

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 December 2020

Public Authority: Driver and Vehicle Licensing Agency
(Department for Transport)

Address: Longview Road
Swansea
SA6 7JL

Decision (including any steps ordered)

1. In a six part request, the complainant has requested information from the Driver and Vehicle Licensing Agency (DVLA) about a specific parking company and about the Keeper of a Vehicle at the Date of an Event service. DVLA provided information relevant to one part, advised it does not hold information relevant to three parts and withheld the remaining information under section 31(1)(a) (law enforcement) and section 43(2) (commercial interests) of the FOIA, with the public interest favouring maintaining these exemptions.
2. In the course of the Commissioner's investigation, DVLA withdrew its reliance on section 43 and released the information it had been withholding under that exemption. The complainant disputes that DVLA does not hold information relevant to part 5 of his request, and its reliance on section 31 to withhold information he requested in part 1.
3. The Commissioner's decision is as follows:
 - On the balance of probabilities DVLA does not hold the information requested in part 1 of the request. DVLA's response breached section 1(1)(a) of the FOIA as it did not advise him that it does not hold that information.
 - On the balance of probabilities, DVLA does not hold the information requested in part 5 of the request and its response to that part complied with section 1(1)(a).

- DVLA breached section 10(1) of the FOIA as it did not comply with section 1(1) within 20 working days of the request.
4. The Commissioner does not require DVLA to take any remedial steps.

Background

5. The Keeper of a Vehicle at the Date of an Event (KADOE) service is a managed service that gives certain companies access to the DVLA's Vehicle Keeper data. It is a service for companies such as solicitors, insurance companies, toll operators and parking management companies that need to know a vehicle keeper's name and address on a particular date.
6. Once contracts have been signed a company could connect to the KADOE service in a number of ways, but all are electronic and involve installing the appropriate IT software.
7. In relation to operators of private car parks, in order to request vehicle keeper details from DVLA, an operator must be a member of one of two Accredited Trade Associations and follow a code of practice. However, operators of private car parks can also be a customer of an intermediary 'link' company. Such a link company would request keeper details through the KADOE service on behalf of its customers.

Request and response

8. On 17 August 2019 the complainant wrote to DVLA through the WhatDoTheyKnow website and requested information in the following terms:

"I write in looking for information relating to KADOE requests fulfilled in favour of Smart Parking Limited (also known as Town and Country Parking) for the land adjacent to 18 Wind Street, Ammanford, Carmarthenshire, SA18 3DN (commonly referred to as Shoppers World car park).

1) Per section B11.1.c.1. of KADOE contract, please provide a copy Smart Parking Ltd's site survey questionnaire.

2) Per section D11. of KADOE contract, please confirm the number and dates of inspections that the DVLA has made to ensure Smart Parking Ltd's compliance with the contract.

- 3) *Per section C5. of KADOE contract, please confirm the number and dates of review meeting held with Smart Parking Ltd.*
- 4) *Per section C5.3.o of KADOE contract, please provide a copy of the landowner agreement (if one exists) between Smart Parking Ltd and the lawful owner/agent of land adjacent to 18 Wind Street, Ammanford, Carmarthenshire, SA18 3DN (commonly referred to as Shoppers World).*
- 5) *Please confirm the number of points on Smart Parking Ltd's ATA membership I5cense as well as notification events that the DVLA has recorded.*
- 6) *Please provide a signed copy of the latest KADOE contract enacted by Smart Parking Ltd, including the complete Annex A Declaration."*
9. On 17 September 2019 DVLA asked the complainant to clarify part 1 of his request, which he did on 24 September 2019, explaining that he *"had expected that Smart Parking Ltd's site survey questionnaire would relate to its own operating centre(s) but if [DVLA had] one that specifically relates to the site/land adjacent to 18 Wind St then [he would] take that too."*
10. On 5 November 2019 DVLA responded to the request. It withheld the information it holds that it indicated was relevant to part 1 of the request under section 31(1)(a) of the FOIA. DVLA addressed part 2 and confirmed it does not hold information relevant to parts 3, 4 and 5. DVLA withheld the information it holds that is relevant to part 6 under section 43(2) of the FOIA. DVLA confirmed that it considered the public interest favoured maintaining the two exemptions.
11. On 24 January 2020 the complainant asked DVLA to review its response to parts 1, 5 and 6 of his request.
12. DVLA provided an internal review on 13 March 2020. It found that its response to parts 1, 5 and 6 of the request was appropriate.
13. During the Commissioner's investigation, DVLA reconsidered its response and provided the complainant with a fresh response on 10 November 2020. It maintained its position regarding parts 1 and 5 of the request but withdrew its reliance on section 43(2) regarding part 6. DVLA released this information – a contract – to the complainant.

Scope of the case

14. The complainant first contacted the Commissioner on 17 September 2019 to complain about the way his request for information had been handled.

15. Following DVLA's response of 10 November 2020 the complainant confirmed that he remained dissatisfied with DVLA's response to parts 1 and 5 of his request.
16. The Commissioner's investigation has first focussed on whether DVLA can be said to hold the information requested in part 1 of the request, under section 1(1)(a) of the FOIA. If so, she will consider whether that information is exempt information under section 31(1)(a) of the FOIA. The Commissioner has also considered whether DVLA has complied with section 1(1)(a) of the FOIA with regard to part 5 of the complainant's request. Finally, the Commissioner has considered the timeliness of DVLA's response.

Reasons for decision

Section 1 – right of access to information held by public authorities

17. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b) to have the information communicated to him or her if it is held and is not exempt information.
18. In part 1 of his request, the complainant has requested a copy of Smart Parking Ltd's site survey questionnaire and/or the site survey questionnaire associated with a particular piece of land.
19. In its refusal of 15 November 2019, DVLA told the complainant that the site survey it holds related to Smart Parking Ltd's operating centre. It explained there is no such survey for the land adjacent to 18 Wind Street. The site survey questionnaire that DVLA considers is relevant was completed by the company that acts as the intermediary 'link provider' between particular private parking operators, including Smart Parking Ltd, and DVLA's KADOE service.
20. DVLA said that site survey questionnaires relate specifically to the technical set up of the secure KADOE service electronic link, allowing the customer to submit enquiries for vehicle keeper information. The site survey questionnaire does not relate to actual, physical car park sites.
21. DVLA said it considered site survey questionnaires to be exempt from disclosure under section 31(1)(a) of the FOIA because to put that information into the public domain would be likely to prejudice the prevention or detection of crime.

22. The Commissioner discussed these matters with DVLA in a conversation with it on 1 December 2020. She first considered whether DVLA can be said to hold the information requested. The complainant has requested Smart Parking Ltd's site survey questionnaire and/or the site survey questionnaire for land adjacent to 18 Wind Street. DVLA explained that such information does not exist as Smart Parking Ltd has not itself completed a site survey questionnaire. And it had advised the complainant that there was no site survey questionnaire for the piece of land in question.
23. As explained above, a site survey questionnaire is a questionnaire that ensures that certain organisations that require access to DVLA's KADOE service (for themselves or on behalf of their customers) have IT systems that are sufficiently secure and robust. The information that DVLA holds is the site survey questionnaire for the intermediary company of which Smart Parking Ltd is a customer; it is not the questionnaire for Smart Parking Ltd itself.
24. As noted, the complainant has requested a copy of Smart Parking Ltd's site survey questionnaire and/or the site survey questionnaire for land adjacent to Wind St. Smart Parking Ltd has not completed such a site survey questionnaire itself. The intermediary company of which Smart Parking Ltd is a customer has completed the questionnaire in order to request KADOE data on behalf of Smart Parking Ltd. The questionnaire provides information about the intermediary's IT systems; it does not provide information about Smart Parking's IT systems and whether or not those systems are out of date and insecure. The security or otherwise of Smart Parking's IT systems is a concern that the complainant has expressed in his correspondence.
25. The Commissioner has viewed the site survey questionnaire that DVLA holds. It is quite clearly the questionnaire for the intermediary organisation of which Smart Parking is a customer. The Commissioner does not consider that this information is what the complainant has requested. Moreover, having considered the circumstances, she is satisfied that DVLA does not hold the information the complainant has requested.
26. The Commissioner appreciates that DVLA discussed the site survey questionnaire it holds with the complainant in order to be helpful. However, she must find that DVLA breached section 1(1)(a) of the FOIA. This is because it indicated that it holds the information the complainant has requested in part 1 of his request when, in fact, it does not.
27. The Commissioner has next considered part 5 of the request. The complainant has framed his request as being concerned with Smart Parking Ltd. In part 5 of the request the complainant has requested the

number of points on Smart Parking Ltd's Accredited Trade Association (ATA) membership licence, and the number of 'notification events' that DVLA has recorded. The Commissioner understands the second element of this part to mean notification events against Smart Parking Ltd.

28. With regard to part 5, in its submission to the Commissioner DVLA has largely repeated what it advised the complainant in its correspondence of 10 November 2020 and in its earlier correspondence with him. DVLA said that in its response to the complainant of 5 November 2019, it had advised that it does not hold this information and confirmed again that this is the case. DVLA said that a thorough search had been conducted and that it does not hold e-mail exchanges with the ATAs, nor 'notification events' concerning any sanction points awarded against Smart Parking Ltd.
29. DVLA confirmed that in order for a private parking operator to be permitted to request vehicle keeper information from the DVLA, it must be a member of an ATA. The ATAs are responsible for ensuring parking operators act in accordance with the relevant code of practice. For example, the British Parking Association (BPA) enforces noncompliance with its code of practice through a sanctions scheme. Sanction points are awarded according to the severity of the contravention. DVLA had provided the complainant with a link to where details of the BPA scheme are published.
30. In correspondence to the Commissioner on 18 November 2020 the complainant put forward matters that indicated to him that DVLA does hold relevant information. The Commissioner put these to DVLA and asked it to address them. DVLA and the Commissioner subsequently discussed the complainant's correspondence in a conversation on 1 December 2020.
31. From information published on BPA's website, the complainant said he had identified that one particular parking operator had accrued 15 sanction points in less than four months. He noted that from DVLA's response to a separate information request that DVLA had advised that an ATA will notify it if a parking operator accumulates 10 or more sanction points. The complainant quoted from DVLA's response to another information request (DVLA reference FOIR7845) that:

"While we are notified of sanction points being are [sic] awarded, we do not hold details of why any points were awarded against Smart Parking..."
32. This response suggested to the complainant that DVLA had been notified of sanction points being awarded against Smart Parking Ltd though did not know the reason(s) for the sanction points.

33. In its conversation with the Commissioner DVLA confirmed that it is the ATAs that are responsible for managing sanction points against its member parking operators. As such, DVLA does not hold information on the number of sanction points, if any, Smart Parking Ltd may have accrued. Sanction points expire after 12 months and Smart Parking Ltd would have to accrue 10 or more points in one 12 month period before the ATA that Smart Parking Ltd is a member of would be required to notify DVLA.
34. DVLA acknowledged that its FOIR7845 response was not clear. It advised the Commissioner that it was likely that it had meant to advise that it did not hold details on *whether* Smart Parking had accrued any sanction points, rather than *why* it had such accrued points.
35. In his correspondence to the Commissioner of 18 November 2020 the complainant lists examples of Smart Parking Ltd's non-compliance with particular laws which he says DVLA was notified about in August and autumn 2019. However, the complainant subsequently confirmed that an acquaintance of his had sent those concerns to DVLA, not an ATA.
36. Having re-considered DVLA's submission and the complainant's arguments, and following her discussion with DVLA, the Commissioner is satisfied, on the balance of probabilities, that DVLA does not hold the information requested in part 5 of the request, for the reasons it has given: ATAs manage sanction points and Smart Parking Ltd has not accrued enough points (if any) over a 12 month period to warrant its ATA notifying DVLA. The Commissioner therefore finds that DVLA has complied with section 1(1)(a) of the FOIA in respect of that part.

Section 10 – time for compliance

37. Under section 10(1) a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
38. The complainant in this case first submitted his request on 17 August 2019. DVLA asked the complainant to clarify his request at the limit of the 20 working day deadline. He did so on 24 September 2019 and DVLA provided a response to the clarified request on 5 November 2019. This was outside of the 20 working day requirement and DVLA therefore breached section 10(1) of the FOIA.

Right of appeal

39. 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

40. 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.
41. 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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