

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 October 2017

Public Authority: Driver & Vehicle Licensing Authority (an executive agency of the Department for Transport)

Address: Longview Road
Morrison
Swansea
SA6 7JL

Decision (including any steps ordered)

1. The complainant has requested information on the design of DVLA's databases. The DVLA refused to comply with the request on the grounds that it was vexatious within the meaning of section 14(1) of the FOIA.
2. The Commissioner's decision is that the request is not vexatious and therefore the DVLA was not entitled to refuse to comply with it under section 14(1) of the FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request, which 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.

Request and response

5. The Commissioner notes that under the FOIA the DVLA is not a public authority itself, but is actually an executive agency of the Department

for Transport which is responsible for the DVLA and therefore, the public authority in this case is actually the Department for Transport. However, for the sake of clarity, this decision notice refers to the DVLA as if it were the public authority.

6. On 5 August 2016, the complainant wrote to the DVLA and requested information in the following terms:

"For any DVLA's databases containing details of registered vehicles, registered owners, registered keepers, SORNs, scraped [sic] vehicles, mileages, export and reexport [sic] applications I would like to request the information on database design available as an output of the following SQL query:

*SELECT * FROM INFORMATION_SCHEMA.COLUMNS"*

7. The DVLA responded on 1 September 2016. It explained that information on registered keepers (where available) would be exempt from disclosure under section 40 of the FOIA but in any event it considered this request vexatious as defined by section 14(1) of the FOIA. DVLA further explained it considered the request showed an unreasonable persistence given the number of other requests around this subject matter it had dealt with. It also pointed to the fact the request was identical to an earlier request from January 2016.
8. The complainant responded on 3 November 2016 and clarified the wording of his request should have been for *"information on database design of all DVLA databases..."* and removed *"registered owners"* from the list. The complainant went on to explain why he did not consider the request was vexatious as there was a genuine purpose to the request and the scope was different to the January 2016 request.
9. Following an internal review the DVLA wrote to the complainant on 9 February 2017. It clarified that it considered the reworded request to be the same as the originally worded request as it still required the DVLA to run the specific SQL query against all databases held that contain relevant information. DVLA acknowledged the request was different than the January 2016 request and as such disclosed a list of fields contained in the vehicle database. DVLA explained that as it would hold a number of databases containing some of the requested information it estimated it would exceed the costs limit to comply with the request but in any event it still considered the request to be vexatious.

Scope of the case

10. The complainant contacted the Commissioner on 20 February 2017 to complain about the way his request for information had been handled.
11. The Commissioner considers the scope of her investigation to be to determine whether the request can be characterised as vexatious under section 14 of the FOIA and whether the DVLA has therefore correctly refused to respond.

Reasons for decision

Section 14 – vexatious requests

12. Section 14(1) of the FOIA states that:

"(a) Section 1(1) does not oblige a public authority to comply with a request for information is vexatious."

13. The term "vexatious" is not defined in the FOIA. In the Information Commissioner v Devon CC & Dransfield (2013)¹, the Upper Tribunal commented that the dictionary definition of the word vexatious is only of limited use and that the question of whether a request is vexatious ultimately depends upon the circumstances surrounding the request. The Tribunal concluded that 'vexatious' could be defined as the

"..manifestly unjustified, inappropriate or improper use of a formal procedure".

14. The decision establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.

15. The Upper Tribunal 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.

¹ <http://www.osspsc.gov.uk/Aspx/view.aspx?id=3680>

The Upper Tribunal cautioned 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"

16. The Commissioner therefore needs to consider whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.
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 requests². 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.
18. During the course of responding to the request the complainant sought to reword the request. However, the DVLA did not consider that this rewording made any difference to the request as it would still require the DVLA to run the specific SQL query against all the databases held at the DVLA that contain the information mentioned.
19. In determining that the request was vexatious the DVLA referred to an earlier request from the complainant that was considered by the Commissioner³ and later by the Information Tribunal⁴. This request was made in January 2016 and was for all vehicle details on the V5C form, dates of registrations, keeper changes, SORNs, scrap notifications and other changes. DVLA found that complying with this request would exceed the cost limit and refused the request under section 12 of the FOIA.

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatiousrequests.pdf>

³ ICO Decision Notice FS50628411

⁴ EA/2016/0268

20. The complainant appealed this decision to the Information Tribunal and his grounds for appeal were that the cost estimate had been inflated and that if true it suggested failures in the DVLA database design. The complainant provided his own cost estimate suggesting any reasonably qualified database engineer would be capable of responding to the request within the cost limit.
21. The DVLA provided witness evidence setting out that its process for creating a bespoke scan to interrogate its database did not differ from that considered by the Commissioner in an earlier decision notice⁵. The Tribunal set out that it probed the DVLA witness 'to a significant degree on every part of the estimate and as to the reasonableness of the estimate provided' and ultimately concluded that section 12 of the FOIA was engaged.

Purpose and value of the request, motive of the requester and overlapping requests

22. The Commissioner considers this background to be of significant importance in this case. The Tribunal had not issued its decision relating to the earlier request at the time this request was made and in fact the Commissioner had not concluded her investigation and issued her decision notice. This request was the fifth of eight requests made to the DVLA all of which continue the same line of enquiry regarding DVLA's vehicle database.
23. This particular request followed on from the initial request which was the subject of the Commissioner's decision notice and the Information Tribunal decision. The DVLA argues the intention of this request was to obtain details of database design for all databases held by DVLA in order to discredit the DVLA's cost estimates it has supplied in earlier requests.
24. When the complainant requested an internal review he reiterated that, in his opinion, *"running this query should take no longer than several minutes for an IT professional with reasonable skills so if DVLA will decide that is [sic] takes more than three working days I will not only make a complaint to the ICO but share your response with media and professional community as it raises a number of questions on DVLA's IT department abilities and how public money are being spent."*
25. The Commissioner notes that this suggests the complainant was motivated by not only obtaining information from the database but by

⁵ [FS50345802](#)

exposing issues with the DVLA's database and discrediting its cost estimates relied on in earlier requests.

26. The Commissioner acknowledges that a requester's motive is generally irrelevant when making a request under the FOIA and in isolation the complainant's request may not appear vexatious. Initially it seems the request has purpose and value to the individual as it is seeking to obtain information held on the DVLA's databases. However when viewed in the context of the other requests refused on cost grounds, and taking into account the suggestion any refusal in this case would result in DVLA being named and shamed it does seem that this request demonstrates an unreasonable persistence in its line of enquiry.
27. The DVLA has explained that the request which was later the subject of the Information Tribunal decision was made in January 2016 and the Commissioner issued her decision notice in October 2016. The request which is the subject of this notice was made in August 2016 and the DVLA believes if the complainant had waited for the outcome of the decision notice he may not have needed to make this request given the clear similarities between the two requests.
28. Having considered this position the Commissioner's view is that this request can be seen as a continuation of the complainant's repeated attempts to expose a perceived issue with the DVLA's database or to demonstrate that the DVLA is obstructing FOIA requests by providing spurious cost estimates.
29. The Commissioner considers that the DVLA's explanations do not show that this was an 'overlapping requests' as set out in her guidance. This is where the requester sends in a new request before the public authority has had an opportunity to address their earlier enquiries and in this case this did not happen. The new request overlapped with the Commissioner's decision but not with the public authority's consideration of the request.
30. That being said the pattern of requests do demonstrate a level of persistence. As previously mentioned this request was the fifth of eight requests made to the DVLA by the requester. In the case of the eighth request, this was made on the evening of the Tribunal hearing and was for a larger amount of information than that requested in the complaint being heard by the Tribunal. This request was refused under the cost limit and the requester is pursuing this to internal review despite decisions being made by both the Commissioner and the Tribunal that the cost limit has been reasonably applied by the DVLA in other similar cases.

The Commissioner's decision

31. In her guidance, the Commissioner recognises that the FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable. She also recognises that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.
32. While most people exercise this right responsibly, she acknowledges that a few may misuse or abuse the FOIA by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.
33. In addition, the Commissioner also recognises that dealing with unreasonable requests can place a strain on public authorities' resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.
34. The Commissioner accepts that there is a level of persistence to the request that could be viewed as unreasonable given that the complainant is fully aware that the DVLA's position was likely going to be to refuse the request on cost grounds given its broadly similar nature to earlier requests. In addition to this, the comments from the requester in his internal review request do suggest he is prepared to 'name and shame' the DVLA should they take the same approach to this request as to the previous request.
35. The Commissioner accepts it can also be argued that the requests are attempting to demonstrate some failing on the DVLA's part, particularly in the design and management of its database. Conversely it could also be argued that the complainant has a genuine interest in obtaining information from the database and on its design.
36. The DVLA has not explicitly advanced any arguments relating to the burden of dealing with the request or the disruption to its functions or its staff that dealing with the request would cause. Whilst the DVLA has a valid point that responding to the request would only have resulted in the same outcome – a refusal on cost grounds – this does not necessarily mean it would have been particularly burdensome or disrupting to do so. Whilst it may be frustrating to the DVLA to have to respond to a request when it seems apparent the complainant is aware what the outcome would be and this may be seen as unreasonable it is nonetheless not placing an obvious burden on the public authority.

37. The Commissioner cannot rule out the possibility there is still a genuine purpose to the request other than simply creating a disruption, causing harassment to the DVLA or seeking to find some evidence of flaws in the database design. In fact the complainant explained to the Tribunal he was researching the environmental impact of planned obsolescence of all vehicle makes and models to assist motorists to buy vehicles likely to last longer than competitors therefore reducing the environmental impact of vehicle recycling.
38. In reaching a conclusion the Commissioner refers back to the point that a public authority should expect there may be some degree of annoyance or disruption in committing to being transparent and the purpose of section 14 is to ensure that there is not a disproportionate level of disruption, burden or distress placed on a public authority by requests which have no real value or purpose. In this case, the Commissioner is not able to conclude that the request was designed solely to impact on the public authority in this way and in fact it can be argued there was a purpose to the request. Regardless of this, the fact that no arguments about burden or disruption have been made (and the Commissioner finds none to be obvious) means that even a request of small purpose or value is likely to be a reasonable one and not vexatious.
39. The Commissioner considers the DVLA was therefore incorrect to deem the request as vexatious and that section 14(1) of the FOIA is not engaged.

Right of appeal

40. 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@hmcts.gsi.gov.uk

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

41. 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.
42. 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

Jill Hulley
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