Freedom of Information Act 2000 (FOIA)

Decision notice

Date:	**26 November 2021**
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 made two requests for information which related to the sharing of vehicle data with members of Accredited Trade Associations. The Driver and Vehicle Licensing Agency ("the DVLA") refused both requests as vexatious.

2. The Commissioner's decision is that the DVLA was entitled to rely on section 14(1) of the FOIA to refuse both requests.

3. The Commissioner does not require further steps.

Nomenclature

4. 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

5. On 20 January 2021, the complainant wrote to the DVLA and requested information in the following terms:

"Under the provisions of the Freedom of Information ACT 2000. Please can you forward me responses for the following requests:-

a. Does DVLA release personal information to the British Parking Associations member [redacted]?

b. Has DVLA been forwarded written evidence [redacted] are willing to erect warning signs on their sites to deceive the public contractual parking charges are in force, when they are fully aware trespasses are being committed on demises they offer services for.

c. Has DVLA received evidence the British Parking Association has seen the written confirmation [redacted] are willing to erect warning signs on sites to deceive the public contractual parking charges are in force on their sites where trespasses are being committed.

d. Has DVLA carried out an investigation with the British Parking Association regarding [redacted] actions?

e. Has any sanctions been made against [redacted] access to the DVLA register."

6. On the same day, he also made a further request for information:

"(a) Does the DVLA release personal information to members of the members Accredited Parking Associations, for the purpose of issuing Parking Charges for Trespass.

(b) How many Members of the Accredited Parking Associations request personal information from DVLA to pursue Parking Charges for Trespass?

(c) Is DVLA assured members of the Accredited Parking Associations can lawfully issue and recover Parking Charges for Trespass through the Courts?

(d) Is DVLA aware only a person or entity with possession of land can issue proceedings in court for the recovery of trespass damages to land?

(e) Has the DVLA received any advice which determines Parking Association Members can issue charges for Trespass?

(f) Has DVLA received any information which determines Parking Charges cannot be issued for trespass?

(g) Has DVLA received any transcribed Court judgement decisions which highlight Parking Association Members cannot issue charges for trespass?

(h) Has DVLA at any point been asked to request the Parking Associations to confirm how parking charges can be lawfully issued for trespass by their members?

(i) Has DVLA investigated the claims laid down in the Parking Associations Codes of Practice, that their members are lawfully entitled to issue and recover parking charges for Trespass?"

7. The DVLA responded on 3 February 2021. It refused both requests and relied on section 14(1) and section 14(2) of the FOIA to do so as it considered them to be both vexatious and repeated. Although the refusal notice did include details of the DVLA's internal review process, it also stated that:

"Any future correspondence from you on this subject will be held on file and will not be replied to."

8. The complainant contacted the DVLA on the same day to express his dissatisfaction with its response. The DVLA did not carry out an internal review.

Scope of the case

9. The complainant contacted the Commissioner on 20 May 2021 to complain about the way his request for information had been handled.

10. Given the exemption relied upon and the wording of its refusal notice, the Commissioner considered that requiring the DVLA to complete an internal review would serve no useful purpose. She therefore exercised her discretion and accepted the complaint for investigation without requiring the complainant to exhaust the DVLA's internal review process.

11. At the outset of her investigation, the Commissioner wrote to the DVLA seeking its submission as to why the request was vexatious. She noted that it was not clear, on the available evidence, that the requests would also be repeated and she asked for evidence that the previous requests had been complied with.

12. In its submission, the DVLA appeared to withdraw its reliance on section 14(2), but maintained that section 14(1) of the FOIA applied because the requests were vexatious.

13. The Commissioner considers that the scope of her investigation is to determine whether or not the requests were vexatious.

Background

14. The complainant runs a company ("the Company") which provides land bailiff services. In particular, his company assists estate managers in keeping their roads free from obstruction – particularly in areas with high volumes of traffic and where an obstruction can easily cause gridlock. This is achieved by penalising those vehicles which stop or park outside of the designated parking zones on the land in question.

15. The Company takes action to deal with errant vehicles on the estate and charges the client for doing so. The client can then recover its costs, if it needs to do so, by taking a claim of trespass to a court and recovering damages from the keeper of the vehicle. As part of its work, the Company must identify the registered keeper of any trespassing vehicle so that its client can bring an action against that keeper.

16. The DVLA is required by the Road Vehicles (Registration and Licensing) Regulations ("the Regulations") to maintain a register of vehicles in the UK and record certain particulars of the keeper of each vehicle. Regulation 27(1)(e) of the Regulations permits the Secretary of State for transport (or the DVLA acting on Secretary of State's behalf) to provide details of the registered keeper of a vehicle to:

> *"any person who can show to the satisfaction of the Secretary of State that he has reasonable cause for wanting the particulars to be made available to him."*

17. In 2009, the DVLA introduced a new policy, largely aimed at private parking companies, which stated that the DVLA would only consider those companies who were members of an Approved Trade Association (ATA) to meet the "reasonable cause" requirement for wanting access to registered keeper data. The then-minister explained the new policy to Parliament thus:

> *"…part of the process for accrediting trade associations will include ensuring that there is a clear and enforced code of conduct (for example relating to conduct, parking charge signage, charge levels, appeals procedure, approved ticket wording and appropriate pursuit*

of penalties, that is approach by letter only and county court action only to permit a house call."

18. The Protection of Freedoms Act 2012 outlaws wheel clamping on private land, but it does permit the recovery of parking charges from the registered keeper of a vehicle in certain circumstances. Schedule 4 of the Act states that:

    "parking charge"—

    (a) in the case of a relevant obligation arising under the terms of a relevant contract, means a sum in the nature of a fee or charge, and

    (b) in the case of a relevant obligation arising as a result of a trespass or other tort, means a sum in the nature of damages, however the sum in question is described;"

    "relevant obligation" means—

    (a) an obligation arising under the terms of a relevant contract; or

    (b) an obligation arising, in any circumstances where there is no relevant contract, as a result of a trespass or other tort committed by parking the vehicle on the relevant land;"

19. In March 2013, the DVLA set out further guidance entitled "*Giving people information from our vehicle record*" which was aimed at clarifying the types of individuals and organisations who might seek DVLA data, the types of data that the DVLA was willing to provide and the evidence that it would require in order to be satisfied that a "reasonable cause" had been demonstrated. One particular table within that guidance is aimed at "private car park enforcement companies" and it sets out that, in order for the DVLA to provide data that would identify the registered keeper of a vehicle "parked on private land or breaking conditions on that land," a company must provide evidence of membership of a relevant ATA.

20. In April 2014, the DVLA, whilst recognising that it did not operate car parks, decided that the Company was sufficiently similar to car park operators that it should be subject to the same conditions for accessing DVLA data – specifically that it must be member of an ATA.

21. The complainant considers that the Company performs a different role to private car park operators. When a motorist parks in a private car park, they are implicitly entering into a contract with the operator – who can then charge a fixed penalty if the motorists breaches the terms of that contract (eg. by overstaying or by parking outside of

designated areas) and the matter is dealt with under contract law. By contrast, the complainant notes that his company deal with acts of trespass. The trespass occurs when a motorist either strays onto or stops on land that they are not entitled to stray onto or stop on. The owner of the land can then make a claim for damages against the trespasser and the law of damages works differently to the law of contract. In particular, the owner of the land cannot simply set a pre-determined sum as the damages to be paid – as car parking operators do.

22. The complainant considers it inappropriate for his company to be required to join an ATA for parking operators, as those companies work under a different law and must meet different requirements in order to maintain membership.

23. In 2015, the complainant brought a judicial review against the DVLA, but the claim was dismissed. In dismissing the claim, the judge found that the differences between the Company and the members of the ATAs were "far less substantial than the similarities," however in relation to the Codes of Practice operated by the ATAs, the judge noted that:

> *"The accreditation of the ATA by the Secretary of State is conditional upon it being able to regulate all those businesses which are required to become members of it. In so far as the claimant's business model may require slightly different rules in the Code of Practice, the ATA will therefore be required to adopt them. This does not mean that the claimant is entitled to re-write the Code as he wishes: its purpose remains the regulation of his business so that it does not misuse its access to the register in any way. The BPA and IPC have both confirmed that membership applications from companies which seek to prevent trespass [sic] and it follows that if this requires any changes to the Codes of Practice then they must make them… That, however, is a matter for the ATA to consider when it decides what, if any, amendments to its Code should be made to ensure that the claimant's business is properly regulated."*

24. The current situation, as the Commissioner understands it, is that neither of the two ATAs which deal with such enforcement matters have been willing to admit the Company as a member, as both claim that its business model is incompatible with their Code of Practice and must therefore change to comply. The complainant argues that it is their Code of Practice that must be adapted to meet his business model.

Reasons for decision

Section 14 - Vexatious

25. 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.*

26. Section 14 of the FOIA states that:

> *Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.*

27. The term "vexatious" is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that "vexatious" could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure". The Upper Tribunal's approach in this case was subsequently upheld in the Court of Appeal.

28. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

29. *Dransfield* 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. It explained that these considerations were not meant to be exhaustive and also explained 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).

30. The Commissioner has published guidance on dealing with vexatious requests[1], which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.

31. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains: "*The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies*".

32. However, the Commissioner is also keen to stress that in every case, it is the request itself that is vexatious and not the person making it.

33. In some cases it will be obvious when a request is vexatious but in others it may not. The Commissioner's guidance states: "In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress."

The complainant's position

34. The complainant explained to the Commissioner that he is unable to issue parking charges to deal with situations involving trespass and that it would be unlawful for him to do so. He therefore considers that either none of the members of the current ATAs are dealing with trespass in this way or, if they are doing so, they are acting unlawfully – and that the DVLA must, in supplying them with registered keeper data, be allowing this "unlawful" conduct to persist.

35. The complainant commented that:

> *"I have corresponded with the Accredited Parking Associations asking them to confirm how their members are legally entitled to issue parking charges for trespass, they claim this is possible, as declared in their Codes of Practice. Like the DVLA they will not and cannot confirm how this takes place in law. The Associations are not public bodies, therefore they are not subject to the Freedom of information Act, as such they do not have to provide answers to the*

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

difficult questions I have raised, they ignore me and DVLA because they do not want to answer my questions spin the questions it into me being vexatious.

"The Courts are fully aware parking association members can not issue notices and demands in trespass, I have demonstrated the facts to the associations and DVLA in Court Judgements however they merely ignore the Courts views.

"The reason my requests are being made to the DVLA is they are a public body who are subject to the Freedom of Information Act, as such they ought to satisfy my requests. DVLA must surely be in a position to answer my questions, as they are releasing personal data to the Associations members, who purportedly are legally entitled to issue and recover parking charges for trespass. If this is taking place DVLA will have a duty under the GDPR rules to ensure the release for that purpose is is lawful." [sic]

The DVLA's position

36. The DVLA contended that the requests were vexatious as they represented just the latest phase of an ongoing dispute it had had with the complainant and the Company.

37. The decision that had been made (that the Company would not be entitled to receive DVLA data absent membership of an ATA) was, the DVLA argued, one that was within its competence to make and, as the judicial review had demonstrated, one which was rational.

38. The DVLA noted that it had been involved in protracted correspondence with the complainant over the last nine years. It had attempted to deal with a large volume of correspondence and queries from the complainant, but this had not resolved the situation.

39. The correspondence was at its most intense between June and September of 2015 when the complainant sent or copied the DVLA into a total of 16 items of correspondence during a period of approximately three months – including several threats to take legal action.

40. Whilst subsequent correspondence had been more limited, the DVLA noted that the complainant had made four further complaints, either direct to the DVLA or via his MP, between 2016 and 2020.

41. However, the DVLA noted that correspondence had ramped up in 2021 – with six complaints having been submitted in the year to date (three of which appear to post-date the current requests). The DVLA noted that "business as usual" correspondence from the complainant had also increased and was "putting a significant burden" on its resources –

although it did not quantify that burden, or indicate how much had been received after the requests were made. It did note however that the complainant had submitted nine complaints relating to the enforcement of vehicular trespass during 2021.

42. The DVLA summarised its position thus:

> *"The DVLA is of the view that [the complainant] continues to submit requests for information that he should reasonably know will not be answered, given the DVLA's current position and the unknown outcome of his complaint to the Commissioner about this matter…*
>
> *"…The context, history and pattern of behaviour with regards to his business-as-usual dealings with the DVLA is important and we would suggest that his FOIA requests should not be viewed in isolation. Should the DVLA amend its position and provide the information [the complainant] is seeking, it is clear that he would continue, obsessively, making requests for information regarding a matter that affects him and one which has already been conclusively resolved by the DVLA and by way of a High Court ruling. It would also be likely to impose a disproportionate resource burden on the DVLA.*
>
> *"The DVLA is of the view that there is no public interest in disclosing the information being sought by [the complainant], given the personal nature of it. Furthermore, the DVLA has already explained the position fully to [the complainant] and has provided a great deal of information both within, and outside the provisions of the FOIA."*

The Commissioner's view

43. Having considered the submissions of both parties, the Commissioner is of the view that the requests, when set in the context of the long-running dispute, were vexatious.

44. The complainant started out with legitimate concerns about both the principle of the DVLA's policy and its practical implications. However, the latest requests don't appear to be seeking information in recorded form so much as "proving" that the complainant has been correct all along. The public interest in this matter has dwindled and it is now largely a private grievance of little interest to anyone else.

45. The complainant has urged the Commissioner to disregard the history as he considers this to be a new matter – which should not be tainted by previous events.

46. The Commissioner notes that the requests were submitted after a relatively quiet period of four years. The complainant evidently believes that this should be regarded as some sort of firebreak.

47. However, the Commissioner cannot ignore the fact that both the current requests and the correspondence from 2013 to 2015 have a common thread. Namely that the complainant considers the requirements of ATAs to be incompatible with his business model and it is therefore unreasonable (in his view) for the DVLA to require him to join one – unless the existing ATAs make substantial alterations to allow him to join. This might be a new chapter, but it is the same story. It seems unlikely that these requests would have been submitted if the underlying dispute had been resolved.

48. It is of course the complainant's right to challenge the DVLA if he believes that it has acted unlawfully – and he did so in 2015. The complainant also has the right to challenge the individual ATAs if he believes that membership has unreasonably been denied to him. However, on either account, the route of challenge does not flow through the FOIA.

49. Furthermore, the Commissioner notes that the High Court agreed that the DVLA's position was both lawful and rational.

50. The High Court judgement also noted that there might need to be some adaptation of the ATA's rules in order to allow the complainant to join – but noted that that did not amount to an entitlement for the complainant to rewrite their rules to suit himself.

51. There now appears to be a standoff with the complainant refusing to joining an ATA until they have made sufficient changes to their Codes of Practice and appeals procedures to accommodate his business model. The ATAs are equally adamant that they will not admit him as a member until he has made sufficient changes to his model to meet their Codes of Practice and appeals procedures. That is essentially a private dispute about membership.

52. The DVLA is not a part of those proceedings – except inasmuch as they will not supply registered keeper data to the complainant until he joins an ATA. However, the complainant appears to be targeting the DVLA in a bid to drag it into his dispute with the ATAs and using FOIA as a tool to do so – that is an abuse of the FOIA process.

53. The evidence provided by the DVLA demonstrates that responding to these requests is unlikely to resolve matters and will likely lead to yet more correspondence. The amount of correspondence the complainant has submitted since the requests were made would indicate that he will

not be satisfied until either the DVLA or the ATAs have accepted his point of view.

54. Furthermore the Commissioner is not persuaded that some elements of the requests are genuinely seeking recorded information – rather, they appear to be asking the DVLA to offer its opinion.

55. The Commissioner is therefore satisfied that the requests were vexatious and therefore the DVLA was entitled to rely on section 14(1) of the FOIA to refuse them.

Other matters

Section 14(2) of the FOIA

56. The DVLA appeared, in its submission, to withdraw its reliance on section 14(2) of the FOIA and, as such, the Commissioner makes no formal finding on the matter.

57. However, having seen more recent responses to information requests of the complainant, the Commissioner considers it useful to draw the DVLA's attention to her published guidance on repeated requests.[2]

58. It is not sufficient for a public authority to rely on this exemption merely because the same person has made the same request in the past. The public authority must also demonstrate that it *complied* with that previous request. In this context, the Commissioner considers that a public authority will only have complied with a request where it either provided the information it held to the requestor or where it informed the requestor that it did not hold the information that had been sought.

59. In the present case, the requests did appear to overlap with previous requests the complainant had made, but those earlier requests had been refused as vexatious. As section 14(1) is an exemption from the duty to comply with a request at all, the DVLA could not reasonably have been said to have "complied" with the previous request – even if it had been justified in relying on the exemption in the manner that it did.

[2] https://ico.org.uk/for-organisations/dealing-with-repeat-requests/#hastheauthority

Right of appeal

60. 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: 0203 936 8963
    Fax: 0870 739 5836
    Email: grc@justice.gov.uk

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

61. 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.

62. 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 .....

Roger Cawthorne
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