

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 January 2024

Public Authority: Driver & Vehicle Licensing Agency (an executive agency of the Department for Transport)

Address: Longview Road
Morrison
Swansea
SA6 7JL

Decision (including any steps ordered)

1. The complainant has requested information relating to complaints. The Driver and Vehicle Licensing Agency ("the public authority") disclosed information in response to the request.
2. The Commissioner's decision is that, on the balance of probabilities, the public authority has disclosed all information that falls within the scope of the request and has complied with section 1 (general right of access) of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. On 28 June 2023, the complainant wrote to the public authority and requested:

“I will need to request under the FOIA redacted copies and responses to all the complaints DVLA received relating to CP Plus/Group Nexus AOS parking operators as stated in your reply to my FOIR 10495.

From July 2020 - April 2023 DVLA received 36 complaints

28 related to CP Plus/Group Nexus behaviour/practice.

7 related to incorrect/inaccurate release of data. (6 one already sent).

1 related to their compliance with the law.”
5. The public authority responded on 19 July 2023. It disclosed the information it held that fell within the scope of the request, with the names of individuals and vehicle registration marks redacted under section 40(2) (personal information).
6. The complainant requested an internal review on 21 July 2023. They stated:

“Your email reply only contained 5 out of the 35 copies and responses of complaints I'd requested... It seems absurd DVLA retains upheld complaint records yet destroys those not upheld after 180 days. The ones which are more likely to be legally challenged.”
7. Following an internal review the public authority wrote to the complainant on 15 December 2023, it upheld its previous position.

Scope of the case

8. The complainant raised several concerns about the way their request has been handled with the Commissioner. These concerns included that the public authority's internal review was carried out by the same individual who issued the refusal notice of 19 July 2023 and that header information was missing from some of the public authority's emails.
9. Whilst its best practice for an internal review to be conducted by an individual who didn't have any involvement in the original response, this is not a statutory requirement. The Commissioner can't comment on the second concern.

10. The crux of the complainant's concern is that the public authority holds more information than it's disclosed. The complainant hasn't raised any concerns about the public authority's application of section 40(2), so the Commissioner won't consider it any further.

Reasons for decision

11. In cases where a dispute arises over the recorded information held by a public authority at the time of a request, the Commissioner, following the outcome of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. This means that the Commissioner will determine whether it is likely, or unlikely, that the public authority held information relevant to the complainant's request at the time that the request was received.
12. In order to make his determination, the Commissioner has considered both the public authority's explanation as to why all information has been identified and the complainant's arguments.
13. In its refusal notice, the public authority explained:

"complaints that have not been upheld are retained on e-mails and after 180 days, the majority of e-mails held by the DVLA are automatically deleted, therefore any complaints made before that timeframe, are no longer held."
14. In their internal review request, the complainant queried this:

"This reply states complaints not upheld are deleted after 180 days (should be retained for at least 3 years). With 32 complaints not upheld and deleted how could the previous FOI team member manage to inform me that over the past 3 years DVLA received 28 complaints relating to CP Plus/Group Nexus behaviour/practice, 7 concerned with personal data requests and 1 compliance with the law."
15. To which the public authority responded:

"while these complaints are managed and stored on our e-mail system and therefore the full details of each complaint will be deleted in line with DVLA's email retention policy of six months, the DVLA records certain details of them on a separate Excel spreadsheet, which is retained for 24 months. The data held on this spreadsheet includes the following fields:

- Name of the complainant
 - Vehicle Registration Mark (VRM)
 - Name of company/organisation
 - Caseworker
 - Date of receipt
 - Date of reply
 - Complaint Categories (there are four categories, detailed below)
 1. Incorrect release of or accuracy of data
 2. Company behaviour/Practice
 3. No legal basis/Compliance with law
 4. Breach of external regulation or Code of Practice (CoP)''
16. So, the Commissioner understands that whilst any actual complaints that are not upheld will be deleted in line with the public authority's retention and disposal policy, a record of the complaint will be retained for longer.
17. This makes sense to the Commissioner; if a complaint isn't upheld no further action needs to be taken. Therefore there's no reason to hold the details of the complaint or the response to it. However, there will be multiple reasons why the public authority needs to retain data relating to the total number of complaints for longer.
18. The complainant has put forward several reasons why the public authority should retain the disputed information:
- The request relates to a high profile issue that's 'attracted a constant high level of complaints and criticism from the public and MP's.'
 - The spreadsheet data will hold limited value without the full details of the complaint.
 - An individual might wish to challenge the DVLA's handling of their complaint so it would make sense for the public authority to retain the full details of the complaint.
19. All of the complainant's arguments seem to focus on why the disputed information **should** be retained for longer than it is. Unfortunately, this isn't something the Commissioner can comment on. It's purely the Commissioner's role to determine, on the balance of probabilities, whether a public authority has provided all of the relevant information it

holds. Looking at the public authority's explanation, the Commissioner is satisfied that it has.

20. It's not the role of the Commissioner to comment on the appropriateness of the public authority's retention schedule in this context. Data minimisation states that information shouldn't be held for any longer than is necessary. It's up to a public authority to determine how long that should be, bearing in mind the purpose for which it's held.
21. The Commissioner can't compel the public authority to change its policies to retain this information for longer. He is satisfied the disputed information wasn't held at the time of the request and therefore, couldn't be provided in response to the request.

Other matters

22. A public authority should provide its internal review outcome within twenty working days of receipt of the review request. This period can be extended to forty working days if its particularly complex.
23. The public authority grossly exceeded this timeframe in providing its internal review outcome.

Right of appeal

24. 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

25. 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.
26. 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

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF