

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 May 2024

Public Authority: Department for Levelling Up, Housing and Communities (DLUHC)

Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant made a request to DLUHC, requesting copies of information it has taken into account when producing a regulatory impact assessment of the Private Parking Code of Practice. DLUHC has refused the request under section 14(1) of FOIA (vexatious requests) on the grounds that to comply with the request would be excessively burdensome.
2. The Commissioner's decision is that DLUHC is entitled to refuse the request under section 14(1) of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. On 18 August 2023, the complainant wrote to DLUHC and requested information in the following terms, regarding information it has taken into account when producing a regulatory impact assessment of the Private Parking Code of Practice¹:

"I previously asked if it was possible for the 416 pieces of correspondence and 224 news articles to be shared to help our understanding and best target an informed response from our

¹ [Private Parking Code of Practice: draft impact assessment \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

association. Regarding the 416 complaints, we would be happy to receive redacted copies leaving just PCN and operator references to enable analysis, which in turn can ensure DLUHC is fully informed as to the specific matters that have been used as direct evidence in your modelling.”

5. The complainant subsequently clarified that they were referring to the redaction of personal data specifically, “we would be content for all personal data to be redacted, so long as any specific references to PCN details and parking operators remain visible thus enabling the letters to be cross-referenced to our records”, indicating that the request was for the 416 complaints including the PCN and operator references, but excluding any personal data included in those complaints.
6. DLUHC responded to the request on 18 September 2023. It stated that it had previously provided the 224 news articles mentioned in the request. Regarding the request for the 416 pieces of correspondence, it confirmed that it held this information, however it refused the request under section 14(1) of FOIA (vexatious requests) on the grounds of the burden of complying with the request. It stated that it considered the request to be burdensome due to the time it would take to consider whether any of the held information was exempt from disclosure.
7. Following an internal review DLUHC wrote to the complainant on 16 October 2023. It maintained its original position.
8. The complaint made to the Commissioner relates to the disclosure of the 416 pieces of correspondence, there does not appear to be any dispute as to whether the 224 news articles have been disclosed.

Reasons for decision

Section 14(1) – vexatious requests

9. Section 14(1) of FOIA allows a public authority to refuse to comply with a request if it is vexatious.
10. In the Commissioner’s view, section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority.

11. In particular, the Commissioner accepts that there may be cases where a request could be considered to be vexatious because the amount of time required to review and prepare the information for disclosure would place a grossly oppressive burden on the public authority². This is the position adopted by DLUHC in this case.
12. The Commissioner has first considered the purpose and value of the request.
13. DLUHC has provided the following context regarding the information requested:

“The Department is currently implementing the Parking (Code of Practice) Act 2019, which includes the development of an independent Code of Practice for private parking companies, which will aim to raise standards across the industry. The Code was initially published in February 2022, but was later withdrawn when some private parking companies issued legal proceedings against the decisions to introduce new levels of parking charges and ban debt recovery fees. The Department is currently reviewing the elements of the Code relating to parking charges and debt recovery fees, which has included producing a Regulatory Impact Assessment on the Code (which is where the 416 correspondence cases are mentioned to illustrate common concerns raised by MPs and members of the public). The Department will shortly be launching a public consultation on these elements of Code, before final decisions are made by Ministers and the Code is reissued.”

14. It has also explained that the correspondence that has been requested is comprised both of correspondence from members of the public to DLUHC and of correspondence from MPs to DLUHC ministers (which often enclose correspondence from members of the public to their MP). The correspondence covers a range of issues raised by members of the public and MPs relating to car parking and was received over a 12-month period between 2021 and 2022.
15. The complainant has indicated that their reason for making the request is to better understand what concerns have been taken into account when carrying out the impact assessment. Specifically, they want the opportunity to assess the validity of the complaints being used to inform

² <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/how-do-we-deal-with-a-single-burdensome-request/>

government policy, which they argue could have a significant impact on the parking sector and the public. They argue that this is necessary to ensure that policy-making in this area proceeds on a fully-informed basis.

16. The Commissioner accepts that there is a clear purpose and value of the request in terms of providing greater transparency and scrutiny of the information DLUHC has taken into account when developing policy in this area.
17. In terms of the burden that complying with the request would place upon DLUHC, at internal review it stated it would take 44 hours to collate the information, consider whether exemptions apply to the information it holds within the scope of the request and carry out the necessary redactions. In its submissions to the commissioner, DLUHC has stated that it had made an error when producing this estimate and that the total estimated time stated should have been 43 hours rather than 44 hours.
18. DLUHC has provided the following information to the Commissioner regarding how it has reached the estimate of 43 hours as the total time it would take to comply with the request:

“We have calculated that it would take c31 hours of Executive Officer / Higher Executive Officer resource to undertake the work, and c12 hours of team leader resource (Grade 6/Deputy Director) to check the work. This equates to a total of c43 hours staff time (to note the minor revision from the previous 44-hour estimate, due to an error in our previous calculations).

The work includes:

- Searching for the correspondence on the Department’s correspondence system
- Downloading correspondence
- Converting the emails to PDF
- Reading each piece of correspondence and considering whether any FOIA exemptions apply
- Redacting correspondence as necessary
- Review by team leaders

A sample of five pieces of correspondence was selected, which included different types of correspondence (some from MPs, some from members of the public) as well as varying lengths, to ensure a varied sample. It took one Executive Officer **22 minutes** and one Grade 6 officer **9 minutes** to review the five pieces of correspondence by undertaking the activities outlined

above. The above calculations for the total time taken to perform the necessary redactions for all 416 cases (43 hours in total) were calculated based on this exercise. In addition, the Department would also need to carry out third party consultation with MPs, as is normal practice.”

19. DLUHC also provided a copy of the five pieces of correspondence used in the sampling exercise to the Commissioner.
20. Regarding the consideration of exemptions, DLUHC states that it considers information within the 416 pieces of correspondence is likely to be exempt under section 40(2) (personal data), section 41(1) (information provided in confidence), section 43(2) (prejudice to commercial interests) and section 35(1)(a) (formulation/development of government policy) of FOIA. DLUHC therefore argues that it would need to consider whether information is exempt under these four exemptions in order to comply with the request.
21. Regarding the presence of personal data within the requested information, DLUHC states, “personal data is likely to be contained in every item of correspondence in scope, including the name of the correspondent and their contact details. Some items in scope may also contain further identifiable information such as parking charge notice (PCN) reference numbers”.
22. DLUHC considers that section 41(1) (information provided in confidence) is likely to be engaged with respect to some information within the correspondence as it often receives, “correspondence from members of the public which contains sensitive information regarding their personal circumstances – e.g. specific health conditions or financial difficulties”.
23. DLUHC provided the following explanation to the Commissioner as to why it considers that section 43(2) (prejudice to commercial interests) is likely to be engaged with respect some information within the correspondence:

“We receive correspondence where members of the public or MPs are critical of particular parking companies or car parks (see case numbers [reference redacted], [reference redacted], [reference redacted] from sampling exercise, for example), and releasing such correspondence could damage the commercial interests of not only parking companies, but also the landowners on whose behalf parking is provided. This is because the release of this information could deter motorists from visiting a particular car park and thus prevent them from accessing the services provided by the landowner (e.g. supermarkets, high streets etc.).”

24. DLUHC considers that section 35(1)(a)(formulation/development of government policy) is likely to be engaged with respect some information within the correspondence as, "the correspondence has been used to inform government policy as the thematic analysis of these cases has been used as part of the Government's Private Parking Code of Practice Impact Assessment which is a necessary step to delivering the Parking Code of Practice, a key Government policy".
25. DLUHC also argues that the potentially exempt information is scattered throughout the correspondence. The Commissioner's view is that section 14(1) is more likely to be engaged if this is the case as the potentially exempt information cannot easily be isolated.
26. The complainant disputes that the exemptions at section 43(2) and section 35(1)(a) are likely to be engaged by some of the information within the correspondence. In their complaint to the Commissioner they stated:

"The refusal also refers to commercial interest or policy development exceptions. We do not consider that these would be engaged; we think it likely the correspondence requested will involve complaints relating to specific occasions alleging that a parking operator acted inappropriately or unreasonably. Information about such specific occasions is unlikely to relate to policy formation or to engage commercial interests."
27. Having viewed the correspondence considered in the sampling exercise and considered the nature of the correspondence in scope of the request and the arguments put forward by DLUHC, the Commissioner's view is that it is highly likely that all of the pieces of correspondence will contain information that is exempt from disclosure under section 40(2) (personal data). The Commissioner also considers that many will contain information that may be exempt from disclosure under section 41(1) (information provided in confidence) as disclosure of the information to the world at large under FOIA may constitute a breach of confidence.
28. While the Commissioner considers it unlikely that disclosure of any single complaint about a parking company or car park would impact the commercial interests of either the parking company or landowner, he does accept that if the information across the 416 complaints shows a high number of complaints about specific operators or identifies particular repeated practices of concern relating to specific operators, disclosure of this information may prejudice the commercial interests of these companies. The Commissioner therefore accepts that DLUHC would need to consider whether information may be exempt under section 43(2) when dealing with this request.

29. Regarding whether DLUHC would need to consider whether any of the information within the correspondence is exempt from disclosure under section 35(1)(a), this exemption states that information held by a government department such as DLUHC is exempt information if it relates to the formulation or development of government policy. The Commissioner's guidance³ states, "to be exempt, the information must relate to the formulation or development of government policy. These terms broadly refer to the design of new policy, and the process of reviewing or improving existing policy". The Commissioner's guidance is also clear that the term "relates to" can be interpreted broadly, "this means the information does not have to be created as part of the activity. Any significant link between the information and the activity is enough. Information may 'relate to' the activity due to its original purpose when created, or its later use, or its subject matter. Information created before the activity started may still be covered if it was used in or affected the activity at a later date". Given the link between the requested correspondence and the impact assessment, the Commissioner therefore considers DLUHC's position that it would need to consider whether any of the information is exempt under section 35(1)(a) to be reasonable.
30. The Commissioner therefore accepts that, in order to comply with the request, it would be appropriate for DLUHC to consider whether any of the information within the correspondence is exempt under the four exemptions listed in paragraph 20 of this notice. The Commissioner also accepts that the potentially exempt information is likely scattered throughout the correspondence in such a way that the potentially exempt information cannot easily be isolated.
31. Having accepted that it would be necessary for DLUHC to consider these exemptions, the Commissioner has gone on to consider whether DLUHC's estimate of 43 hours to comply with the request is a reasonable estimate.
32. The Commissioner considers that the sampling exercise carried out by DLUHC provides useful information which supports the estimate it has reached of 43 hours. The Commissioner considers DLUHC's approach to the sampling exercise of selecting a varied sample of the correspondence, (some from MPs, some from members of the public, as well as varying lengths) to be a reasonable approach to selecting a sample that is representative of the correspondence as a whole.

³ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-35-government-policy/>

33. DLUHC's estimate of 43 hours, gives an average of just over six minutes per piece of correspondence. Given that this has been based on the sampling exercise described above and having viewed the information considered in the sampling exercise and considered the arguments put forward by DLUHC, the Commissioner considers this to be a reasonable estimate. He has already accepted that when complying with the request DLUHC could consider whether any information in the piece of correspondence is exempt from disclosure under the four exemptions discussed above.
34. The Commissioner therefore accepts the estimate of 43 hours to be a reasonable estimate of the time it would take DLUHC to comply with the request and therefore considers that the burden that would be imposed upon DLUHC should it be required to comply with the request to be significant.
35. The Commissioner accepts that the request has a clear value and purpose. However, because of the volume of information in the scope of the request, the Commissioner accepts that the burden placed on DLUHC in complying with it will be a grossly oppressive one. In the Commissioner's opinion despite the clear value in the disclosure of the requested information, he does not accept that this is sufficient to justify placing such a burden on DLUHC.
36. The complainant has stated that they have offered to fund the costs involved in the provision of this information, however, DLUHC is not under any obligation to comply with the request on this basis.
37. The Commissioner's decision is therefore that DLUHC is entitled to refuse the request under section 14(1) of FOIA.

Right of appeal

38. 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

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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