

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 May 2018

Public Authority: DVLA
Address: Longview Road
Morrison
Swansea
SA6 7JL

Decision (including any steps ordered)

1. The complainant has requested information relating to the number plates of international organisations and diplomatic cars.
2. The Commissioner's decision is that DVLA has correctly applied section 27(1)(a) to the withheld information.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 16 August 2017, the complainant wrote to DVLA and requested information in the following terms:

"Under the Freedom of Information Act 2000, please give me a list of the codes/prefixes which are allocated to foreign countries and international organisations for their diplomatic cars.

You will realise that this information is obtainable (although with some difficulty) by simple observation, for instance, standing outside the Afghan embassy, standing outside the Albanian embassy, standing outside the Algerian embassy and so on. So you would find it difficult to say that a health & safety, security or international relations exemption is in use."

5. DVLA responded on 12 September 2017 and refused to provide the requested information. It stated that it was exempt from disclosure by virtue of sections 27(1) and 40(2).

6. Following an internal review DVLA wrote to the complainant on 24 October 2017 and maintained its position.

Scope of the case

7. The complainant contacted the Commissioner on 16 October 2017 to complain about the way his request for information had been handled. He stated that DVLA "have not carried out their burden of proof as to section 27 because they have not explained how prejudice might happen". In addition the complainant stated that "No reasoning has been given as to why a foreign embassy would judge this to be a breach of trust so severe as to prejudice our relations with them".
8. During the Commissioner's investigation, DVLA also sought late reliance on sections 31(1)(a) and (b) and 38(1). The Commissioner considers the scope of this case to be to determine if DVLA has correctly applied any of the exemptions it has cited.

Background

9. DVLA explained that diplomatic vehicles are afforded an exemption from paying vehicle excise duty (road tax) and that exemption is afforded to staff of foreign missions based in this country and consular officers of those countries. It also stated that it is aware that lists of codes/prefixes are available on the internet, but that it has not been 'officially' published or endorsed by DVLA or another government department.
10. DVLA also referred to the complainant's statement that he could obtain the information:
"although with some difficulty, by simple observation for instance standing outside the relevant Embassy".
11. DVLA stated that it is of course an individual's choice to take such action but it would not be appropriate for DVLA to disclose information into the public domain that confirms suspicions or assertions that may already be published online.
12. Furthermore, disclosure under FOI would be to a much wider audience than just the requestor or those who may attend and observe movements outside an Embassy. Disclosure under FOI would be to all, including those without easy access to Embassies or the time or inclination to find and attend their locations to observe vehicle movements.

Reasons for decision

Section 27 – international relations

13. Section 27(1)(a) of FOIA states that:

Information is exempt information if its disclosure would, or would be likely to, prejudice –

(a) relations between the United Kingdom and any other State...

14. In order for a prejudice based exemption, such as section 27(1), to be engaged the Commissioner considers that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority to discharge.

15. Furthermore, the Commissioner has been guided by the comments of the Information Tribunal which suggested that, in the context of section 27(1), prejudice can be real and of substance *'if it makes relations more difficult or calls for a particular diplomatic response to contain or limit damage which would not have otherwise have been necessary. We do not consider that prejudice necessarily requires demonstration of actual harm to the relevant interests in terms of quantifiable loss or damage'*¹.

¹ *Campaign Against the Arms Trade v The Information Commissioner and Ministry of Defence* (EA/2006/0040) paragraph 81.

16. The first issue is whether the exemption is engaged, the reasoning of the DVLA as to why this exemption was engaged was that disclosure of the withheld information would be likely to prejudice relations between the UK and other States. In order for the Commissioner to accept that prejudice would be likely to result, there must be a real and significant likelihood of this outcome occurring, rather than this being a remote possibility. The question here is, therefore, whether there is a real and significant chance of prejudice to relations between the UK and other States through disclosure of the information in question.
17. In this case DVLA is relying on the lower threshold, 'would be likely to occur'. However this still means that DVLA needs to satisfy the Commissioner that the change of international relations being prejudiced is more than a hypothetical possibility; there must be a real and significant risk.
18. The Commissioner has considered DVLA's submission and is satisfied that the exemption is engaged.
19. Given that the information requested relates to diplomatic vehicles, disclosure would clearly have some impact on the UK's relationships with other States and international organisations. The Commissioner considers this is more than a hypothetical possibility.
20. Having satisfied herself that the exemption is engaged, the Commissioner has next 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

21. DVLA considered the following arguments:
 - the FOI Act presupposes that disclosure of information generally is to be regarded as being in the public interest
 - there is general public interest in promoting the transparency of government (leading to greater accountability and an increase in trust)
 - the public may be interested to know how the codes/prefixes are allocated to foreign countries and for their Diplomatic vehicles.

Public interest arguments in favour of maintaining the exemption

22. DVLA then considered the following:

- Section 27(1)(a) acknowledges that the successful conduct of international relations is reliant on upholding confidence and trust between Governments and international organisations. Should the United Kingdom (UK) fail to preserve these qualities, the ability to protect and promote UK interests through international relations will be hindered.
- Disclosing information which relates to diplomats is likely to damage the UK's relationship with the States and international organisations concerned, thereby impeding the UK government's powers to protect and promote UK interests through international relations.
- If this information is put into the public domain, substantial time and cost will be incurred in amending the diplomatic marks to maintain the international relationships.
- Effective relationships with diplomats are pivotal to maintaining stable international liaison. The effects of a deterioration or breakdown in such relationships can harm the UK in a number of areas, which would be against the public interest.
- To disclose details of codes/prefixes which are allocated to foreign countries and international organisations for their diplomatic vehicles, would be likely to prejudice relations between the UK and other States. The UK has a duty to maintain effective conduct of international relations and is obliged to protect information that could compromise such relationships.

Balance of the public interest

23. DVLA concluded that the public interest in maintaining the exemption outweighs the public interest for disclosure because the UK needs to sustain the trust, confidence and promotion of UK interests internationally through international interests.
24. DVLA considered that for the reasons of sustaining trust, confidence and the promotion of UK interests through international relations, the public interest in withholding the information outweighs the public interest in disclosing it.
25. The Commissioner considers that there is strong public interest in not harming the UK's relations with any another State. The Commissioner has found that there is a real and significant risk of harming the UK's relations with other States and international organisations. Furthermore,

in these times of heightened security alerts, identifying specific organisations or a country's diplomats by the number plates could be considered a security risk to their staff.

26. In the absence of any compelling arguments in favour of disclosure, the Commissioner has decided that the public interest favours maintaining the exemption.

Right of appeal

27. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. 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.
29. 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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