

**Freedom of Information Act 2000 (FOIA)
Decision notice**

Date: 21 November 2022

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 associated with a deceased persons driving licence processing. The DVLA confirmed it held the information but refused the request under section 41(1) and 31(1)(c) of FOIA.
2. The Commissioner's decision is that the DVLA was entitled to apply the exemption at section 41(1) of FOIA for withholding the information and the public interest favours maintaining this exemption.
3. No steps are required as a result of this decision notice.

Request and response

4. On 26 February 2020, the complainant wrote to the public authority and requested information in the following terms:

"I am looking for all information for a deceased person known as Salman Abedi. An article about his death can be viewed at the following link:

[What We Know About Salman Abedi, The Suspect In The Manchester Arena Bombing : The Two-Way : NPR](#)

I am looking at all information concerning his driving licence, from application to internal correspondence to its processing including any points that it earned. I would also be interested in photos that were sent with the application."

5. The DVLA responded on 11 March 2022 following the First Tier (Information Rights) Tribunal ref: [\[EA/2021/0176\]](#). In line with that decision, a fresh response to the request for information citing section 41(1) and 31(1)(c) was provided.
6. The complainant argued that due to extensive media coverage, the DVLA's usual stance regarding deceased licence holders cannot apply.
7. The DVLA upheld its original position at internal review.

Reasons for decision

Section 41 – information provided in confidence

8. The following analysis sets out why the Commissioner has concluded that DVLA was entitled to rely on section 41 of FOIA in this particular case.
9. Section 41(1) provides that information is exempt if, under subsection (a) the public authority obtained it from any other person and, under subsection (b), disclosure would constitute a breach of confidence actionable by that person or any other person. This exemption is absolute and therefore not subject to a public interest test, as such.
10. The DVLA has withheld the requested information under this exemption.

11. The decision notice referred to earlier concluded that the information would have been obtained by the DVLA by a third party, the deceased individual in the request to whom the information requested relates. This reasoning remains the same in this case.
12. For disclosure to constitute an actionable breach of confidence the information must have the necessary quality of confidence, have been communicated in circumstances importing an obligation of confidence and the disclosure of such information would cause a detriment to any party.
13. The previous decision concluded the information would have the necessary quality of confidence and be more than trivial for reasons the Commissioner does not intend to repeat here.
14. Similarly, the earlier decision notice found that information provided in a driving license application is communicated in circumstances importing an obligation of confidence. Again, the Commissioner is not repeating these arguments here.
15. The issue in the previous decision was whether there could be an actionable breach of confidence by simply confirming or denying if the information was held – a position the Commissioner accepted in relation to potential damage to the estate of the deceased but not to the argument that it would damage the trust the public place in the DVLA. In this case the Commissioner is more minded to accept that as the issue at hand is disclosure of the information, the DVLA's arguments about erosion of public trust carry more weight as there is an implicit duty of confidence surrounding information provided as part of the driving licence application process. Therefore, the Commissioner considers the exemption is engaged.
16. The Commissioner would also like to highlight, as they did in the previous decision notice cited, that the Tribunal¹ has confirmed that action for a breach of confidence can be taken by the personal representative of the deceased person and therefore section 41 can apply after the death of an individual. The Commissioner has previously

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<https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i25/mrspbluckvinformationcommissioner17sept07.pdf>

accepted the duty of confidence can survive the death of the confider and it is not necessary to establish there is personal representative of the deceased to accept section 41 can be engaged.

17. Turning to the public interest test, again the arguments from both parties remain largely the same as in the previous decision.
18. The Commissioner places significance on the common law duty of confidence and the assumption that the confidence should be maintained unless the public interest in disclosure is exceptional. In the earlier case the fact the Commissioner did not accept confirming or denying if the information was held could impact on the public's trust in the DVLA was a deciding factor. In this case, the Commissioner accepts this argument as the issue is now to do with disclosing the information that is held and there is a real possibility that disclosing details obtained during a licence application process could undermine public trust in the DVLA.
19. The Commissioner echoes comments in the previous decision that disclosure may help to build a picture of how UK authorities dealt with the deceased individual and there is public interest in the story. However, some of this public interest is met in the confirmation that the DVLA has the requested information. As there is an inherent public interest in preserving the principle of confidentiality, specifically where it relates to information obtained in a process that carries an assumption of confidentiality, the Commissioner considers the balance of the public interest lies in withholding the information.
20. In terms of any public interest defence for disclosure, the Commissioner cannot identify any significant public interest in this case to outweigh the public interest in maintaining the confidence in the information. He is therefore satisfied that section 41 of FOIA is engaged. As the Commissioner is satisfied that section 41 applies, there is no need to go on to consider section 31.

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: 0203 936 8963

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

Phillip Angell
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Water Lane
Wilmslow
Cheshire
SK9 5AF