

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 October 2017

**Public Authority:** Driver and Vehicle Licensing Agency (An executive agency of the Department for Transport)

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

#### Decision (including any steps ordered)

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1. The complainant has requested the interaction between Driver and Vehicle Licensing Agency (DVLA) and the Independent Complaints Assessors (ICA) in relation to a particular matter. DVLA would neither confirm nor deny holding the requested information by virtue of section 40(5)(a)(personal information) of FOIA. The Commissioner's decision is that it was correct to do so. No steps are required.

#### Request and response

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2. On 11 January 2017 the complainant made the following request for information under FOIA:

*'You are sending out an email which is lying to drivers up and down the country telling them to tax their vehicles immediately when you know full well their vehicles are already taxed. That is a deliberate attempt to commit fraud as many people have fallen victim to this scam and you have not given the money back to these drivers and/ or registered keepers.*

*Now, despite a reprimand from the ICA over these emails and the fact that you were meant to pull the email or reword it, you have failed to comply with the ICA recommendations.*

*I would now like you to publish all interactions between yourselves and the ICA in relation to the matter and all the investigative notes that the DVLA complaints team, [redacted name] in particular, have made also in relation to the same issues.*

3. On 7 February 2017 DVLA refused to confirm or deny that it holds any information relating to the request citing section 40(5) (Personal Information):

*'The information you are requesting concerns a specific ICA case and therefore, DVLA considers the information you are requesting to be personal information. As such the Agency can neither confirm nor deny that it holds this information. The duty to confirm or deny whether the information you have requested is held does not apply by virtue of section 40(5)(a) of the FOIA. This should not be taken to be evidence that the information you asked for does or does not exist.'*

4. On 7 February 2017, the complainant expressed his dissatisfaction and this was treated as a request for an internal review. DVLA responded to this on 19 May 2017.
5. On 13 June 2017 the complainant requested an internal review concerning the 'Direct Debit Cancellation Email'. DVLA reviewed the case and provided the outcome of its review on 20 June stating that to avoid any confusion, that this letter replaced their letter of 19 May 2017. DVLA upheld its decision to cite section 40(5) to refuse to confirm or deny whether the information requested is held. DVLA explained that a response under FOIA is a response to everyone.' *For that reason, the Agency would be in breach of data protection law if it disclosed any information that could lead to the identification of an individual.'*

## **Scope of the case**

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6. On 19 May 2017 the complainant contacted the Information Commissioner and after providing further information, the case was accepted on 29 June 2017.
7. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of FOIA. FOIA is concerned with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

8. The Commissioner's investigation will focus on the citing of section 40(5)(a).

## Reasons for decision

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### Section 40 – personal information

9. Section 40(5)(a) of FOIA excludes a public authority from complying with the duty imposed by section 1(1)(a) of FOIA - confirming whether or not the requested information is held - in relation to information which, if held by the public authority, would be exempt information by virtue of subsection (1). In other words, if someone requests their own personal data, there is an exemption from the duty to confirm or deny under FOIA.
10. Section 40(1) of FOIA states that:

*"Any information to which a request relates is exempt information if it constitutes personal data of which the applicant is the data subject".*
11. The Data Protection Act 1998 (DPA) defines personal data as:

*"...data which relate to a living individual who can be identified*

*a) from those data, or*

*b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,*

*and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual."*
12. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
13. The Commissioner understands that the Independent Complaints Assessors review complaints made against the Department for Transport and its agencies (including DVLA) and other bodies.
14. Having considered the wording of the request and the information provided by the complainant and DVLA in this case, the Commissioner is satisfied that the complainant is, or would be, the subject of this

requested information. This is because the information he has requested is about or connected to him and a complaint. It is an approach for information which can be linked to a named, living individual - the complainant himself. It follows that the Commissioner considers that the complainant is the data subject within the meaning of the section 40(1) exemption.

15. In relation to such information, the provisions of section 40(5) mean that DVLA is not required to comply with the duty to confirm or deny whether it holds the information, as the duty to confirm or deny does not arise in relation to information which is (or, if it were held by the DVLA, would be) exempt information by virtue of subsection (1).
16. For DVLA to provide even a response to section 1(1)(a) by confirming or denying that such requested information is held confirms that the personal data asked about in the request actually exists or does not exist. Either response amounts to a public disclosure of personal data in respect of the data subject of the request.
17. The Commissioner is satisfied that confirming or denying whether it holds any information under the terms of FOIA means that the public authority would be confirming, to the world at large, whether it holds details of a complaint involving the complainant. She therefore considers that the section 40(5)(a) exemption was relied upon correctly by DVLA in this case.

## Right of appeal

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18. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

19. 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.
20. 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 .....**

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