Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2019

Public Authority: Driver and Vehicle Licensing Agency (Department for Transport)

Address: Longview Road
Morriston
Swansea
SA6 7JL

Decision (including any steps ordered)

1. The complainant has requested previous iterations of a form. The Driver and Vehicle Licensing Agency (DVLA) refused to comply with the request, citing section 14(1). It considered the request to be vexatious, as it believes there is no public interest, purpose or value in the disclosure of the information requested.

2. The Commissioner's decision is that section 14(1) does not apply to this request.

3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.

    - revisit the request and issue a fresh response to the complainant in accordance with its obligations under the FOIA that does not rely on section 14(1).

4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. The complainant contacted the DVLA to obtain information related to this request on multiple occasions prior to submitting this request for information.

6. The complainant has an appeal in process with the information tribunal involving the DVLA.

Request and response

7. On 29 April 2019, the complainant wrote to the public authority and requested information in the following terms:

8. "*Please supply all the various iterations of DVLA FORM V888/3 in English only.*

   https://www.gov.uk/government/publicatio...

   Published 1 November 2011

   Last updated 8 April 2019 ……..”

   [list of previous versions of the form removed for brevity]

9. The public authority responded on 28 May 2019. It stated it believed the request lacked serious purpose or value and applied section 14(1), vexatious requests.

10. Following an internal review, the public authority wrote to the complainant on 21 June 2019. It stated it believed it was correct to apply section 14(1) to the request, and upheld the initial decision.

Scope of the case

11. The complainant contacted the Commissioner on 22 June 2019 to complain about the way his request for information had been handled.

12. The Commissioner considers the scope of this case to be to determine if the public authority has correctly applied section 14(1) to the request.

Reasons for decision

13. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious. There is no public interest test.

14. The term 'vexatious' is not defined in the FOIA. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of the Information Commissioner v Devon CC & Dransfield (GIA/3037/2011). The Tribunal commented that vexatious could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure". The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

15. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering 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.

16. The Upper Tribunal did however also caution 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 previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).

17. 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 requests[1]. In brief these consist of, in no particular order: abusive or aggressive language; burden on the authority; personal grudges; unreasonable persistence; unfounded accusations; intransigence; frequent or overlapping requests; deliberate intention to cause annoyance; scattergun approach; disproportionate effort; no obvious intent to obtain information; futile requests; frivolous requests.

[1] https://ico.org.uk/media/for-organisations/documents/1198/dealingwith-vexatious-requests.pdf

18. 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.

19. The Commissioner's guidance suggests that if a request is not patently vexatious the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.

20. Where relevant, public authorities need to take into account wider factors such as the background and history of the request.

21. The Commissioner invited the complainant to make submissions, but he did not wish to do so.

22. The DVLA explained it believes releasing previous and redundant versions of an application form into the public domain serves no purpose as the application forms are outdated, and are an archive.

23. It also argued that the release of previous versions of a form into the public domain would inevitably result in applicants submitting outdated application forms, thereby increasing the administrative burden on the DVLA. It explained it processes approximately 500 V888/3 forms each day.

24. DVLA wrote that the requester is known to them from previous interactions. He is continuing to make requests for information that fall within the scope of an ongoing appeal.

25. The DVLA also explained that since 2017, he has made 21 requests to it that all relate to the same subject – the release of vehicle keeper data. It stated this suggests he is abusing his right of access to information. He made two overlapping requests within five weeks of each other this year.

26. The Commissioner's view is that the request may have value to the requester, and to the larger public. The Upper Tribunal Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013) observed that

    "public authorities should be wary of jumping to conclusions about there being a lack of any value or serious purpose behind a request simply because it is not immediately self-evident."

Whilst the DVLA may not be able to deduce the value or serious purpose at first glance, it may be of value to others. Indeed the requester may wish to view previous versions of forms to see how they have been updated over time – what has been amended, removed or added in.

27. The Commissioner does not accept the argument that the release of information into the public domain of previous forms would mean that it would be 'inevitable' that wrong forms would be submitted to it. It is a possibility, but one that must be weighed against the duty of the public authority to be open and to act within its statutory responsibilities.

28. It is the Commissioner's view the argument that the burden imposed upon the DVLA would be disproportionate to the work required to fulfil the request, is weak. Accessing previous versions of a form is likely to be a relatively quick task for the DVLA to complete. The potential burden of having incorrect forms submitted were the information to be released, is not a persuasive argument. Presently, the form is accessed through the DVLA's website where it is reasonable to assume the vast majority of companies would access it. The link is for one form only, and the DVLA have the option of keeping it this way.

29. Although the requester has submitted 21 requests to the DVLA, this has been over a three year period. This is not an overly excessive use of FOIA. Whilst two of the requests he made were submitted in a short timeframe and overlapped in area of interest, the Commissioner does not regard this as meeting the threshold that would indicate the request may be vexatious.

30. DVLA did not provide any other information in its submission that would support this application. The response to the Commissioner contained sparse information, arguments and evidence to support its claim that section 14(1) applies to this request.

31. The fact that the complainant has made 21 previous requests, the existence of the appeal and the DVLA stating this request has no serious purpose or value aren't together sufficient in this case to warrant the application of section 14(1) in light of the poor submissions from the DVLA that have been received by the Commissioner.

32. Overall, the Commissioner does not consider this request as having no value or purpose. She does not see that a great burden would be imposed on the DVLA by answering this request, and has not been provided with the level of evidence required to indicate that the requester is vexatious in any other way.

33. Therefore, the Commissioner requires the DVLA to revisit the request and issue a fresh response to the complainant that does not rely on section 14(1).

Right of appeal

34. 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@justice.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

35. 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.

36. 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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF