

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 February 2020

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

Decision (including any steps ordered)

1. The complainant has requested the number of enforcement cases dealt with each month by the DVLA. The DVLA refused to disclose the requested information under section 31(1)(d) FOIA.
2. The Commissioner's decision is that the DVLA has incorrectly applied section 31(1)(d) FOIA to the withheld information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the withheld information.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 3 June 2019 the complainant made the following request for information under the FOIA for:

"Confirm how many cases were dealt with in each month for which figures have been provided?"

The complainant had previously asked the DVLA for information regarding the amount the DVLA recovered following enforcement action in relation to specified circumstances. The DVLA responded and provided the complainant with the amount recovered per month on 3 June 2019.

6. On 21 June 2019 the DVLA responded. It refused to provide the number of cases per month under section 31(1)(d) FOIA.
7. The complainant requested an internal review on 22 June 2019. The DVLA sent the outcome of its internal review on 23 September 2019. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. The Commissioner has considered whether the DVLA was correct to withhold the requested information under section 31(1)(d) FOIA.

Reasons for decision

10. The DVLA has argued that the withheld information is exempt on the basis of section 31(1)(d) FOIA. Section 31 provides a general exemption for information which relates to law enforcement. Section 31(1)(d) relates specifically to the assessment or collection of any tax or duty. To engage section 31(1)(d) the public authority must therefore be reasonably able to demonstrate that disclosure of the requested information would or would be likely to prejudice the collection of taxes.
11. As with any prejudice based exemption, a public authority may choose to argue for the application of regulation 31(1)(d) on one of two possible limbs – the first requires that prejudice 'would' occur, the second that prejudice 'would be likely' to occur.
12. The DVLA has stated that they believe the likelihood of prejudice arising through disclosure is one that is likely to occur, rather than one that would occur. While this limb places a weaker evidential

- burden on the DVLA to discharge, it still requires it to be able to demonstrate that there is a real and significant risk of the prejudice occurring.
13. The Commissioner has first considered whether the DVLA is formally tasked with the collection of taxes.
 14. The DVLA explained that the specific duty in question is Vehicle Excise Duty (VED) sometimes referred to as 'road tax'. The DVLA confirmed it has the responsibility of collecting and enforcing payment of VED on behalf of the Secretary of State for Transport with all VED collected being paid to HM Treasury. The Agency collects around £6 billion per year in VED on behalf of the Exchequer.
 15. In this case the Commissioner is satisfied that the DVLA is formally tasked with the collection of VED.
 16. The Commissioner has therefore gone on to consider how disclosure would be likely to prejudice this function.
 17. The DVLA referred the Commissioner to a previous Decision Notice under reference FS50178905 in which the Commissioner agreed that section 31(1)(d) of the FOIA was correctly applied to information relating to the collection and enforcement of VED. At paragraph 40, the Commissioner agreed that disclosure of information relating to how the DVLA enforces the collection of VED *would be likely to prejudice the collection of VED*. The Commissioner concluded at paragraph 41 that section 31(1)(d) was engaged.
 18. DVLA said that it had published, as much information regarding VED enforcement as it possibly could without the need to apply an exemption. The disclosure of the amount collected from VED enforcement is considered to be generic and in the public interest to disclose. However, it argued the disclosure of the more specific details of the actual number of enforcement cases could lead to an assessment of how to potentially evade the payment of VED.
 19. The Decision Notice referred to by DVLA above related to a request for what constitutes 'exceptional circumstances' in relation to the appeals process regarding its Continuous Registration (CR) scheme. In relation to this specific information, the Commissioner did find that "public awareness of these particular exceptional circumstances would be likely to reduce the deterrent effect of the LLPs [Late Licensing Penalty] and in doing so, reduce the incentive of the individual to either license their vehicle or declare SORN, which in turn would be likely to prejudice the collection of VED." It is clear to see how disclosure of this information would be likely to inform individuals as to the exceptional

circumstances which may be more likely to result in a successful appeal.

20. In this case the withheld information is the number of enforcement cases per month. It is not clear from the arguments presented by DVLA in this case as to how this information would be likely to be used to potentially evade enforcement action. It does not provide any information behind the decision making as to which cases to enforce and which cases not to enforce. The Commissioner does not therefore consider that the DVLA has demonstrated how the particular information requested in this case would be likely to result in the prejudice claimed. The Commissioner does not therefore consider that regulation 31(1)(d) FOIA was correctly engaged in this case.

Right of appeal

21. 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

22. 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.
23. 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

Gemma Garvey

Senior Case Officer

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF