

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 19 October 2018

**Public Authority:** Driving and Vehicle Standards Agency  
**Address:** The Axis Building,  
112 Upper Parliament Street,  
Nottingham  
NG1 6LP

**Complainant:** Mr John Beaman  
**Address:** johnbeaman@btinternet.com

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to the questions set for the driving theory test.
2. The Commissioner's decision is that Driving and Vehicle Standards Agency (DVSA) has correctly cited section 14(1) of the FOIA in response to the request.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

#### **Request and response**

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4. On 26 September 2017 the complainant submitted an FOI request asking for a list of all theory test questions used for 2016, the number of times each question was presented to applicants during the test and the number of times each was answered incorrectly. On 20 October 2017 DVSA advised that the information requested was exempt from disclosure under section 36 of the FOIA.
5. The complainant subsequently made further requests relating to the same information.
6. This resulted in the complainant receiving a response on 16 March 2018 advising that DVSA were applying section 14(1) of the FOIA.

## Scope of the case

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7. The complainant contacted the Commissioner on 25 March 2018 to complain about the way his request for information had been handled.
8. The Commissioner contacted the complainant to confirm the scope of the case as being to consider the application of section 14. The complainant then responded that he wished for the application of section 36 to be considered.
9. The Commissioner explained that it was not possible to investigate this as the last exemption correspondence with DVSA had been with regard to the application of section 14. The complainant then agreed to proceed with the case on the basis of section 14.

## Background

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10. DVSA explained that in its response of 20 October 2017, it had cited section 36(2)(c). It included a link to the relevant exemption to aid the complainant's understanding and informed him that disclosure of theory test questions and incorrect answers would undermine the integrity of the test, as candidates would learn the questions and answers required to pass their theory test rather than learning all road safety aspects.
11. This would severely compromise the integrity of the test, therefore impacting on road safety whilst compromising road safety initiatives. It also explained that this has been certified at Ministerial level and was subject to a public interest test (PIT). It provided a copy of the PIT to its response. The complainant made further requests to obtain the theory test data, asking for this to be anonymised as he considered that DVSA had 'misinterpreted' his initial request and it could provide the data by numbering each question rather than giving the specific question.
12. DVSA considered that section 36 would still apply in this instance, as it does not make public how many questions there are in the theory test. Doing so would have a detrimental impact on the agency as if the recipient were to have the number of questions in the 'live pool' of questions asked, they could, if so minded, compile a replication of the test, which DVSA seeks to prevent as the confidentiality of the intellectual property is critical to the validity of the test. If DVSA were to publish or disclose the number of questions, it has for use in the live tests; it may be used to cause embarrassment to the agency and/or reputational damage, with a detrimental effect in the test and public policy, it would also be against ministerial agreement.

## Reasons for decision

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### Section 14(1) – vexatious requests

13. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.

Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.

14. The term “*vexatious*” is not defined in the FOIA. The Upper Tribunal (Information Rights) considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield*<sup>1</sup>. It commented that “vexatious” could be defined as the “manifestly unjustified, inappropriate or improper use of a formal procedure”. The Upper Tribunal’s approach in this case was subsequently upheld in the Court of Appeal.
15. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request and (4) harassment or distress of and to staff.
16. The Upper Tribunal did however also caution that these considerations were not meant to be exhaustive. Rather, it stressed the: “*importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests*” (paragraph 45).
17. The Commissioner has published guidance on dealing with vexatious requests<sup>2</sup>, which includes a number of indicators that may apply in the case of a vexatious request. In brief these consist of, in no particular order: abusive or aggressive language; burden on the authority; personal grudges; unreasonable persistence; unfounded accusations;

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<sup>1</sup> UKUT 440 (AAC)

<sup>2</sup> [https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-](https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests/)

intransigence; frequent or overlapping requests; deliberate intention to cause annoyance; scattergun approach; disproportionate effort; no obvious intent to obtain information; futile requests; frivolous requests.

18. The Commissioner's guidance suggests that if a request is not patently vexatious the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.
19. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains:

*"The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies".*

20. DVSA argued that to deal with this request would have had a detrimental impact on the team and agency as the complainant has submitted requests of the same or a similar nature to DVSA on 25 September 2017, 26 January 2018, 21 February 2018 and 12 March 2018.
21. The complainant also made a request on 21 February 2018; this request was asking for data pertaining to the fees/charges and commissions paid to Pearson VUE on a yearly basis since its inception. Whilst this request was not regarding theory test questions it was received on the same day as another request, where the complainant asked for a list of all test results and the number of failed questions; this was relating to theory test questions. The complainant also corresponded with various DVSA staff, and was told on several occasions, that it could not provide the information pertaining to theory tests as it risked the integrity and security of the test. The complainant's repeated requests and subsequent supplementary questions to not only the FOI team, but other members of DVSA, were deemed as obsessive in nature.
22. DVSA further argued that the complainant's persistence in obtaining information and data in relation to theory test questions, was a burden on the team; as in addition to the FOI requests received, he emailed the team nine times to seek further information within the four month period of the requests.
23. DVSA stated that it was also unjustified and disproportionate, as it had already offered to provide the complainant with the anonymised top ten

best performing and bottom ten worst performing questions. The complainant agreed to receive this information.

24. Once received, he again requested the specific questions to be identified. On 22 February, the complainant, following advice from DVSA, contacted the theory test Product Manager for standards and theory test policy, who responded on 28 February. She confirmed that DVSA were unable to provide a list of theory test questions and reiterated the reason for this.
25. The complainant then proceeded to submit another request for theory test data on 12 March 2018. It was after this request that DVSA consulted with Department for Transport (DfT) FOI Advice Team. Following a discussion about the repeated requests and subsequent correspondence, a decision was made to treat the requests, and further correspondence in relation to this matter, as vexatious on 16 March 2018.
26. DVSA also argued that the nature of the requests, repeated emails and phone calls, could be considered as an attempt for the complainant to find a different method of formulating a list of questions, which DVSA had previously exempted.
27. The Commissioner notes that the majority of requests DVSA refer to in paragraph 20 were made following its response to the request of 26 September 2017 citing section 36.
28. The complainant has advised that he has concerns about the fairness of test marking and that candidates may be unnecessarily failed. He further stated that he had information indicating that approximately 200,000 tests per annum had been compromised, although he did not elaborate on how this had happened.

### **The Commissioner's decision**

29. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case shows a history of previous and subsequent information requests. Clearly in this case, DVSA considers that the context and history strengthens its argument that the request is vexatious.
30. The purpose of section 14 of the FOIA is to protect public authorities and their employees in their everyday business. In her guidance, the Commissioner recognises that dealing with unreasonable requests can place a strain on public authorities' resources and get in the way of delivering mainstream services or answering legitimate requests.

31. Clearly if there is a suspicion of wrong doing an individual may consider that making a request under the FOIA would be the most efficient way to gather evidence and this gives a request serious purpose and value.
32. However, in this case the Commissioner has no evidence to indicate that there has been any wrong doing. The Commissioner has carefully considered both the DVSA's arguments and the complainant's position regarding the information request in this case.
33. She has also carefully reviewed all the information and evidence presented to her by both parties and finds that whilst at face value the request appears reasonable, when seen in the context of the wider correspondence with DVSA can be deemed to be vexatious. She considers, that on this occasion, in all the circumstances of this case, DVSA is entitled to rely on section 14(1).

## **Right of appeal**

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34. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

35. 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.
36. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**