in such a way to cause disruption, annoyance and stress, they also held no purpose or value. Therefore, a decision was made to treat the complainant's requests, and further correspondence in relation to this matter, as vexatious on 6 February 2018.

The Commissioner's decision

32. The Commissioner notes the complainant is an employee of DVSA. Having reviewed the information provided the Commissioner considers that DVSA have correctly cited section 14(1) in response to the request.
33. It is clear that the complainant has a personal grudge with regard to MEC and its implementation, and that he has made repeated and overlapping requests to more than one public authority relating to the same issue.
34. The complainant has also been provided with advice as to where to direct his enquiries but has chosen to not take this advice and continue making FOI requests. Furthermore, the Commissioner is not persuaded that the request has any serious purpose and value as the complainant has not followed the advice given as to how to obtain the relevant information.
35. The tone of the complainant's correspondence is clearly critical and is almost certain to cause minimally, irritation. Although not privy to all the information the Commissioner is aware of other legal processes underway relating to the matters in this decision notice, and therefore considers that the complainant is being unreasonably persistent.
36. By ignoring DVSA's advice to contact HR and continuing to make FOI requests the Commissioner considers the complainant has adopted an unreasonable entrenched position.
37. The Commissioner sees this as a clear example of an inappropriate use of the FOIA and considers DVSA has correctly applied section 14(1).

Right of appeal

38. 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: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

39. 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.

40. 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

**Pamela Clements
Group Manager
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SK9 5AF**