

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 October 2024

Public Authority: Driver and 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 about M2C forms and the procedure to make licensing decisions from information about medical conditions. The Driver and Vehicle Licensing Agency ('the DVLA') provided a redacted copy of the M2C decision process map but relied on section 31(1)(a) of FOIA (law enforcement) to withhold the redacted information.
2. The Commissioner's decision is that the DVLA was entitled to rely on section 31(1)(a) of FOIA to withhold the redacted information.
3. The Commissioner does not require further steps.

Request and response

4. On 29 January 2024, the complainant wrote to the DVLA and requested information in the following terms:
 - "1) The guidelines, advice, or policy for interpreting the content of M2C medical forms received from licence holder's medical personnel to make licensing decisions
 - 2) the grade of staff and description of training received for the role of interpreting M2C forms

- 3) The proportion of licensing decisions on the basis of M2C forms reviewed by a DVLA doctor before notification is sent to the license holder.
 - 4) The proportion of licence holders that appeal the decisions of DVLA made on the basis of M2C form.
 - 5) The proportion of license holders who are given a copy of M2C form within 21 days of notification of a DVLA licensing decision on the basis of information acquired from an M2C form
 - 6) In cases that are appealed, the proportion of cases where the DVLA doctor disagrees with the original licensing decision that was communicated to the license holder
 - 7) What grades of DVLA staff are involved in appraisals for the revalidation procedure for DVLA doctors
 - 8) What proportion of DVLA doctors receive feedback for revalidation from license holders."
5. The DVLA responded on 22 February 2024. It provided redacted copy of the information requested in question one, and stated that the redacted sections were withheld under section 31(1)(a) of FOIA. It provided responses to questions two, five and seven and advised that it could not provide responses to questions three, four and six within the cost limit. For question eight, it responded that it did not hold the requested information.
 6. The complainant requested an internal review on 11 March 2024. The DVLA did not provide an internal review response.

Scope of the case

7. The complainant contacted the Commissioner on 21 May 2024 to complain about the way their request for information had been handled.
8. In their complaint to the Commissioner, the complainant only expressed dissatisfaction with the redactions applied to the information disclosed in question one.
9. In his investigation letter, the Commissioner invited the complainant to raise any other concerns about the handling of their request, including the other reasons given for not being provided with the requested information. The complainant did not put forward any additional grounds for complaint. For this reason, the Commissioner will not consider the DVLA's application of section 12 of FOIA (cost limit), or whether it holds information in scope of question eight.
10. The Commissioner therefore considers that the scope of his investigation is to determine whether the DVLA was entitled to rely on section 31 of

FOIA to withhold some of the requested information in its response to question one.

Reasons for decision

Section 31 – law enforcement

11. Section 31(1)(a) of FOIA states that:

“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice- (a) the prevention or detection of crime....”

12. The exemption in section 31(1)(a) covers all aspects of the prevention and detection of crime. It could apply to information on general policies and methods adopted by law enforcement agencies.

13. The exemption also covers information held by public authorities without any specific law enforcement responsibilities. It could be used to withhold information that would make anyone, including the public authority itself, more vulnerable to crime.

14. The DVLA has explained that it acts on behalf of the Secretary of State for Transport in applying the medical standards to decide whether a driving licence holder or applicant meets the minimum medical standards for driving. In the 23/24 financial year, the DVLA made 722,449 medical licensing decisions, with 65,075 applications being refused and entitlements revoked on medical grounds.

15. In this case, the information requested in question one relates to 'M2C', which are series two questionnaires issued to healthcare providers or medical professionals. The DVLA explained that series one or 'M1C' questionnaires are issued to applicants and existing licence holders that have declared a medical condition. When an applicant for a driving licence or an existing licence holder declares a medical condition, a questionnaire is sent to them. Once the questionnaires are returned, the answers provided are used to inform whether the applicant or an existing licence holder meets the medical standards to drive.

16. The DVLA has explained that it is reliant on applicants and licence holders providing the information, without having reference to internal decision-making processes, which could unduly influence their declarations. The medical licensing system is based on a 'self-declaration' process and all drivers and licence applicants have a legal duty to notify DVLA of a medical condition that may affect safe driving. In some cases, DVLA will be able to make a licensing decision from the

information received from the driver or applicant. However, further evidence may be required, with the driver's consent, from the doctor or healthcare professional.

17. The DVLA has explained that the withheld information in this case is the process map or Operating Instructions (OIs) used by DVLA staff to assist making medical licensing decisions, when a M2C medical questionnaire is returned by a medical professional or healthcare provider.
18. In order to engage a prejudice based exemption such as section 31, there must be likelihood that disclosure would, or would be likely to, cause prejudice to the interests that the exemption protects. In the Commissioner's view, three criteria must be met in order to engage a prejudice based exemption:
 - 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 – that is, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.
19. The DVLA has stated that disclosure of the withheld information would be likely to prejudice the prevention or detection of crime. It explained that a false declaration by an applicant for a driving licence or an existing licence holder may result in a £1,000 fine and prosecution by the police, pursuant to section 99 of the Road Traffic Act 1988.
20. It explained that while the withheld information concerns actions to take by staff when M2C questionnaires are returned by medical professionals, the DVLA considers that the withheld information could be used by applicants or licence holders, to inform answers to series one questionnaires.
21. In this case, having considered DVLA's submissions, the Commissioner is satisfied that the actual harm that DVLA alleges would, or would be likely to, occur if the withheld information was disclosed does relate to the applicable interests within section 31(1)(a); that is the prevention of

crime. The Commissioner is satisfied that individuals making false claims about their medical conditions could lead to those people obtaining or continuing to hold driving licences fraudulently.

22. Second, 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 that is alleged must, be real, actual or of substance.
23. The Commissioner considers that DVLA has demonstrated that such a causal relationship exists and that the alleged prejudice is of substance.
24. Disclosing the requested information would put detailed information about DVLA decision making process concerning medical conditions into the public domain. This could then permit those so inclined to adapt their answers about medical conditions to fit within the criteria for them to obtain or maintain a driving licence. Individuals who submitted false information on the questionnaires could drive without meeting the required conditions linked to physical and mental health. Not only would this be a false declaration, and therefore illegal, it would risk the safety of themselves and other road users.
25. Third, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – for example, 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. The anticipated prejudice must be more likely than not.
26. The Commissioner is satisfied that there is more than a hypothetical possibility that the above prejudice could occur.
27. Having considered the DVLA's submissions and all the circumstances of this case, the Commissioner is satisfied that the three criteria for prejudice have been met and that section 31(1)(a) of FOIA can be applied to the redacted information. He will now go on to consider the public interest arguments.

Public interest test

Factors in favour of disclosure of the requested information

28. The DVLA has acknowledged that there is a public interest in transparency, accountability and trust.

29. The complainant has challenged the DVLA's reasoning that disclosure of the requested information would lead to individuals making false declarations. They argued that the M2C form is only completed by healthcare professionals and not individual licence holders with a potential conflict of interests. They added that healthcare professionals are regulated by a codes of ethics that would prohibit making false declarations.

Factors in favour of maintaining the exemption

30. The DVLA considers that disclosure of the withheld information would give applicants and licence holders a 'roadmap' to assist in completing the medical questionnaire. This could assist individuals to attempt to circumvent DVLA processes to obtain a positive licensing decision which could impact road safety.
31. The DVLA explained that it makes hundreds of thousands of medical licensing decisions each year, of which, 10% are refused an entitlement to drive or revoked. It considers that any decrease in this percentage as a result of disclosure, would be likely to result in drivers being incorrectly in possession of an entitlement to drive, that may not meet the medical standards to do so. This is a significant road safety risk.

Balance of the public interest

32. The Commissioner notes the complainant's argument about the M2C form being completed by medical professionals, and the unlikelihood that they would make false claims. The Commissioner has reviewed the forms along with the withheld information. He acknowledges that it is the M2C form that relates directly to the withheld information, and not the M1C form that is completed by the applicant or driver. However, the Commissioner notes that knowledge of the OIs contained in the requested information, could prompt individuals to alter their responses on the M1C in order to avoid triggering the need for an M2C form to be completed. Equally, it is possible that knowledge of the OIs could deter applicants or existing licence holders to declare medical conditions or complete the M1C form at all.
33. The Commissioner does not consider there are particularly strong arguments for disclosure of the withheld information. He accepts there is value in the disclosure of information that increases transparency and accountability. However, he considers that there is a strong public interest in safeguarding the robustness of the measures used to assess people with medical conditions that could affect their ability to drive legally and safely.

34. On balance the Commissioner therefore considers that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the application of the section 31(1)(a) of FOIA.

Other matters

35. The Commissioner notes that the DVLA did not provide an internal review of its response in this case. Although internal reviews are not a statutory requirement under FOIA, the Commissioner considers that further explanation to the complainant about the DVLA's application of section 31 of FOIA may have avoided a complaint being made to the Commissioner.

Right of appeal

36. 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

37. 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.
38. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Keeley Christine
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