

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 August 2015

Public Authority: Driver and Vehicle Standards Agency
(an Executive Agency of the Department for Transport)

Address: The Axis Building
112 Upper Parliament Street
Nottingham
NG1 6LP

Decision (including any steps ordered)

1. The complainant requested from the Driver and Vehicle Standards Agency (DVSA) information about a call-off contract for theory testing. The DVSA initially refused to comply with the request as it considered it to be vexatious under section 14(1) of the FOIA. Following its internal review, the DVSA withdrew its reliance on section 14(1) and said the requested information was exempt from disclosure under section 22 because it intended to publish the requested information in the future.
2. The Commissioner's decision is that the DVSA incorrectly applied the exemption under section 22. However, the requested information was published during the Commissioner's investigation and therefore, he does not require the DVSA to take any steps.

Request and response

3. On 11 August 2014, the complainant requested information concerning the call-out contract for theory testing that had been awarded to learndirect Ltd. The request was submitted through the DVSA's online submission process.
4. The DVSA responded on 10 September and refused to comply with the request. It said that the burden of complying with the request made it vexatious under section 14(1) of the FOIA.

5. Following an internal review the DVSA wrote to the complainant on 19 January. It revised its position, now relying on the exemption under section 22 of the FOIA as it said the requested information was due to be published at the end of April 2015.
6. The contract was published during the Commissioner's investigation¹. The Commissioner invited the complainant to withdraw his complaint at that stage, however the complainant preferred to progress to a decision notice.

Scope of the case

7. The complainant initially contacted the Commissioner on 30 January 2015 to complain about the way his request for information had been handled. He considered that the length of time between his request for the information and its expected publication was unreasonable.
8. The Commissioner has focussed his investigation on the DVSA's final application of the section 22 exemption to the request.

Reasons for decision

9. In September 2012, the Government Procurement Service and the then Driving Standards Agency jointly ran a competition to appoint a supplier for a framework contract to provide computer-based testing for government. The competition was concluded in early 2013. A call-off contract for the driving theory test was awarded under this framework to learndirect Ltd, on 18 October 2013.
10. Section 22 of the FOIA says that information is exempt information if, **at the time of the request**, it is held with a view to its publication at some future date, and if it is reasonable in all the circumstances to withhold it until it is published.
11. The DVSA has told the Commissioner that at the end of 2013 it began work on preparing the contract in question for publication. It intended

¹ <https://www.contractsfinder.service.gov.uk/Notice/0c490824-f06a-414c-ab4e-b12a0d2de885>

to publish the contract in line with the Government's transparency and accountability agenda, which includes the publication of contracts². At the time of the complainant's request however – 11 August 2014 – the DVSA says that the work to determine any redactions to the contract – part of the preparation process - was built into existing workforce planning to fit in around other responsibilities. It intended to publish a redacted version of the contract at the beginning of 2015.

12. Based on what the DVSA has told him, the Commissioner is not satisfied that at the time it received the request, the DVSA held the information with a view to publishing it in the future. This is because the DVSA considered that some of the information is exempt from disclosure under section 31 (prejudice to the prevention or detection of crime) and section 43(2) (prejudice to commercial interests). It considered that this particular information would need to be redacted and has, indeed subsequently redacted it. At the time of the request, however, it appears that it had yet to undertake any redaction process. Consequently, at the time of the request it would not have been able to say which parts of the contract it would be publishing and which it would not.
13. In [FS50121803](#) the public authority had refused a request for prison-related information about several notorious convicted murderers. One of the exemptions that it relied on was section 22, on the grounds that it intended to place some of the requested information into the public domain via the National Archives (TNA). To do this, it planned to review all the information prior to transfer to TNA at some future date. It would have to undertake that exercise, since it was likely other exemptions would apply to some of the sensitive information.
14. The decision notice in FS50121803 rejects the authority's view that section 22 was engaged. Although the Commissioner agreed that at the time of the request it was clear that some of the information was destined for future publication, the authority could not specify which information that was.
15. In order to engage section 22, a public authority must be able to clearly point to the specific information it intends to publish. The exemption will only apply to that information.

² <https://www.gov.uk/government/collections/procurement-and-contracting-transparency-progress-reports>

16. In this case, the Commissioner considers that the DVSA was incorrect to apply section 22 because at the time of the request it could not have pointed to the specific information that it intended to publish. Because he finds the exemption was not engaged, it has not been necessary to consider any public interest arguments.
17. As the information has now been disclosed in a redacted format and the complainant has not complained about the redactions made, the Commissioner does not require the DVSA to take any steps.

Right of appeal

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

Website: 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
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