

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

### **Decision notice**

**Date:** 27 May 2021

**Public Authority:** Driver and Vehicle Licencing Agency (DVLA)

**Address:** Longview Road

Morrison

Swansea

SA6 7JL

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

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1. The complainant has requested the DVLA to disclose the registration marks linked to previously commercially owned vehicles from the date the DVLA stopped including this information on the V5C log book up to the cost limit. The DVLA refused to comply with the request citing section 14(1) of the FOIA. It also cited section 17(6) and advised the complainant that it would not respond to any future requests of this nature.
2. The Commissioner's decision is that the DVLA is entitled to refuse to comply with the complainant's request in accordance with section 14(1) of the FOIA. She therefore does not require any further action to be taken.

### **Request and response**

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3. On 6 July 2020, the complainant wrote to the DVLA and requested information in the following terms:

"I also want to make a fresh request for the data I requested before, the ICO document I refer to allows me to make a new request every 6 months, therefore my request is for £600 worth of the registration marks linked to previously commercially owned vehicles from the date the DVLA stopped including this information of the V5C log book."

4. The DVLA responded on 3 August 2020 . It refused to comply with the request in accordance with section 14(1) of the FOIA. It also applied section 17(6) advising the complainant that it is not obliged to respond to any further requests relating to information considered to be of a similar nature.
5. The complainant responded on 7 August 2020. He asked for part of the email of 6 July 2020 to be managed as a formal complaint.
6. The DVLA issued a further response on 14 August 2020. It confirmed again that it considered the information request of 6 July 2020 to be vexatious because the matter is being considered by the First-tier Tribunal. It advised the complainant that he could request an internal review of this decision and provided the contact details of the DVLA's FOIA Team.
7. As far as the Commissioner is aware no formal internal review was request or indeed carried out.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 5 September 2020 to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of her investigation to be to determine whether the DVLA is entitled to rely on section 14(1) of the FOIA in this case or not.

### **Reasons for decision**

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#### **Section 14(1) - vexatious**

10. 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.

11. 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.

12. The Dransfield definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
13. 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).
14. 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.
15. 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 requestor, 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".
16. 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.
17. 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."
18. The DVLA referred the Commissioner to the complainant's request of 2 September 2019, in which he requested the following information:

"I also make a request for records of all vehicles that were previously commercially owned under the FOI, and also if necessary in accordance with Open government licence for public sector information."
19. It responded on 30 September 2019 stating that the information in scope of that part of his request was not held. The response explained

that this was because the DVLA record contains the registered keeper of a vehicle and not its owner. The DVLA confirmed that the complainant replied on 1 October 2019 to clarify his request to seek details relating to vehicles that had previously been registered to commercial organisations.

20. The DVLA responded to the complainant on 9 October 2019 advising that a scan of the entire vehicle register, some 49 million records, followed by a manual interrogation of the results would be required to provide the information requested. This work is estimated to exceed £600 and therefore section 12 of the FOIA applied. It stated that it also offered to discuss the matter with the complainant.
21. On 30 October 2019 two members of staff at the DVLA spoke to the complainant over the telephone. They explained to the complainant that it did not appear to be possible to refine or reshape the request so that it would fall below the £600 cost limit and that a scan of the entire vehicle database would be required. They also explained that it is not possible to scan part of the vehicle register.
22. The DVLA explained that an internal review then followed. It wrote to the complainant on 11 December 2019 to recap what had been said during the 30 October 2019 telephone call. It set out why the DVLA maintained that it was not possible to respond to the request within the £600 cost limit. It also specifically addressed the issue of advice and assistance, stating:

“You also asked why we were unable to assist you to refine your request to bring it within the cost limit of £600. We explained that a scan of the entire vehicle database would be required and that it is simply not possible just to scan part of the database. While this may seem to you a simple request, I can assure you that it is not and that it would involve considerable work and financial cost”.

23. The DVLA advised that the complainant made a complaint to the Commissioner and a decision notice was served on 6 March 2020 which concluded that the DVLA had correctly relied on section 12 of the FOIA. In addition, it stated that the notice addressed the duty to provide advice and assistance under section 16 of the FOIA by noting the following:

“12. Prior to issuing its internal review, DVLA spoke to the applicant and explained that it would need to scan over 49 million records that are contained within its vehicle register.

13. In its response is further explained that it can only interrogate a vehicle record by the individual vehicle registration number (VRN) so

further manual interrogation of the register would also be required to try and ascertain which vehicles are registered to commercial organisation and which are registered to private individuals.

17. DVLA then went on to explain that it was unable to assist the applicant to refined his request to bring it within the cost limit of £600. It explained that a scan of the entire vehicle database would be required and that it is simply not possible just to scan part of the database."

24. The complainant appealed to the First-tier Tribunal on 10 March 2020. The DVLA said that the Commissioner defended the decision she had reached (that the DVLA had correctly relied on section 12 of the FOIA) and highlighted the case law confirming that the correct approach is to consider the cost of compliance based on a public authority's information systems as they are, rather than as they should be. It stated that the Commissioner also relied on *Kirkham v Information Commissioner* [2018] UKU 126 (AAC) for support for the proposition that:

"[a] public authority cannot comply with FOIA by providing such information as it can find before section 12 applies."

25. With regards to advice and assistance, the DVLA stated the Commissioner submitted that:

"given the breadth of the request and the work required to obtain the requested information it was not possible to refine the request to bring it within the costs limit."

26. It confirmed that the Commissioner argued that the appeal had no reasonable prospect of success and should be struck out or dismissed. On 24 March 2020, the First-tier Tribunal struck out the appeal on the basis that it had no reasonable prospects of success. That decision was however then set aside by the First-tier Tribunal. Although it upheld the decision to strike out the appeal of section 12, it decided that section 16 (advice and assistance) should be considered further.
27. The DVLA considers at that point the complainant was fully aware that the information he is seeking cannot be provided and that making further repeated requests for that is fruitless. Furthermore, the DVLA said that this is a live issue which is subject to consideration by the First-tier Tribunal. For these reasons the DVLA considers the complainant's line of enquiry to be vexatious and therefore it issued him with a section 14(1) refusal notice in response to his request of 6 July 2020.
28. It commented further that it acknowledges the complainant believes he can make a new request every six months for the requested information

up to the cost limit. But given that the complainant is fully aware that the information cannot be provided to him within the cost limit, and the line of enquiry is considered to be vexatious for the reasons outlined above, it does not consider the complainant should continue to make requests for information that he knows, or should reasonably know, it cannot provide.

29. In its refusal notice of 3 August 2020 it also applied section 17(6) of the FOIA. The DVLA stated that it has provided the complainant with a refusal notice confirming that the request is vexatious. It is therefore entitled to rely on section 17(6) for any further requests from the complainant of this nature, as it would be unreasonable to expect the DVLA to issue another refusal on the same grounds.

### **The complainant's position**

30. The complainant does not believe his request is vexatious. He stated that he is entitled to make requests every six months for the requested information up to the cost limit. He is also of the view that his previous request and the ongoing First-tier Tribunal appeal should have no bearing on this request, its merits and how it should be handled.

### **The Commissioner's decision**

31. The Commissioner is satisfied that the DVLA is correct to refuse to comply with the complainant's request in accordance with section 14(1) of the FOIA on the basis that the request is vexatious. She will now explain why.
32. The complainant is entitled to exercise his rights and make requests for information to the DVLA and other public bodies. However, the DVLA and other public bodies are equally entitled to consider each and every one on a case by case basis in accordance with its obligations under the FOIA. Section 14(1) entitles a public authority to refuse to comply with a request for information if it considers the request is vexatious. The internal review process under the section 45 code of practice, referral to the Commissioner under section 50 of the FOIA and ultimately to the First-tier Tribunal provide the necessary route to any applicant wishing to challenge how a request for information they have made has been handled by the relevant public body.
33. As detailed in paragraph 15 above, when considering whether a request for information is vexatious, a public authority is entitled to take into account the context of the request and the history of its relationship with the requester. The Commissioner's guidance makes reference to this often being a major factor in the consideration of section 14(1) of the FOIA.

34. The Commissioner notes that the complainant made a request for the same information (albeit not limited at this time to the cost limit) back in September 2019. The DVLA explained in detail to the complainant why it was unable to process the request within the cost limit. It explained that a scan of the entire vehicle register, some 49 million records, followed by a manual interrogation of the results would be required. Even then, the DVLA advised the complainant that it could not guarantee to identify all records. It also explained to the complainant, in a telephone conversation that followed, that it was unable to offer any advice or assistance to enable him to make a refined request which could be processed within the cost limit. This is because it is not possible to scan part of the vehicle register.
35. In its internal review response of 11 December 2019 it referred the complainant to a previous First-tier Tribunal ([Pavel Matveyev v Information Commissioner and the DVLA EA/2016/0268](#)) and Upper Tribunal decision ([GIA/2974/2017 Pavel Matvayev v Information Commissioner and DVLA](#)) which upheld the application of the cost limit for conducting a scan of its vehicle register.
36. In the 2016 appeal, the First-tier Tribunal heard evidence from a member of staff at the DVLA who had significant knowledge of the management of the DVLA IT system and accepted the estimate it put forward in that case, for running a bespoke scan, which would have been required to answer the requests made, and even to a narrowed request would exceed the costs limit. It accepted the estimate put forward on the basis that it was "sensible, realistic, and supported by cogent evidence", that being the test used in an earlier tribunal case from 2007 (Randall v Information Commissioner EA/2007/004).
37. The key is that a bespoke scan would be required in the first instance, no matter what limit was placed, and this would exceed the appropriate limit. In the appeal the DVLA's witness confirmed:

"Bespoke scans were not a core part of the DVLA business. It ran operational activities involving outputs for the register and updates for the Police. Between April 2016 and 2017, DVLA had done 15 bespoke scans. The largest scan took 144 hours, the shortest 61 hours. In the present case, the figure of 41-hour estimate was conservative. Without fundamental modernisation, it was not possible to resolve queries more quickly."
38. The Upper Tribunal refused Mr Matveyev's application. It stated that the First-tier Tribunal was entitled to accept the evidence put forward by the DVLA as to both the cost of compliance and the reasons for those costs. At paragraph 20 it said:

“The FTT here has clearly accepted that DVLA data is captured on a computer system of some age, and there was evidence before it that it was not designed for bespoke interrogation, but for the government functions which it was set up to perform, thus explaining the costs of producing the information. The FTT had evidence before it which entitled it to draw those conclusions, and it has explained why it did.”

39. The complainant referred his request of 2 September 2019 to the Commissioner under section 50 of the FOIA. The Commissioner issued a decision notice on 6 March 2020 which upheld the DVLA’s application of section 12 of the FOIA. This notice, too, referred the complainant to the tribunal appeals referred to in paragraph 35 above. The complainant appealed to the First-tier Tribunal. The complainant’s appeal on section 12 was struck out on the basis that it has no prospect of success. However, the complainant appeal on section 16 (the duty to provide advice and assistance) is still under consideration at the time of writing.
40. Despite the outcome of his first request, his appeal on section 12 being struck out, being referred to previous tribunal hearings in which it has clearly been upheld that the DVLA cannot run bespoke scans of its database within the cost limit and being advised that there is no advice and assistance that can be provided to enable him to make a request that could be processed within the cost limit, the complainant continues to make information requests to the DVLA for data up to the cost limit every 6 months. Requests the complainant should reasonably know cannot be processed within the costs limit for the reasons the DVLA has previously explained.
41. There is no requirement for a public authority to work up to the cost limit when the request itself would exceed the cost limit. The complainant has been advised that a bespoke scan of the entire database would be required to process his request and it is simply not possible to just scan part of it. Despite this he continues to make requests believing he is entitled to do so every 6 months. As stated earlier, the complainant is entitled to exercise his rights under the legislation. But the DVLA equally is entitled to consider any request it receives in accordance with the legislation and decide whether section 12, 14 or any other exemption applies. If a public authority has previously issued a refusal notice under section 14(1) to an applicant and warned them of the provisions of section 17(6), it is entitled to refuse to respond at all to any requests for the same or very similar information.
42. The Commissioner considers the appropriate means of challenging a public authority’s refusal to comply with an information request is a referral to the Commissioner in accordance with section 50 of the FOIA. The appropriate route for challenging the Commissioner’s decision is an



appeal to the First-tier Tribunal and then the Upper Tribunal if considered necessary. It is noted that the complainant has appealed the Commissioner's decision notice of 6 March 2020 to the First-tier Tribunal and is now awaiting the outcome of its determination on section 16 of the FOIA. The Commissioner considers the appropriate course of action would be to wait until the tribunal has fully considered the appeal brought to it, rather than make further requests for the same information knowing what the DVLA's established position is on processing requests that require a scan of its database. Continuing to make requests regardless is fruitless, as they will only end up with the same response that has already been issued, as this is the DVLA's firm position. If the tribunal considers the Commissioner's decision is incorrect on a point of law it can substitute this decision for one of its own and direct the DVLA to take any appropriate steps.

43. It seems the complainant is trying to circumvent or side step the tribunal process and avoid delay. It is the Commissioner's opinion that the complainant has not let the tribunal process run its course and this is the most appropriate means of challenging the Commissioner's decision. Knowing the DVLA's established and already tested position on running bespoke scans of its database, she considers it is a waste of the DVLA's public resources to look at and respond to further requests for the same information up to the cost limit from the complainant.
44. The Commissioner is also of the opinion that making requests every 6 months for any data that can be provided within the cost limit (taking the position that the DVLA is able to process a refined request, which the DVLA firmly states it cannot), would in itself be vexatious too. Considering there is currently 49 million records on the DVLA's database, this process would require numerous individual requests over a significant period of time. The Commissioner considers it could be appropriately argued that this task would be overly burdensome on the DVLA in terms of time and resources. The limited information that could be gleaned by every request up to the cost limit would be disproportionate to the overall burden on the public authority.
45. For the above reasons, the Commissioner is satisfied that the DVLA is entitled to refuse to comply with this request in accordance with section 14(1) of the FOIA.

## **Other matters**

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46. The Commissioner notes that the DVLA also cited section 17(6) in its refusal notice of 3 August 2020. It put the complainant on notice that

any further requests for the same information would not be responded to. This is because the complainant has already received a refusal notice for the same request citing section 14(1) of the FOIA and it would therefore be unreasonable to expect it to respond to others on the same basis.

47. The complainant made a further request on 9 December 2020. The DVLA did not respond. The complainant has referred this request to the Commissioner as well and a further decision notice will follow addressing the DVLA's reliance on section 17(6).

## Right of appeal

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48. 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)

49. 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.
50. 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

**Samantha Coward**  
**Senior Case Officer**  
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