

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 the terms of reference relating to the Driver and Vehicle Licensing Agency's (DVLA) review of its requirement to return expiring/expired driving licences. The DVLA initially withheld the information under section 35(1)(a) of FOIA. During the Commissioner's investigation the DVLA revised its position stating that the requested information is not held.
2. The Commissioner's decision is that the DVLA does not hold the requested information but has failed to comply with section 1 of FOIA. The Commissioner finds that the DVLA did comply with section 16.
3. The Commissioner does not require the DVLA to take any steps.

Request and response

4. On 12 January 2022, the complainant submitted the following request for information to the DVLA:

"I was advised on 22/11/21 (case reference number [number redacted]) that DVLA is "reviewing our current procedures around all documents being returned to us". I would like to receive a copy of the terms of reference for that review"

5. The complainant followed up their request with the following clarification:

"I've attached a copy of my original enquiry to DVLA in relation to the requirement to return expiring/expired driving licences (see attached Word document) and the response received from DVLA contact centre (see attached Outlook item). As you can see the response includes the words in quotations in your e-mail below. Since good practice requires that all such reviews are carried out in accordance with pre-specified Terms of Reference, I would like to receive a copy of those. Please let me know if this does not provide sufficient clarification."

6. The DVLA responded on 12 January 2022 asking the complainant to clarify "what [their] case is in regards to and which copy of the terms of reference for that review is in regard to?".
7. The complainant responded on 12 January 2022 with the following clarification:

"I've attached a copy of my original enquiry to DVLA in relation to the requirement to return expiring/expired driving licences (see attached Word document) and the response received from DVLA contact centre (see attached Outlook item). As you can see the response includes the words in quotations in your e-mail below. Since good practice requires that all such reviews are carried out in accordance with pre-specified Terms of Reference, I would like to receive a copy of those. Please let me know if this does not provide sufficient clarification."

8. The DVLA responded on 24 January 2022. It stated that the DVLA held information falling within the scope of the request. However, the information was being withheld under section 35(1)(a) of FOIA on the basis that the information related to the formulation or development of government policy.
9. The complainant wrote to the DVLA on 25 January 2022 disagreeing with the DVLA's reliance on section 35(1)(a) and stating that it had not discharged its responsibilities under section 16 of FOIA to provide adequate advice and assistance to help them refine their request.
10. The DVLA provided the complainant with the outcome of its internal review on 11 February 2022, maintaining its original position.

Scope of the case

11. The complainant contacted the Commissioner on 12 February 2022 to complain about the way their request for information had been handled. In particular, the complainant does not believe the DVLA has justified its decision to apply section 35(1)(a) and has not met its obligations under section 16 of FOIA.
12. During the course of the investigation, the DVLA revised its position, stating that the requested information is not held. This means that the Commissioner cannot make a determination under section 35(1)(a) but must instead make a determination under section 1 of FOIA.
13. The scope of this case and of the following analysis is whether the DVLA has complied with section 1 and section 16 of FOIA.

Reasons for decision

Section 1 – General right of access to information

14. Section 1(1) of the FOIA states that:

“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.”
15. Section 1(1) requires that any person making a request for information to a public authority must be informed in writing by the public authority whether it holds information relevant to the request and, if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.
16. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
17. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a

public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).

18. The complainant seeks the terms of reference relating to the requirement to return expiring/expired driving licences.
19. In response to the request, the DVLA originally stated that information was held, but fell under the exemption provided for the formulation or development of government policy – section 35(1)(a). The Commissioner therefore requested a copy of the withheld information, and the DVLA's arguments for the application of section 35(1)(a).
20. Having reviewed the DVLA's submission, the Commissioner is concerned that the DVLA failed to appropriately consider the parameters of the request, and conduct proper searches based on those parameters.
21. The DVLA stated to the Commissioner that it does not hold the requested information but has provided a document as representing the 'withheld information' which appears to the Commissioner to be unrelated to the parameters of the request.
22. The DVLA stated that there are no pre-specified terms of reference for the policy review in question. The DVLA explained that the information it held is a draft version of a submission to government Ministers outlining the policy and legal issues around the option of removing the requirement for drivers to return their previous driving licence when a new licence has been granted.
23. The Commissioner emphasises that section 1 of FOIA requires the DVLA to conduct searches for information which falls within the parameters of the request. In this case, the DVLA is seeking to withhold information that does not appear – based on the DVLA's submissions - to be that which has been requested by the complainant. Furthermore, it would appear that the information the DVLA is seeking to withhold was created in September 2022, nine months after receipt of the request for information. In such a scenario, the Commissioner cannot reasonably conclude that the DVLA has conducted proper searches.
24. The Commissioner's conclusion is, therefore, that the DVLA has failed to comply with section 1 of FOIA.
25. The Commissioner notes that the DVLA has now conducted proper searches and he has considered the DVLA's position. He is satisfied that there is no available evidence to suggest that such a Terms of Reference document is held by the DVLA.

26. The Commissioner's conclusion is therefore that, on the balance of probabilities, the DVLA does not hold information within the parameters of the complainant's request.

Section 16(1) – duty to provide advice and assistance

27. The complainant does not believe that the DVLA has met its obligations under section 16 of FOIA. The complainant stated that it is clear precisely what their reasons were for asking to see the terms of reference. The complainant stated that this should have enabled the DVLA to redact the terms of reference in such a way as to satisfy their requirements without releasing those elements about which the DVLA had genuine section 35(1)(a) concerns.

28. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request where it would be reasonable to do so.

29. The Commissioner's guidance on section 16(1) states that, generally, there are three main circumstances in which the duty arises:

“The first is that you have reason to believe that the applicant has not given their real name. In this case, you should ask the applicant for it.

The second circumstance is when the request, read objectively, is ambiguous and requires clarification as to the information sought. In this case, you should contact the applicant to ask for more details to help you identify and locate the information they want.

The third circumstance is when the request would exceed the appropriate limit beyond which you would not be required to provide the information. In this instance, you should provide the applicant or prospective applicant with advice and assistance to help them reframe the request in a way that would bring it within the appropriate limit.”

30. The Commissioner notes that the first and third criteria do not apply in this case.

31. As regards the second criterion, the DVLA has stated that having considered the request, it does not appear to be ambiguous as the complainant is seeking a very specific document, namely the “terms of reference”. The DVLA stated that having reviewed the matter further, it may have been helpful if it had explained that it does not hold such a document and advised the complainant that the information held in scope, is considered to engage section 35(1)(a) of FOIA.

32. The DVLA explained that its initial response of 24 January 2022 did contain some advice outside the provisions of FOIA, explaining that the requirement was under review, and the reasons that a previous driving licence needs to be returned. The DVLA stated that given the limited and sensitive nature of the information held in scope, there is little that could have been offered by the DVLA to further advise and assist the complainant, without perhaps prejudicing the ongoing policy considerations
33. Taking all the above into consideration, in the circumstances of this request, the Commissioner is satisfied that the DVLA complied with the duty under section 16.

Other matters

34. The Commissioner reminds the DVLA of the strong importance in clearly establishing the parameters of a request, and of ensuring that the information it considers falls within those parameters.

Right of appeal

35. 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

36. 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.
37. 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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