

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 15 November 2019

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

**Address:** Longview Road  
Morrison  
Swansea  
SA6 7JL

#### **Decision (including any steps ordered)**

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1. The complainant has requested information about meetings with the Road Haulage Association and the employment of nurses to process medical data. The Driver & Vehicle Licensing Agency ("the DVLA") had yet to respond to the request at the date of the notice as it was considering the balance of the public interest.
2. The Commissioner's decision is that the DVLA has not completed its public interest considerations within a reasonable timeframe and has thus breached section 17(3) of the FOIA.
3. The Commissioner requires the DVLA to take the following steps to ensure compliance with the legislation.
  - Issue a substantive response to the request.
4. The DVLA 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.

#### **Nomenclature**

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5. The DVLA is not listed as a separate public authority in Schedule 1 of the FOIA because it is an Executive Agency of the Department for Transport. However, as it has its own FOI unit and as both the complainant and the Commissioner have corresponded with "the DVLA" during the course of

the request and complaint, the Commissioner will refer to "the DVLA" for the purposes of this notice – although the public authority is, ultimately, the Department for Transport.

## Request and response

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6. On 4 September 2019, the complainant wrote to the DVLA and requested information in the following terms:

*"The DVLA have had a series of meetings with the Road Haulage Association with reference to the medical section of the DVLA and the processing of medical information. Can you please provide the dates of these meetings and supply the minutes from them?"*

*"Also in the DVLA's 2017-18 annual report it was disclosed that the DVLA had recruited 10 nurses to help process medical applications. Can you please confirm their roles and responsibilities and do they have responsibility to pass someone as fit to drive? Do the DVLA still employ nurses for this role and if so how many?"*

7. The DVLA responded on 30 September 2019. It stated that it considered that section 35 of the FOIA (formulation of government policy) might be engaged in relation to some of the information within the scope of the request and that it needed further time to consider where the balance of the public interest might lie. The DVLA stated that it would have completed this work by 30 October 2019.
8. The complainant wrote back to the DVLA to say that he did not consider that section 35 would be likely to apply to the information in question and therefore the DVLA was not entitled to have additional time to respond to his request.
9. The DVLA issued a further response on 30 October 2019 in which it again stated that it had yet to complete its considerations about the balance of the public interest.

## Scope of the case

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10. The complainant first contacted the Commissioner on 8 October 2019 to complain about the fact that the DVLA had applied for an extension to consider the balance of the public interest.
11. As the Commissioner considered that investigating whether a qualified exemption would be engaged in relation to the requested information (when a substantive response had yet to be provided) would not be an

appropriate use of her resources, she advised the complainant to allow the DVLA until 30 October 2019 to complete its considerations – on the basis that any procedural issues could be addressed as part of a broader investigation once the DVLA had issued its substantive response.

12. When the DVLA then proceeded to issue a further extension to the time needed to consider the public interest, the Commissioner wrote to the DVLA, drawing attention to her guidance that a “reasonable” amount of time to consider the public interest would normally be an additional 20 working days unless exceptional circumstances applied. She therefore asked the DVLA to either provide the information or issue a refusal notice to the complainant within 10 working days. The correspondence was neither acknowledged nor responded to.
13. As the DVLA does not appear to have responded to the request, despite her intervention, the Commissioner now considers that a decision notice is necessary in this case.
14. The Commissioner considers that the scope of this notice is to consider whether the DVLA has had a reasonable amount of time, in the circumstances, to consider the balance of the public interest. Whilst the Commissioner is aware that the complainant disputes that the exemption would apply in the first place, such matters would need to be dealt with once a substantive response has been received.
15. For the avoidance of doubt, the Commissioner is making no finding as to whether section 35 would be engaged in relation to any of the information within scope.

## **Reasons for decision**

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16. Section 1(1) of the FOIA states that:

*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, to have that information communicated to him.*

17. Section 8(1) of the FOIA states:

*In this Act any reference to a “request for information” is a reference to such a request which –*

- (a) *is in writing,*
  - (b) *states the name of the applicant and an address for correspondence, and*
  - (c) *describes the information requested.*
18. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.
19. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
20. Section 10(3) of the FOIA states that, where a public authority is considering the balance of public interest, it can extend the 20 working day deadline "*until such time as is reasonable in the circumstances.*"
21. Under Section 17(3) of the FOIA, a public authority can, where it is citing a qualified exemption, have a 'reasonable' extension of time to consider the balance of the public interest. The Commissioner considers it reasonable to extend the time to provide a full response, including public interest considerations, by up to a further 20 working days, which would allow a public authority 40 working days in total. The Commissioner considers that any extension beyond 40 working days should be exceptional and requires the public authority to justify the time taken fully.
22. At the date of issuing this decision notice the DVLA has well in excess of 40 working days to respond to this request but has not done so. The DVLA was given the opportunity to explain any exceptional circumstances which would make a further delay reasonable, but has not done so. The Commissioner therefore cannot consider any further delay to be reasonable in the circumstances.
23. In the Commissioner's opinion the DVLA has failed to complete its public interest test considerations within a reasonable timeframe and therefore she has concluded that the DVLA has not complied with Section 17(3) of the Act.

## Right of appeal

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24. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

25. 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.
26. 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 .....**

**Phillip Angell**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**