

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 09 February 2010

Public Authority: The Vehicle and Operator Services Agency
(VOSA)
Address: An executive agency of the Department for Transport
4th Floor Berkeley House
Croydon Street
Bristol
BS5 0DA

Summary

The complainant made two separate requests to VOSA and modified those requests on the telephone. All his requests concerned information about a named company and in particular information connected to maintenance investigations and the prohibition notices served on it (PG9s). The public authority eventually provided complete copies of the 2007 and 2008 maintenance reports. The Commissioner finds breaches of section 1(1) (b) and 10(1) in not providing this information within twenty working days of receiving the requests for information. The outstanding information consisted of the PG9 notices themselves, to which the public authority applied sections 43(2) and 31(1)(g). The Commissioner has determined that the public authority has applied section 31(1)(g) correctly. He finds breaches of sections 17 in failing to cite an exemption on which it has later relied. He requires no remedial steps to be taken in this case.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. The Commissioner notes that under the Act VOSA is not a public authority itself, but is actually an executive agency of the Department for Transport which is responsible for VOSA. The public authority in this case is therefore the

Department for Transport not VOSA. However, for the sake of clarity, this decision notice refers to VOSA as if it were the public authority.

3. An article in the local newspaper reported that [company redacted] lost the right to run a number of vehicles as its authorisation was revoked by the Traffic Commissioner after a public inquiry. The newspaper report also explained that the public inquiry heard that 13 PG9 notices had been issued to it.
4. PG9s are prohibition notices which are completed in order to prohibit or restrict the movement of a vehicle. Section 69 of the Road Traffic Act 1988 as amended by the 1991 Act states that Vehicle Examiners in the course of conducting an inspection (for the purpose of various sections under which VOSA conducts such inspections) may issue prohibitions based on the following criteria:

(i) Delayed prohibitions

If....it appears to a Vehicle Examiner that owing to any defects in the vehicle it is, or is likely to become , unfit for service, he may prohibit the driving of the vehicle absolutely, or for one or more specified purposes, or except for one or more specified purposes.

(ii) Immediate prohibitions

...a prohibition under this section shall come into force as soon as the notice has been given if... in the opinion of the vehicle examiner imposing it the defects in the vehicle in question are such that driving it, or driving it for any purpose within the prohibition, would involve a danger of injury to any person.'

5. The complainant made his requests to understand the reasoning behind the authorisation being removed and to see if there was any pattern of non compliance with safety and roadworthiness legislation by [company redacted].

The Request

6. In this case there are two requests for information that have been considered by the Commissioner.

Request 1

7. On 17 July 2009 the complainant requested the following information from the public authority in line with section 1(1) of the Act:

'My respectful request is for a copy of the inspection carried out as per the newspaper article on [company redacted].'

He also explained that he would like this report as soon as possible and without recourse to the Commissioner. He also provided an example of the information he had received in respect of a request that he had made previously.

8. Between 17 July 2009 and 18 August 2009 there were a number of telephone conversations between the complainant and the public authority. The complainant's understanding of this conversation was that he had broadened his request to include all the information requested in request 2 (below). The public authority's understanding of the conversation was that he had made a new request to include a maintenance report and details of spot checks it had carried out. There is no telephone note held by the public authority concerning these conversations and therefore the dates that these new requests were made is uncertain.
9. On 18 August 2009 the public authority responded to the complainant's request for information. It explained that there were 66 checks on buses between the 2007 maintenance report and its report to the Traffic Commissioner on 7 April 2009. It stated that it had checked the buses on 20 different dates and that 6 immediate prohibitions, 5 delayed prohibitions and 2 variations or refusal to clear a prohibition were issued. It provided a redacted version of a 2008 maintenance report (dated 22 December 2008). It redacted the personal details of the examiner and operator due to section 40(2). It also explained that a fleet check was carried out in conjunction with the maintenance report whether 7 buses were checked and 1 delayed prohibition was issued. It explained that it referred the case to the Traffic Commissioner as a result of this fleet inspection. It did not believe that the 2007 maintenance report was covered by the scope of the request.
10. On 18 August 2009 the complainant expressed dissatisfaction at what he had received. He explained, in a letter, that he believed his request embraced further information and that this was what he wanted. He went on to outline what he believed he had requested. In line with the public authority's interpretation, the Commissioner is of the view that the complainant requested an internal review of the response of 18 August 2009 and also made new requests (detailed below as request 2) for further information.
11. On 1 September 2009 the public authority communicated the result of its internal review to the complainant. It explained that it believed it had provided the information that was requested and referred the complainant to the Commissioner if he was dissatisfied with the information provided.

Request 2

12. On 18 August 2009 the complainant explained that he believed he had requested more information than he had received in response to request 1. He explained that his request included the following:

'However my last request included all sorts of papers as well as the final report. In this application I was initially under the impression that all papers relevant and relating to [company redacted] would have been sent as a matter of course and whilst I may make a list I am not sure what documentation there is.'

I assume on reflection though am not sure than an earlier report(s) into [company redacted] may have also been carried out hence the firm and drastic action taken at the inspection referred to in the news...

- *In this case I would respectfully request if at all possible any prior inspection reports which I assume lead up to the report as per the news article.*
- *In addition the individual PG9 reports on the bus inspection before or since.*
- *In my last disclosure I received internal correspondence from HQ [VOSA's Headquarters near Bristol] to the Bredbury office [VOSA's inspection centre, near Stockport].*
- *I received correspondence letters and faxes from the Bredbury office to the Inspectors or whatever.*

It would be easier if possible to surrender all reports though I do not know what other reports or papers the Commissioner would produce in the circumstances as I do not now [sic] your internal procedures.

Once again many thanks. Having access to the report the crisis is over for the time being.'

13. On 14 September 2009 the public authority wrote to the complainant. It explained that it believed that section 43(2) [prejudice to commercial interests] was engaged and it needed further time to consider the public interest test in respect of his request.
14. On 29 September 2009 the public authority provided a response to this request:
 - It provided a copy of a report dated April 2009 which directly preceded the public inquiry in June 2009 that led to the event to which the request related. It did not provide any prior inspection reports – in particular it did not identify that the 2007 report was caught by the request.
 - It explained that it held the PG9s in relation to individual buses. However, it believed that section 43(2) applied to them and provided public interest arguments that explained why it believed that the public interest favoured the maintenance of the exemption over disclosure in this case.
 - It explained that it had checked the information it held about [company redacted] and that there was no correspondence relevant to this request. It explained that it only held papers about the registration and/or cancellation of bus services operated on this licence, and requests and receipts for payments in relation to it.
15. On 11 October 2009 the complainant requested an internal review. He asked whether there were typed versions of the inspection reports he had received as he was unable to read the handwritten versions. He explained:

'In earlier applications I had request all papers relating to [Company redacted] and there must have been internal memos and subsequent correspondence from Regional VOSA at Manchester to the Traffic Commissioner at HQ upon which she made her decision. A report must have been prepared from the handwritten documents.

My request was for all papers and I would ask for a copy of the above correspondence, The report also states that the operator ([company redacted]) runs 28 PSV's so that there must be an earlier report because the Traffic Commissioner as I understand it took a number of licences from [company redacted] reducing it to 28.

Where are the nine prohibition notices referred to in the report and the inspection report for 2007?

I original wrote in July 2009 requesting the report as per the newspaper article that stated 7 licences had been taken from [Company redacted]. You have surrendered two reports and have still not surrendered the report that recommends taking away the 7 licences, the one I originally requested.

Where is it?

The report sent also refers to another two prohibition notices in the conclusions section.

Where are they?

The report also refers to a warning letters [sic].

Where is that letter?

...

It would be greatly appreciated if a typed copy of the handwritten remarks on the last report of 25/11/2008 you sent me as I am having difficulty reading the writing and also all the correspondence referred to above in the report and not referred to in relation [company redacted] in addition to the original report I requested on 17th July 2009.'

16. On 28 October 2009 the public authority communicated the results of its internal review. It explained that it had reconsidered the way that the request had been handled and decided that its approach had been correct. It stated that it did not hold any further correspondence that was embraced by the original request, that it was still applying section 43(2) to the PG9s and that he may wish to make a request to the Traffic Commissioner for information held by it. It also explained that it believed it was correct to treat each request as separate.

The Investigation

Scope of the case

17. On 6 September 2009, 16 September 2009, 30 September 2009, 9 October 2009 and 23 October 2009 the complainant contacted the Commissioner to complain about the way his requests for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
- He believed that he had only made one request and that the public authority had erred by considering the two separately. That he shouldn't have been required to have made a second application.
 - He believed that he was entitled to all the information that he had asked for in less than twenty working days without exception as his request was urgent.
 - He called the public authority to clarify his request and not the other way round.
 - He believed that there were considerable public interest factors in favour of disclosing the PG9s.
 - He believed that the public authority was showing patterns of noncompliance with the Act.
 - He believed that there was other information held – particularly the correct maintenance report.
 - This case was in his view analogous to a previous one the Commissioner has considered.
 - It was important that the Commissioner expedited matters where possible.
 - VOSA should be ordered to disclose all documentation going back three years in this case.
18. On 10 November 2009 the Commissioner wrote to the complainant. He explained that he believed the scope of his investigation was:

Request 1

- To determine if section 40(2) [third party personal information] has been applied correctly to the withheld information within the 2008 maintenance report (dated 22 December 2008).
- To determine on the balance of probabilities if there is any other report that falls within the scope of this request, that is, not the 2008 maintenance report nor the report dated 25 September 2008.

- To determine if section 10(1) has been complied with (time for compliance with request).

Request 2

- To determine on the balance of probabilities whether there is further information held by the public authority that is relevant to request 2. In particular whether there are other relevant reports or warning letters.
 - To determine whether section 40(2) has been applied correctly to the names contained in the 2008 maintenance report.
 - To determine whether section 43(2) was applied correctly to the PG9s.
 - To determine if section 10(1) has been complied with (time for compliance with request).
19. On 10 November 2009 the complainant wrote to the Commissioner and stated that he agreed that the scope of the investigation would be as above.
20. During the course of the Commissioner's investigation the following matters were resolved informally and therefore these are not addressed in this Notice:
1. The 2007 maintenance report was located and released in full on 18 November 2009.
 2. The public authority released the 2008 maintenance report in full on 17 December 2009. This meant that the public authority was not relying any further on section 40(2) in respect of the redactions made.
21. On 18 December 2009 the complainant wrote to the Commissioner. He expressed general dissatisfaction and stated that he still sought the outstanding PG9s. His letter explained that this was the outstanding information that he would expect to obtain. As a consequence of this communication, and the release of the information as outlined in paragraph 20 above, the Commissioner has therefore further limited the scope of his investigation to a consideration of whether the PG9s can be provided to the complainant. He will also consider the procedural matters that formed part of the complaint but will not consider whether other information may be held.
22. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. The Commissioner can only consider information access issues. He is unable to make any judgment about how the public authority acted in relation to inspecting vehicles or on [company redacted]'s conduct in relation to any matter.

Chronology

23. On 10 November 2009 the Commissioner wrote to the complainant. He explained his remit, his case by case approach, how investigations proceed and his understanding of the scope of his investigation into each request.
24. The Commissioner also spoke to the complainant on the telephone on the same day and the complainant confirmed by email that he understood the Commissioner's remit and the scope of the investigation for each request.
25. On 11 November 2009 the complainant telephoned the Commissioner. He expressed particular concerns about the lack of the 2007 maintenance report.
26. On 12 November 2009 the Commissioner wrote to the public authority asking about the information held, for a copy of it and for details of its arguments for the application of the exemptions. He also asked the public authority to look for the 2007 maintenance report and if possible to provide it as soon as possible.
27. On 13 November 2009 the complainant wrote to the Commissioner. He expressed his dissatisfaction at how this case was being conducted.
28. On 16 November 2009 the Commissioner telephoned the public authority. He asked to be updated with the progress in locating the 2007 report. The public authority replied that it would try and disclose it as soon as possible. On 18 November 2009 the unredacted 2007 report was provided.
29. On 24 November 2009 the public authority telephoned the Commissioner. It explained that it was having difficulty identifying information that may be within the scope of the second request. The Commissioner asked for it to send all the papers that it had that were relevant in order for him to make a decision.
30. On 9 December 2009 the Commissioner received detailed responses to his enquiries by email. The public authority also explained that the withheld information was to follow in the post.
31. On 14 December 2009 the complainant contacted the Commissioner on the telephone. He expressed his dissatisfaction concerning not receiving an update and the Commissioner failing to obtain all the information that he sought. The Commissioner explained that the case would proceed in line with his procedures.
32. Later on the same day, the Commissioner received the paper copy of the withheld information.
33. On 18 December 2009 the complainant contacted the Commissioner again to express his dissatisfaction at the way the case had been handled. He followed that telephone conversation with the letter discussed in paragraph 21 above.
34. On 24 December 2009 the Commissioner provided an update in this case. He explained that he was preparing this Decision Notice.

35. On 27 December 2009 the complainant contacted the Commissioner again and explained that he remained dissatisfied with the time that was being taken by the Commissioner to investigate this case.

Analysis

Substantive Procedural Matters

36. The complainant has expressed the opinion that he had requested all of the information contained within request 2 as part of request 1, and therefore that it was unreasonable for request 2 to be considered separately.
37. The Commissioner notes that this is contingent on knowing what was said in the telephone conversations between request 1 and the first response. He notes that the public authority has no written record of what was said in respect of these calls (besides what was contained in the response it issued). He is therefore unable to make a decision on this issue on the basis of contemporary evidence. He believes that the public authority should consider making such records in similar circumstances, particularly when it may be that the telephone call represents a clarification of a request made under the Act.
38. The Commissioner therefore has considered the request objectively. He believes that request 1 is clear in scope. It asked only for the inspection reports and nothing else. There is common ground that this was also expanded within the telephone conversations to a history of the maintenance inspections that were also provided in the initial response and the maintenance reports. The Commissioner notes that the complainant acknowledged in request 2 that he had expected information to have been provided but may not have asked for it. This supports the public authority's position that all the information that was asked for in request 2 was not asked for previously.
39. The Commissioner has decided that it was reasonable in these circumstances for each request to be considered separately.

Exemptions

40. As noted above the Commissioner has considered whether the PG9s have been withheld correctly in this case.
41. In the public authority's submissions it argued that both section 43(2) [prejudice to commercial interests] and section 31(1)(g) – as connected to 31(2)(c) [prejudice to the public authority exercising its functions of ascertaining whether circumstances justify regulatory action] applied to this information.
42. The Commissioner has considered these arguments and has the discretion to accept the late application of exemptions where in the circumstances of the particular case it is reasonable to do so. He notes that the section 31 was relied on within the first exchange of correspondence with the Commissioner and was

done proactively. He therefore has decided that he will accept the public authority's arguments concerning the application of 31(1)(g) in this case.

43. The Commissioner has considered section 31(1)(g) first. If in his view the exemption has been correctly applied to the withheld information then he will not proceed to consider the application of the second exemption.

Overview

44. Section 31(1) states that:

*"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would or would be likely to prejudice:
....(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2) ..."*

45. Section 31(2)(c) specifies the set purpose as:

'the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.'

46. For section 31 to be applied correctly the public authority must show firstly that there would be, or would be likely to be, prejudice to a specified purpose and secondly that the public interest in maintaining the exemption outweighs the public interest in disclosure.
47. The specified purpose in this case requires for the public authority to exercise 'functions for the purpose of ascertaining whether circumstances which would justify regulatory action under any enactment exist or may arise'. The first consideration is therefore whether the public authority exercises such functions.

Does the public authority exercise the appropriate functions for it to be able to rely on the specific purpose cited?

48. The Commissioner believes it is helpful at this point to explain the role of VOSA and also how it interrelates with the Traffic Commissioners (who are a separate public authority under the Act).
49. VOSA is an executive agency of the Department for Transport. It holds the status of trading fund and its statutory responsibilities comprise of ensuring the road worthiness and safety of all the vehicles on the road and enforcing relevant legislation. It provides a range of licensing, testing and enforcement services with the aim of improving the roadworthiness standards of vehicles.
50. It does this in part through routine and targeted checks on operators to check compliance with the operator's licensing requirements. Checks can also be carried out whilst vehicles are in service. Inspections are usually carried out every 12 to 18 months although these can be carried out more frequently where there appear to be continuing problems against a particular operator. Once this

inspection has been carried out the examiner will notify the operator verbally or in writing of any immediate action or infringements that need to be dealt with. The operator is advised that the process will include either a report to the Traffic Commissioner or a report for prosecution where the results are found to be unsatisfactory.

51. VOSA's powers to enable inspection are found in section 68 of the Road Traffic Act 1988 (RTA 1988). This states that a vehicle examiner may at any time, on production if so required of his authority, inspect any vehicle to which section 68 applies and for that purpose detain the vehicle during such time as is required for the inspection, and may at any time which is reasonable having regard to the circumstances of the case enter any premises on which he has reason to believe that such a vehicle is kept. A person who intentionally obstructs an examiner in the exercise of his powers is guilty of an offence under the RTA 1998.
52. These powers enable VOSA to ensure that vehicles are roadworthy. Should a vehicle not be roadworthy then VOSA will issue a prohibition notice (a PG9). This prevents a vehicle from being moved until the defect is remedied and another inspection conducted. The presence of PG9s feed into the regulatory work done by the Traffic Commissioner and present important evidence when licensing is considered and/or when a public inquiry is conducted. VOSA is also able to refer any operator to the Traffic Commissioner where it believes the defects are manifest and require further regulatory action.
53. The Traffic Commissioners are appointed by the Secretary of State under section 4(2) of the Public Passenger Vehicles Act 1981 ("PPVA"), and are statutorily independent of VOSA. Under the PPVA, Traffic Commissioners are responsible for granting Passenger Carrying Vehicles (PCVs) operator licences. Traffic Commissioners are responsible for monitoring compliance with licence conditions and under section 17 of PPVA can take disciplinary action against a licence holder if they considers it appropriate. If a Traffic Commissioner finds the operator to no longer be of good repute, of other appropriate standing or professionally competent, he must revoke the licence. In other circumstances he may revoke, suspend for a period of time or vary any condition attached to the licence or add a condition.
54. The Traffic Commissioners can hold public inquiries. It is in these inquiries that the authority considers professional repute, commercial viability and whether or not conditions contained within licences are followed. The statutory provision that provides the source of the Traffic Commissioners' right to conduct public inquiries can be found in section 35 of the Goods Vehicles (Licensing of Operators) Act 1995. Section 26(1)(c) of this Act sets out the period (5 years) in which the PG9s can be taken into account by the Traffic Commissioner in respect of regulatory action. It aims to impose sanctions in a graduated way ensuring that the sanction is proportionate to the defect identified. These responsibilities were taken away from VOSA by 1985 Transport Act.
55. However, it was envisaged that VOSA and the Traffic Commissioners would regulate this area in a cooperative fashion. They work together (albeit with independent discretion) to improve road safety, enforce the law on vehicles to

enable that they accord with Professional standards and investigate vehicle accidents, deaths and recalls. VOSA also provides the Traffic Commissioners with administrative support when they consider and process applications for licences to operate buses. It also provides support staff for the Traffic Commissioner's tribunal function.

56. The Commissioner has considered the situation and believes that VOSA does exercise functions for the purpose of ascertaining whether circumstances which would justify regulatory action under any enactment exist or may arise. VOSA is responsible for ensuring that all vehicles are roadworthy and has the discretion to refer operators to the Traffic Commissioner when regulatory action is required.

Would the release of this information be likely to prejudice the specified purpose?

57. When considering the prejudice element of the exemption, it is important to note that there are two possible thresholds for the exemption to be engaged. These are 'would prejudice' and 'would be likely to prejudice' and each has a separate legal test. Following the Information Tribunal in *McIntyre v The Information Commissioner* [EA/2007/0068], the Commissioner will apply the lower threshold 'would be likely to prejudice' where the public authority has not specified either way. In this case the public authority identified potential harm from disclosure but did not specify which threshold it was applying.
58. In reaching a decision on the question of prejudice the Commissioner has been mindful of the test of 'likely to prejudice' as enunciated by Mr Justice Mundy in the case of *R (on the application of Lord) V Secretary of State for the Home Office* [2003] EWHC 2073, and followed by the Tribunal in the case of *John Connor Press Associates Limited V ICO* (EA/2005/005) at paragraph 15, where the Tribunal interpreted the expression 'likely to prejudice' within the context of the section 43 exemption as meaning that the chance of prejudice being suffered should be more than a hypothetical or a remote possibility, that there must have been a real and significant risk. The Tribunal in that case indicated that the degree of risk must be such that there 'may very well' be prejudice to those interests, even if the risk falls short of being more probable than not.
59. It is important to note that only applicable interests contained within the exemption can be relied on in any arguments. Therefore, when considering prejudice, the Commissioner will only consider arguments that relate to the possibility that there would be a likely prejudice the public authority exercising its functions of ascertaining whether circumstances justify regulatory action. No other arguments will be considered.
60. In considering prejudice the Commissioner has considered a three stage test. All stages must be satisfied for the Commissioner to be satisfied that the exemption is engaged (and that prejudice is present). This three step test has been developed from *Hogan and Oxford City Council v the Information Commissioner* (EA2005/0026 & EA/2005/0030):

- Whether the disclosure of the information has had some effect on the applicable interest [the public authority exercising its functions of ascertaining whether circumstances justify regulatory action];
- Whether the effect on the applicable interest [the public authority exercising its functions of ascertaining whether circumstances justify regulatory action] is detrimental or damaging in some way; and
- Whether the probability of this effect occurring is not too remote – that there is a 'real and significant risk'.

61. When considering the first stage, the Commissioner recognises that the withheld information is regarded as important evidence in considering licensing requirements and it was important in the public inquiry. Should the full details of the PG9s be placed in the public domain, the operator could claim that they had not had the opportunity to offer mitigation or defence, this may prevent the Traffic Commissioner from using this evidence and infringe on the possibility of further regulatory action. It would otherwise be possible for a company to firstly appeal the PG9 through VOSA's internal procedures and raise a defence within a public inquiry or before the Traffic Tribunal. The Commissioner believes that in this case the complementary nature of the functions of VOSA and the Traffic Commissioners mean that in the event that this evidence became invalid, it would impinge on VOSA's own regulatory role as it would be unable to ascertain whether the defects could be remedied in the correct forum and therefore could not ascertain whether the circumstances justify regulatory action. For this reason he believes that the first stage is therefore satisfied.
62. In relation to the second stage, prejudice is likely to occur because the prohibition notices must be taken into account when deciding if regulatory action is necessary. Such regulatory action can be taken either by VOSA or the Traffic Commissioner. The public authority is reluctant to potentially compromise any further action that may be taken by the Traffic Commissioner, and release of the PG9s may have that effect as it would not be clear whether the PG9s could be relied upon. The Traffic Commissioner is able to take action up to five years after the issue of a PG9, should the operator's compliance record warrant it. In addition it would be placed in a position where its regulatory role was impeded. The Commissioner is satisfied that the effect would be potentially detrimental and damaging in this case.
63. In addition the public authority has explained that it is required to be a trusted holder of certain information in order to perform its own statutory functions. Should it lose this credibility then its regulatory functions would be undermined. In particular it may experience difficulty in exercising its statutory functions to inspect vehicles. The Commissioner appreciates these arguments but as the specific information has been created by the public authority for its own purposes and the right to inspect is enshrined in legislation, he has not been convinced that these arguments have identified additional prejudice. He has therefore not placed any weight on these arguments when considering prejudice.

64. Finally, the Commissioner must consider the probability of this effect occurring. He has been satisfied that the risk is 'real and significant' in this case from the evidence that has been provided by the public authority. He notes that VOSA has the statutory responsibility to ensure that there is safety on the road and must attempt to do this in the most effective way. He believes that VOSA ensure that its regulatory work dovetails with the Traffic Commissioner and as regulator it must be able to take into account the effect its actions may have in the context of its overall regulatory aims. He believes that there is a 'real and significant' risk of prejudice to the ascertaining of whether regulatory action is appropriate in circumstances where the disclosure of the information would lead to an erosion of its options. This is because it would create uncertainty about whether there would be adequate evidence for regulatory action by the Traffic Commissioner, as the company was not given any opportunity to defend itself and the information would already be in the public domain. In particular he believes that a public inquiry amounts to a quasi-judicial process where it is important that the right evidence can be brought.
65. The Commissioner is therefore satisfied by the public authority's arguments that there would be likely to be prejudice to the specified purpose in this case. The exemption is therefore engaged, and he must now move to consider the public interest test.

The public interest test

66. The public interest test requires the determination of whether the public interest in maintaining the exemption outweighs the public interest in disclosure of the information. The Commissioner is only able to consider factors that arise from the nature of the exemption when considering the maintenance of the exemption but can consider all public interest factors when considering whether the information can be disclosed.

Public interest arguments in favour of disclosing the requested information

67. The public authority and complainant agree that the release of the information will inform the public of the exact nature of the concerns in relation to [company redacted]. It will provide an enhanced understanding of the operator's maintenance record. In addition, it would provide further information to enable members of the public to make a choice about the bus company they use. There is a strong public interest argument in allowing the public to be informed about any potential safety concerns.
68. The Commissioner acknowledges that there is strong public interest in the public authority being accountable for its decisions and that it is as transparent as possible about the way it makes those decisions. It is also important that the public authority's approach is opened to debate and it is important for the public to have evidence that the Traffic Commissioner has complied with its own Practice Direction in relation to public inquiries and that the public's safety is being fully protected.

69. There is also a public interest in enabling debate about the way VOSA exercises its functions and such debate may improve the quality of decisions made by it. The requested information would allow the public to scrutinise the systems that are in place and help buttress high standards of performance. It could also be said to be economically efficient for the public to have all such information about service providers in order for the market to ensure that safety becomes an all encompassing priority.
70. The complainant has explained that he has serious concerns about [company redacted]. He has stated that he believes that the company's attitude could lead to the possibility of pedestrians, drivers and passengers suffering serious injury or worse. The Commissioner has considered the withheld information and does not believe that its contents will shed light on these concerns. PG9s are issued at a moment in time and once issued mean that the relevant bus cannot be driven, nor cause any further adverse consequences, until the defect is remedied and VOSA have provided the all clear. He has therefore not placed much weight on this factor as a public interest argument.

Public interest arguments in favour of maintaining the exemption

71. The public authority has evidenced that there is a real and substantial risk of prejudice to its regulatory functions through the release of this information. The Commissioner as noted above accepts this is so. The Commissioner believes that it is in the public interest to ensure that the public authority is able to exercise its function of ascertaining whether circumstances justify regulatory action. It is very important for public safety that the public authority responsible for ensuring safety of road vehicles carries out its duty without undermining its regulatory processes. The Commissioner regards this public interest consideration as having considerable weight in this case.
72. The Commissioner also understands that there is a strong public interest in allowing individuals and companies to challenge decisions from the public authority. In this case it is possible for a company to firstly appeal the PG9 through VOSA's internal procedures and also can raise a defence at public inquiries or before the Traffic Tribunal. The Commissioner believes that the public interest in ensuring the correct process is not undermined is considerable. If the appeal process were to be undermined then this would also be likely to adversely affect the function of ascertaining whether circumstances justify regulatory action.
73. The Commissioner also recognizes that it is important that the public authority is able to perform its functions in a way that is both effective and proportionate. The public authority in general works cooperatively with service providers but it also has formal powers to withdraw the licensing and thereby end the business of service providers. The Commissioner believes that it is in the public interest not to disable effective regulation in this instance.
74. The Commissioner acknowledges that the arguments surrounding accountability and transparency have considerable weight in principle. However, in this case the Commissioner believes that there are a number of mitigating factors which reduce the strength of the arguments outlined above.

75. Firstly, the Commissioner has established that the public authority already publishes a substantial amount of information on how it checks vehicles¹. It also publishes information about the decisions it has made in the Applications and Decisions section of its website² (for example, the newspaper article used the information that it published to inform the public about its concerns). He also believes that the public interest in disclosure of this particular information has been countered by the release of the other information, such as the number of PG9s issued and vehicles checked, and that this has already provided a level of transparency and accountability. VOSA has provided as much information as it believes it can without causing prejudice to its regulatory functions.
76. Secondly, the Commissioner notes that there is already considerable debate reflected by the newspaper article about [company redacted]. From examining the withheld information, he is not convinced that the withheld information is likely to inform that debate to any substantial degree.
77. Thirdly, the Commissioner notes the nature of the powers that the public authority possesses. The Commissioner believes that they act as an effective deterrent in themselves and further disclosure was neither anticipated nor necessary in this instance.

Balance of the public interest arguments

78. Having weighed the public interest arguments, the Commissioner has concluded that in this case the public interest is weighed in favour of maintaining the application of the exemption and therefore the withheld information should not be disclosed. In reaching this conclusion, the Commissioner has been particularly persuaded by the very strong public interest in not undermining the possibility of regulatory action in order to ensure the roads are safe.
79. As the Commissioner has upheld the application of section 31(1)(g), he is not required to go on to consider whether or not section 43(2) has been applied correctly.

Procedural Requirements

80. Section 10(1) provides that where information is held and not exempt it should be provided, as soon as possible, and within twenty working days in any event. In this case the public authority failed to identify that the 2007 maintenance report was within the scope of the request and failed to provide it. This failure constitutes a breach of section 10(1). As the report has now been provided no remedial steps are required.
81. The public authority also failed to release the full version of the 2008 maintenance report before the Commissioner's involvement. This also constitutes a breach of

¹ It publishes testing manuals and guides which can be found at the following link:
<http://www.dft.gov.uk/vosa/publications/manualsandguides/vehicletestingmanualsandguides.htm>

² See: <http://www.dft.gov.uk/vosa/publications/applicationsanddecisions/ad-easterntrafficarea/ad-easterntrafficarea.htm>

- section 10(1). As the report has now been provided no remedial steps are required.
82. The failure to provide the full copies of the 2007 and 2008 maintenance reports by the time of completion of the internal review also comprises a breach of section 1(1)(b).
83. The public authority failed to specify an exemption (section 31(1)(g)) that it was later to rely on. Therefore the Commissioner finds that the public authority breached sections 17(1)(b) and 17(1)(c).
84. He also finds that section 17(1) was breached as the public authority failed to apply this exemption within the statutory time limit for complying with section 1(1).

The Decision

85. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- It applied the exemption at section 31(1)(g) [as connected to 31(2)(c)] correctly in respect of the outstanding PG9s.
86. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- It breached section 1(1)(b) in failing to provide full copies of the 2007 and 2008 reports by the time of completion of its internal review.
 - It breached section 10(1) as it failed to provide the full 2007 and 2008 reports prior to the Commissioner's involvement.
 - It breached sections 17(1)(b) and (c) as it failed to apply section 31(1)(g) to the PG9s prior to the Commissioner's involvement.
 - It also breached section 17(1) in failing to apply section 31(1)(g) to the PG9s within the statutory time period for complying with section 1(1).

Steps Required

87. The Commissioner requires no steps to be taken.

Right of Appeal

88. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 9th day of February 2010

Signed

**Anne Jones
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 1 - General right of access to information held by public authorities

- (1) Any person making a request for information to a public authority is entitled—
- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.

Section 10 - Time for compliance with request

(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

(2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.

(3) If, and to the extent that—

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
 - (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,
- the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.

Section 17 - Refusal of Request

(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.

Section 31 - Law enforcement

(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

- (a) the prevention or detection of crime,
 - (b) the apprehension or prosecution of offenders,
 - (c) the administration of justice,
 - (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
 - (e) the operation of the immigration controls,
 - (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
 - (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
 - (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
 - (i) any inquiry held under the [1976 c. 14.] Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.
- (2) The purposes referred to in subsection (1)(g) to (i) are—
- (a) the purpose of ascertaining whether any person has failed to comply with the law,
 - (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
 - (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
 - (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
 - (e) the purpose of ascertaining the cause of an accident,
 - (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
 - (g) the purpose of protecting the property of charities from loss or misapplication,
 - (h) the purpose of recovering the property of charities,
 - (i) the purpose of securing the health, safety and welfare of persons at work, and
 - (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.
- (3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).