

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 August 2017

Public Authority: Driver & Vehicle Licensing Agency
Address: Longview Road
Morrison
Swansea
SA6 7JL

Decision (including any steps ordered)

1. The complainant has requested all records relating to action taken on selling driver details. The Driver & Vehicle Licensing Agency (DVLA) refused the request on the basis of various subsections of the section 31 exemption (Law Enforcement).
2. The Commissioner's decision is that DVLA has demonstrated that section 31(1)(g) with 31(2)(b) is engaged and the public interest favours maintaining the exemption. She requires no steps to be taken.

Request and response

3. On 27 February 2017 the complainant requested the following information:

'Please provide all records relating [to] the action taken by the DVLA to prevent organisations selling driver details accessed under KADOE to MIL Collections Ld.'
4. On 4 April 2017 DVLA responded and refused to provide the information citing section 31(1)(g) and subsection 31(2)(b).
5. The complainant requested an internal review on 4 April 2017.
6. DVLA provided the outcome of its internal review on 6 June 2017 and upheld the decision to refuse the requested information under section 31 due to an ongoing investigation.

Scope of the case

7. The complainant contacted the Commissioner on 8 June 2017 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of her investigation to be to determine if DVLA has correctly applied the provisions of section 31 and if so to determine where the balance of the public interest lies.

Background

9. The DVLA has provided the following background to the request.
10. DVLA is able to release details of a vehicle's registered keeper from its vehicle register where reasonable cause to receive that information can be demonstrated. Subject to a range of conditions, the Keeper At Date Of Event (KADOE) service allows organisations to make requests for keeper data electronically. The facility is provided under contract. The Agency has measures in place to ensure that those making use of the KADOE service do so under the terms of the contract.

Reasons for decision

Section 31 – law enforcement

11. Section 31 provides a prejudice-based exemption which protects a variety of law enforcement interests. Consideration of this exemption is a two-stage process. Firstly, in order for the exemption to be engaged it must be at least likely that disclosure would prejudice one of the law enforcement interests protected by section 31 of FOIA. Secondly, the exemption is subject to a public interest balancing test. The effect of this is that the information should be disclosed if the public interest favours this, even though the exemption is engaged.

12. DVLA has applied section 31(1)(g) together with section 31(2)(b).

13. The relevant parts of section 31 of the FOI provide that:

“(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),

(2) The purposes referred to in subsection (1)(g) to (i) are –

(b) the purpose of ascertaining whether any person is responsible for any conduct which is improper.'

14. The Commissioner will therefore consider whether DVLA exercises a relevant function for any of the purposes specified in this subsection, the likelihood of prejudice to any of the functions if the requested information were to be disclosed and whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

DVLA's functions for the purposes of Section 31(2)(b)

15. For the exemption to be engaged, the Commissioner requires the function identified by the public authority in relation to section 31(1)(g) to be a function which is specifically entrusted to that public authority to fulfil.
16. DVLA have stated that this is an ongoing investigation:
- Disclosure of the information requested would be likely to prejudice DVLA's ability to effectively conduct an investigation into the actions of the companies involved in this specific matter.
 - The investigation is ongoing and DVLA must have sufficient space to conduct the investigation without undue influence or distraction.
 - DVLA has received a number of requests for information relating to the investigation. DVLA is also aware that discussions have taken place (across internet forums etc) regarding the specific case involving MIL Collections. Therefore, there is a real and significant risk of third parties attempting to influence DVLA's view before it reaches a decision.
17. The Commissioner considers that this function places a duty on DVLA to protect the vehicle and owners' details against risks arising out of or in connection with the services it provides.
18. Based on the submissions from DVLA the Commissioner is satisfied that DVLA performs a relevant function in relation to section 31(1)(g) and this function is exercised in ascertaining that a Company is making use of the KADOE service under the terms of contract.

Likelihood of prejudice occurring

19. At the time of the request DVLA had not yet made a decision on the particular case involving MIL Collections.

20. DVLA has stated that it was concerned that disclosing the requested information would impact on it being able to achieve a fair outcome. This is because it could lead to bias or influence perceptions of the situation endangering the ability of individuals to provide an impartial and objective view of the situation and therefore make fair decisions.
21. Taking into account the subject matter and DVLA's representations, the Commissioner accepts that there is a real and significant risk that disclosure during an ongoing investigation would have been likely to prejudice DVLA's ability to reach a decision without undue influence. Therefore the Commissioner considers that section 31(1)(g) with section 31(2)(b) is engaged in relation to the withheld information.
22. The exemption under section 31(1)(g) with section 31(2)(b) is a qualified exemption which means that the information in question should only be withheld where the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosure

23. The complainant has argued for disclosure as '*the DVLA was not engaged in law enforcement nor is it a law enforcement agency.*'
24. DVLA have stated that arguments in favour of disclosure would demonstrate that DVLA takes the release of information from its records seriously and will investigate complaints received thoroughly and that investigations are dealt with objectively.

Public interest arguments in favour of maintaining the exemption

25. DVLA have argued that the public interest arguments in favour of maintaining the exemption are:
 - To ensure that DVLA is able to investigate the procedures being undertaken by parking companies who receive DVLA data thoroughly without interruption.
 - It would be unreasonable to release the information requested while the issue is still being investigated as this would enable third parties to comment on the events without being in full possession of the facts.
 - DVLA should be able to analyse relevant correspondence without the fear of individuals hindering the investigation by providing their view as to the final outcome before the investigation has been completed.

Balance of the public interest arguments

26. DVLA have argued that *'DVLA should be able to complete all investigations into matters concerning the release of information from its vehicle records without intrusion from third parties. DVLA should be able to consider any evidence without distraction in order to make a balanced decision as to the outcome of the investigation.'*
27. The Commissioner notes the complainant's argument that DVLA is not a law enforcement agency. However, the Commissioner accepts that DVLA will investigate complaints about the release of information from its vehicle records in accordance with the KADOE service provided under contract.
28. In reaching a view on where the public interest lies in this case, the Commissioner accepts there is a legitimate public interest in informing the public about the investigative process.
29. Balanced against this is the need to allow DVLA a safe space to consider an ongoing investigation into a particular company and to ascertain whether any person is responsible for any conduct which is improper.
30. The Commissioner considers that it is in the public interest that DVLA only discloses that information to those entitled to receive it and for DVLA to conduct an investigation without interruption. Therefore the Commissioner considers that the public interest argument for withholding this information outweighs the public interest argument for disclosure.
31. The Commissioner therefore finds that section 31(1)(g) with section 31(2)(b) is engaged in relation to the withheld information and the public interest favours maintaining the exemption.

Right of appeal

32. 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

33. 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.
34. 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
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