

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 December 2013

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

Address: Longview Road
Swansea
SA6 7JL

Decision (including any steps ordered)

1. The complainant requested copies of two updated/amended pieces of legislation. The Driver and Vehicle Licensing Agency ('DVLA') stated that it did not hold the information for the purposes of the FOIA, but advised that the requested information was publicly available and easily accessible and, if it was held, it would be exempt under section 21 of the FOIA. During the course of the Commissioner's investigation, the DVLA located a copy of one of the documents question which was considered to be held for the purpose of the FOIA. It disclosed the information to the complainant, but maintained that it did not hold the other document requested. The Commissioner's decision is that the DVLA has complied with its obligations under section 1 and disclosed the information it holds relevant to the request. He does not require any steps to be taken.

Request and response

2. 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 not the

DVLA. However, for the sake of clarity, this decision notice refers to the DVLA as if it were the public authority.

3. On 21 June 2013, the complainant wrote to the DVLA and requested information in the following terms:

"A copy of the Vehicle Excise Registration Act 1994 (As amended by schedule 45 of the Finance Act 2008) – updated one; and

A copy of the Vehicle Excise Duty (immobilisation, Removal and Disposal of Vehicles) Regulations 1997 (SI 1997/2439)(The 1997 Regulations) As amended by other Statutory Instruments 2008 No 2266".

4. The DVLA responded on 11 July 2013 stating that, whilst it had access to amended copies of legislation, the information was held on a third party database accessible under licence and as such the information is classed "as not being held by DVLA". The response stated that, in any event, the information was reasonably accessible and as such it would be exempt under section 21 of the FOIA. The DVLA provided links to relevant website pages in order that the complainant could access the information requested.
5. On 11 July 2013 the complainant requested an internal review of the DVLA's handling of his request.
6. The DVLA provided the outcome of its internal review on 21 August 2013 and upheld its position that the requested information was not held. It re-iterated that the information was available from various sources and therefore if the DVLA did hold it, it would be exempt under section 21 of the FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 15 August 2013 to complain about the way his request for information had been handled.
8. During the course of the Commissioner's investigation, the DVLA confirmed that it had located a consolidated version of the Vehicle Excise Duty (Immobilisation, Removal and Disposal of Vehicles) Regulations 1997 ('the Wheelclamping regulations') which it had downloaded, saved and printed. It disclosed a copy of this document to the complainant. However, it maintained that it did not hold a copy of the Vehicle Excise Registration Act 1994 (as amended by schedule 45 of the Finance Act 2008) ('VERA'), for the purposes of the FOIA.

9. The Commissioner considers the scope of his investigation is to establish whether the DVLA holds any additional information relevant to the request other than that which it has disclosed.

Reasons for decision

Section 1 – general right of access

Is the requested information held by the DVLA for the purposes of the FOIA?

10. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
11. The DVLA's position is that it does not hold a copy of VERA for the purposes of FOIA. It confirmed that it has access to amended and updated copies of legislation, but the information is held on a third party database (Lexis Nexis), which is accessible to the DVLA under licence. The DVLA confirmed that it does not have unrestricted rights to use the content of the database in question, and as such the information is not considered to be held by the DVLA for the purposes of FOIA.
12. In its responses to the complainant, the DVLA confirmed that it did not hold a copy of the information requested. However, in order to provide advice and assistance, it explained that copies of legislation were available online via the legislation.gov.uk website. The DVLA confirmed that copies of original and revised legislation were available on this website and provided the complainant with links to the relevant section of the website where he could access the information requested.
13. In considering whether the DVLA holds a copy of VERA, the Commissioner has had regard to the decision of the Information Tribunal in *Glen Marlow v the Information Commissioner (EA/2005/0031)*¹. In this case, the Tribunal considered the extent to which information in an online legal library was held by the local authority that subscribed to it. The Tribunal differentiated between the information that the public authority had selected for use and all the other information held within the database. The Tribunal found that information which the public

¹ <http://www.informationtribunal.gov.uk/DBFiles/Decision/i97/Marlow.pdf>

authority had selected, downloaded and saved to its own system was considered to be held, as was any information that had been printed off the database. However, the Tribunal determined that the remainder of the information on the database was not held by the public authority for the purposes of FOIA. In reaching its decision the Tribunal took into account the public authority's subscription to the database, and its licence, which was quite restrictive.

14. The DVLA provided the Commissioner with an extract from its agreement with Lexis Nexis entitled "Licence Restrictions in relation to the Services". The Commissioner notes that the agreement contains almost identical conditions as the subscription/agreement considered by the Tribunal in the case of *Glen Marlow v Information Commissioner* (as outlined in paragraph 6 of the decision). It is therefore clear that the DVLA's rights in relation to the information available on the third party database are very restricted.
15. The Commissioner's guidance on determining whether information is held² addresses the issue of whether information available through online databases is held for the purposes of FOIA. It states that generally information from a third party's database will not be held unless it has been downloaded, saved or printed out by the authority. In light of this guidance (as mentioned in paragraph 8 of this notice), during the course of the Commissioner's investigation, the DVLA located a copy of the Wheelclamping regulations which it had downloaded, printed and saved. However, the DVLA advised that it had conducted searches to determine whether a copy of VERA had been downloaded, printed and saved and it had not located a copy.
16. The DVLA advised that, if it did hold a copy of VERA (which had been downloaded from the relevant database), it would be held only in electronic format. This is because the document is 182 pages long and it would not be cost effective to print out a copy for each member of staff who required access to it.
17. In terms of the searches conducted to ascertain whether a copy of VERA was held, the DVLA confirmed that searches had been carried out within its vehicle policy section. The vehicle policy section holds its electronic files and documents in a dedicated Storage Area Network (SAN) folder

2

http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Practical_application/determining_whether_information_is_held_foi_eir.aspx

on the DVLA network. The SAN is divided into sub-folders, with one sub-folder entitled "legislation" where copies of relevant legislation are stored. Searches were conducted within this folder using the search terms "VERA" (which is the commonly known acronym for the piece of legislation), as well as the full title of the legislation. These searches did not identify a copy of VERA.

18. DVLA also conducted searches of court cases held within its legal department. Whilst some of the court cases would have held a specific section of VERA, only that particular section was downloaded, saved and printed for the purposes of legal proceedings. Searches carried out within the legal department's SAN did not identify any copies of VERA. DVLA's position is, therefore, that it might hold some of the most commonly referred to sections of VERA (referred to in court case files), however it does not hold "a copy of the Vehicle Excise Registration Act 1994 (As amended by schedule 45 of the Finance Act 2008)", which is what the complainant requested.
19. The Commissioner notes that the DVLA has access to the information requested (VERA) via a third party online database. However, in light of the terms of its licence agreement/subscription, and the restrictions in place with regard to the database, he accepts that the information cannot be considered to be held for the purposes of FOIA. Further, in light of the explanations and representations provided by the DVLA, the Commissioner is satisfied that, on the balance of probabilities, the DVLA does not hold any copies of the information requested which have been downloaded, saved and printed from the third party database. The Commissioner is therefore satisfied that the DVLA does not hold an updated copy of VERA for the purposes of the FOIA.

Right of appeal

20. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

21. 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.
22. 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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF