

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 May 2021

Public Authority: Driver & Vehicle Licensing Agency (Executive Agency of the Department for Transport)

Address: Longview Road
Morrison
Swansea
SA6 7JL

Decision (including any steps ordered)

1. The complainant made a six part request for information relating to the sharing of Registered Keeper data with private parking companies. The Driver & Vehicle Licensing Agency ("the DVLA") refused the request citing both section 14(1) (vexatious request) and 14(2) of the FOIA (repeated request).
2. The Commissioner's decision is that the DVLA has failed to demonstrate that the request, as a whole, was vexatious. It was therefore not entitled to rely on section 14(1) of the FOIA to refuse the request. However, the Commissioner does accept that elements [5] and [6] of the request are repeated and therefore the DVLA was entitled to rely on section 14(2) of the FOIA to refuse those elements.
3. The Commissioner requires the DVLA to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to elements [1], [2], [3] and [4] of the request that does not rely on section 14(1) of the FOIA.
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 and Background

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.
6. The DVLA is responsible for maintaining a database containing the name, address and other details of the Registered Keeper of every vehicle that has been registered in the UK. The Road Vehicles (Registration and Licensing) Regulations 2002 govern the situations when the DVLA is permitted to share this data and the specific entities with whom data can be shared.
7. The DVLA operates a service known as KADOE (Keeper At Date Of Event) service which allows approved bodies to check vehicle details against the DVLA's records to allow them to enforce parking infringements. The DVLA shares this data under the terms of the KADOE contract.
8. In 2015, the DVLA discovered that some of the data it was sharing with private parking companies was being passed on to a debt collection agency called MIL Collections Ltd. The DVLA now appears to have concluded that this may not have been done in accordance with the KADOE contract.

Request and response

9. On 18 June 2020, the complainant wrote to the DVLA and requested information in the following terms:

"[1] Disclose all information created after 27.2.17. relating to the action taken by you to prevent the selling of particulars contained in the register under ELISE/KADOE to MIL Collections Ltd.

"[2] Disclose all communications from 2018 onwards with the Information Commissioner's Office relating to your failure to check for reasonable cause (for the applicant wanting data) but still releasing particulars as set out in Regulation 27(1)(e) of The Road Vehicles (Registration and Licensing) Regulations 2002, -

'Disclosure of registration and licensing particulars

27.—(1) The Secretary of State may make any particulars contained in the register available for use —

(e) by 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.'

"[3] How many times since ELISE/KADOE (or similar electronic service) started being used have you released particulars contained in the register to an applicant under the above Regulation 27(1)(e) without FIRST checking the application for reasonable cause for wanting the particulars?"

"[4] Provide a breakdown of the figure for question 3 above by the type of organisation which requested the particulars, for example:

A) Private parking firm 100

B) Fuel filling stations 50

C) Bailiffs/county court enforcement agent 25

"[5] On what date did you decide that particulars contained in the register could be released under Regulation 27(1)(e) without checking for reasonable cause before releasing the data?"

*"[6] What was the name/job title of the person(s) who made the decision in question (5) above?
Provide any legal advice taken received before the decision was taken.*

10. The DVLA responded on 16 July 2020. It refused the request citing both section 14(1) and 14(2) of the FOIA.
11. Following an internal review the DVLA wrote to the complainant on 18 August 2020. It upheld its original position.

Scope of the case

12. The complainant contacted the Commissioner on 18 August 2020 to complain about the way his request for information had been handled.
13. The Commissioner considers that the scope of her investigation is to determine whether either section 14(1) or 14(2) would apply to this request.

Reasons for decision

Section 14 - Vexatious

14. 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.*

15. 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.

16. 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.

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

18. *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).

19. The Commissioner has published guidance on dealing with vexatious requests, 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.¹

20. 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*".
21. 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.
22. 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

23. The Commissioner invited the complainant to put forward any arguments that he might wish to make as to why his request was not vexatious – though noting he was under no obligation to do so.
24. The complainant drew the Commissioner's attention to the data sharing that had taken place, apparently in breach of the KADOE contract and potentially in breach of data protection legislation. He argued that there was a substantial public interest in understanding whether the DVLA had complied with the law.
25. Finally, the complainant drew attention to the size of the DVLA's budget and the fact that the DVLA had recently failed in a bid to overturn, in the Upper Tribunal, a decision made in his favour by the First-Tier Tribunal.

The DVLA's position

26. In its submission, the DVLA drew the Commissioner's attention to the frequency of the complainant's requests. It noted that it had received 33 requests from him since 2017 – although his first request on this particular matter had not been made until March 2018.

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

27. The DVLA noted that the complainant had made a further request on the matter in October 2019, a third in January 2020 and a fourth in February 2020. The request being considered in this notice was, the DVLA argued, the fifth in that chain.
28. Secondly, the DVLA noted that some of the elements of the request were expressed in a manner it considered pejorative – namely that they suggested the DVLA had shared information without the parking companies showing “reasonable cause” to receive that information and hence not in accordance with the law.
29. Thirdly, the DVLA noted that it had also provided some information outside of the FOIA, noting that the complainant had received a response to a letter he had sent to the Secretary of State for Transport and a response to a data protection concern he had raised. It also noted that, in the last few weeks it had received another similar request from the complainant.
30. In summary, the DVLA contended that:

"The DVLA takes the view that we have provided sufficient information as well as a great deal of advice and assistance. We consider that this particular line of enquiry is vexatious because [the complainant's] continued requests about this issue repeatedly ask questions which have been dealt with and the position explained. [The complainant's] line of enquiry has not deviated and his continued persistence does not appear to be a sincere attempt to obtain information that would serve a wider public interest.

"Despite being advised of the position on several occasions about this matter, [the complainant] continued to make requests for information suggesting that the DVLA releases information to private parking companies without a basis for reasonable cause being established."

The Commissioner's view

31. The effect of section 14(1) is to relieve a public authority of its duty to communicate information or even determine whether relevant information is held. It therefore follows that the threshold for demonstrating that the exemption is engaged will be a high one.
32. In the Commissioner's view, the DVLA has not demonstrated that the high bar for vexatiousness has been met.
33. Whilst 33 requests is a reasonably high number, even spread out over just three and a half years (it was not clear whether the DVLA had counted up to the date this request was responded to or the date it had

responded to the Commissioner's investigation) that still amounts to less than one per month. Furthermore, the DVLA stated that it had only received four previous requests on this particular topic, spread over two years. This does not strike the Commissioner as an intolerable burden to expect a public authority of the DVLA's size to bear.

34. On the DVLA's second point, whilst the Commissioner accepts that it might chafe at an implication of wrongdoing, she does not accept that this falls into the category of the sort of unfounded accusations that frequently accompany a vexatious request.
35. The legislation makes clear that the DVLA is only permitted to share its KADOE information with those who have shown a "reasonable cause" to want that information. The terms of the KADOE contract make clear that any information that is shared can only be used for the "reasonable cause" for which it was first requested.
36. The DVLA was keen to stress to the Commissioner both the rigour with which it screens companies prior to entering into a KADOE contract and its process for auditing compliance with the contract. Nevertheless, the Commissioner notes that the DVLA had been sufficiently concerned about information being passed to MIL Collections Ltd to conduct its own investigation and, whilst that issue may not be reflected precisely in the complainant's wording, she does not consider that an allegation that there may have been a breach of either the law or a contractual obligation is completely without any merit – even though it may not be legally correct. Whilst the complainant might be wise to phrase his future requests in less provocative terms, the Commissioner does not consider that the phrasing of the request alone renders it vexatious.
37. Equally, the Commissioner does not accept the DVLA's implication that the complainant is being unreasonably persistent in his pursuit of this matter.
38. Whilst there has been some overlap between requests (discussed in more detail below), each request the complainant has submitted on this topic area has explored new ground. The March 2018 request sought information about the governing legislation. The October 2019 request enquired about "reasonable cause" and which companies were entitled to KADOE information. The January 2020 request asked for information concerning the DVLA's audits with a follow-up asking about the outcome of those audits. The present request breaks new ground by asking about the types of companies requesting KADOE data, correspondence with the ICO and action taken in respect of MIL Collections Ltd.
39. Whilst these requests undoubtedly have a common thread, each one seeks information which would allow the issue to be examined through a

different lens. This is not a case where the complainant has engaged in multiple unsuccessful litigations – indeed the Commissioner notes that the complaint was successful in challenging the DVLA in the most recent round of Tribunal hearings. Whilst the Commissioner accepts that it is often a fine line between persistence and belligerence, the complainant has, to date, stayed the right side of that line.

40. Finally, the Commissioner notes that this is not a niche concern, nor is it one solely of interest to the complainant. The DVLA's sharing of the personal data that it is required to collect and the safeguards applied to such sharing, are matters of wide public concern. The DVLA has faced accusations that its data-sharing arrangements may not have complied with new data protection legislation. That is not to say that the DVLA has, or has not, done anything wrong – merely to note that the more controversial an issue, the stronger the public interest is likely to be in information that would shed light on the matters involved.
41. The *Dransfield* judgement emphasised that, even where there is a strong public interest in particular information, that should not act as a "trump card" when set against significant evidence that the request would otherwise be vexatious. However in the circumstances of this case, the Commissioner is satisfied both that the information in question is of wider public interest and that the context in which the request was set does not contain sufficient indication that the request was vexatious.
42. The Commissioner therefore concludes that the request was not vexatious and therefore the DVLA was not entitled to rely on section 14(1) of the FOIA to refuse it.

Section 14(2) – Repeated Request

43. Section 14(2) of the FOIA states that:

Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

44. Both the DVLA's initial response to the request and the outcome of its internal review stated specifically that the DVLA was relying on both section 14(1) and 14(2) to refuse the request. However, despite being asked specifically to address both limbs of the exemption in its submission, the DVLA only addressed the vexatious limb – although it did not explicitly resile from its earlier position and referred to "section 14" rather than "section 14(1)."

45. Given the ambiguity about the DVLA's position, the stance she had decided to take in respect of section 14(1) and her general duty to promote responsible use of the legislation, the Commissioner decided that she would look at both limbs of the exemption. She has therefore examined the DVLA's submission and supporting evidence to determine whether it had in fact demonstrated that this limb of the exemption was engaged.
46. As part of his October 2019 request, the complainant asked:
- "I would like to know the date the DVLA decided that there is no need for a KADOE customer to [show] reasonable cause BEFORE particulars contained in the register are released to private parking companies."*
47. In his January 2020 request he asked:
- "Who/what job title decided that requests made electronically by private parking firms and others under Reg.27.1.e of The Road Vehicles (Registration and Licensing) Regulations 2002 did not need to be checked for reasonable cause for wanting the data prior to DVLA releasing that data. State the date that this decision was made and who (such as the Minister of State) approved that decision."*
48. On both occasions, the DVLA responded to say that it held no recorded information within the scope of his request.
49. The Commissioner considers it evident that both these requests and the request which is the subject of this notice have been submitted by the same individual. Whilst the precise wording of the requests is not entirely consistent, she considers that both the October 2019 request and the January 2020 request are seeking the same information as that sought in element [5] of the present request. Furthermore, she considers that the January 2020 request is seeking the same information as that sought by element [6] of the present request.
50. The Commissioner therefore considers that elements [5] and [6] are "substantially similar" to requests that the complainant has already had responses to.
51. The Commissioner considers that the DVLA complied with the relevant parts of the earlier requests because it informed the complainant that it held no recorded information. Whilst she appreciates that the complainant may dispute whether information is held, the mechanism for doing so would be via an internal review followed by a referral to her office – not by simply submitting the same request again.

52. Finally, the Commissioner is required to consider whether a “reasonable interval” has occurred between the two substantially similar requests.
53. In this case, the January 2020 request was responded to in February 2020 – meaning that the gap between the two requests was just five months.
54. The legislation does not define what a “reasonable interval” should be. The Commissioner’s guidance states that what is “reasonable” will turn on the individual facts of each case. In particular, a public authority should consider whether it is reasonable for a person to expect that there would have been a significant change to the recorded information held in the interval between the two requests.²
55. In this case, the clear implication of the complainant’s request is that the DVLA took a particular “decision” at some point prior to his October 2019 request – and certainly prior to his January 2020 request. Given this presumed date, the Commissioner considers it unreasonable to suppose that the DVLA is likely to have acquired or created new recorded information in the five months from February 2020 to June 2020.
56. The fact that the DVLA would (presumably) contend that no such decision has ever been made is not relevant to this consideration. Even if the complainant were right and some form of decision had been made prior to October 2019, it would not suggest that the DVLA would be any more likely to hold information in June 2020 than it would in February 2020.
57. The Commissioner therefore considers that the DVLA had already complied with at least one substantially similar request prior to receiving elements [5] and [6] of the present request. As a reasonable interval had not elapsed since the previous request was responded to, the Commissioner considers that these elements of the present request were repeated and therefore the DVLA would be entitled to rely on section 14(2) of the FOIA to refuse them.

² <https://ico.org.uk/for-organisations/dealing-with-repeat-requests/>

Right of appeal

58. 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

59. 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.
60. 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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