

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 April 2020

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

Address: Longview Road
Morrison
Swansea
SA6 7JL

Decision (including any steps ordered)

1. The complainant has requested information relating to development of a facility for online and Post Office service for customers entitled to the reduced rate of vehicle tax. Driver and Vehicle Licensing Agency (DVLA) refused to disclose some of the requested information under section 35(1)(a) FOIA.
2. The Commissioner's decision is that section 35(1)(a) FOIA was applied correctly to the withheld information.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 25 March 2019 the complainant requested information of the following description:

"Following [the DVLA's] response to my FOI request of November 2017, can you please tell me what progress has been made with the following reply from you. "The DVLA is working closely with DWP on how data can be shared securely and appropriately between the two departments to help facilitate an online and Post Office service for customers entitled to the reduced rate of vehicle tax."

Please provide copies of any communications that DVLA has had with

DWP regarding this matter since November 2017, or failing this, an explanation as to why nothing has been done."

5. On 18 April 2019 DVLA responded. It confirmed it held information falling within the scope of the request but that the section 35(1)(a) exemption was engaged in relation to this information. It confirmed that it required further time to consider the public interest test in this case. On 22 July 2019 it confirmed that some information requested had already been disclosed to the complainant as a result of a similar request he had made to the Department of Work and Pensions (DWP). It explained that some of the information provided by the DWP was not however held by the DVLA. It confirmed that the remaining information held by DVLA falling within the scope of the request (which had not already been disclosed by DWP) was exempt under section 35(1)(a) FOIA and the public interest in favour of disclosure was outweighed by the public interest in favour of maintaining the exemption.
6. The complainant requested an internal review. DVLA sent the outcome of its internal review on 4 October 2019. DVLA upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. The Commissioner has considered whether the DVLA was correct to apply section 35(1)(a) FOIA to the withheld information.

Background

9. The DVLA has the responsibility for collecting Vehicle Excise Duty (VED) on behalf of the Secretary of State for Transport and all VED collected is then paid to HM Treasury. It collects around £6billion per year in VED on behalf of the Exchequer. Responsibility for licensing (or taxing) a vehicle falls to the registered keeper of that vehicle and that can be done in a number of ways including online via the following link: <https://www.gov.uk/vehicle-tax>
10. If a vehicle keeper is in receipt of a Personal Independent Payment (PIP), then depending on the type of PIP they receive they will either

be exempt from paying VED or be entitled to a 50% reduction (<https://www.gov.uk/financial-help-disabled/vehicles-and-transport>). The scope of the request relates to the latter. Currently, those entitled to the reduction can only license their vehicle by submitting an application to the DVLA; they are unable to use the online application process. The DVLA is currently working with the DWP (DWP administer PIP payments) to find a solution.

Reasons for decision

Section 35(1)(a)

11. Section 35(1)(a) provides that information is exempt if it relates to the formulation and development of government policy.
12. The Commissioner takes the view that the formulation of government policy comprises the early stages of the policy process – where options are generated and sorted, risks are identified, consultation occurs and recommendations or submissions are put to a minister. Development may go beyond this stage to the processes involved in improving or altering already existing policy such as piloting, monitoring, reviewing, analysing or recording the effects of existing policy.
13. Section 35(1)(a) is a class based exemption which means that it is not necessary to demonstrate any prejudice arising from disclosure for the exemption to be engaged. Instead the exemption is engaged so long as the requested information falls within the class of information described in the exemption. In the case of section 35(1)(a) the Commissioner's approach is that the exemption can be given a broad interpretation given that it only requires that information "relates to" the formulation and development of government policy.
14. The DVLA referred to the Commissioner's guidance¹ on the section 35 exemption, the Commissioner considers that a number of factors contribute towards the establishment of a policy in formulation or being developed, including the intention to achieve a particular outcome or change where the consequences are wide ranging. The Commissioner

¹ <https://ico.org.uk/media/for-organisations/documents/1200/government-policy-foi-section-35-guidance.pdf>

also considers the term 'development' to include reviewing, improving and adjusting existing policy.

15. DVLA said that, as explained above, those entitled to a 50% reduction in VED cannot apply for this reduction online. The DVLA is working with the DWP to allow this, which will affect a large number of individuals. Therefore, the DVLA considers the information relates to the improvement and adjustment of an existing policy for the benefit of many.
16. The exemption is interpreted broadly and will capture a wide variety of information. The Commissioner understands that the current policy on VED reductions is currently under review to determine whether it can be adjusted to allow claims to be made online. The Commissioner accepts that the information that is being withheld relates to this and therefore falls under the definition of development of government policy. Section 35(1)(a) is therefore engaged.
17. The Commissioner has now gone on to consider the public interest test, balancing the public interest in maintaining the exemption against the public interest in disclosure.

Public interest test

Public interest arguments in favour of disclosure

18. DVLA acknowledged that there is a presumption in favour of disclosure under FOIA. It said that it is in the public interest to have transparency of the decision making process.

Public interest arguments in favour of maintaining the exemption

19. DVLA argued that disclosure at this time would not allow officials to effectively consider the policy options available.
20. DVLA said that early disclosure of plans or considerations would inhibit the free exchange of ideas.
21. DVLA explained that it would not be in the public interest to disclose information that relates to the ongoing development of this policy. Disclosure at this stage would be likely to inhibit debates, discussion and the exploration of the full range of options available. The DVLA said it needs safe space to consider options without undue influence from the outside and to be able to have open discussions without the threat of those discussions being disclosed.

22. DVLA provided some further supporting evidence which is detailed in the confidential annex attached to this Notice.

Balance of the public interest

23. The Commissioner considers there is a strong public interest in transparency behind a policy relating to reducing tax to those entitled to this. There is public interest in this policy in particular and campaigns in support of the facility to apply for VED reductions online.
24. The Commissioner also considers that there is a strong public interest in allowing DVLA to develop this policy effectively to ensure only those entitled to the reduction in VED receive it.
25. On balance in this case, the Commissioner considers that the public interest in favour of disclosure is outweighed by the public interest in maintaining the exemption in this case.

Right of appeal

26. 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

27. 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.
28. 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