

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 24 November 2020

Public Authority: Driver and Vehicle Licensing Agency (DVLA)
Address: Longview Road
Swansea
SA6 7JL

Decision (including any steps ordered)

1. The complainant has requested information on the number of prosecutions for offences relating to the registration of trade places the DVLA has undertaken in the last five years. The DVLA refused to provide this information on the basis of section 31(1)(d) of the FOIA as it considered it would be likely to prejudice its ability to collect Vehicle Excise Duty
2. The Commissioner's decision is that the DVLA has not demonstrated that the section 31(1)(d) exemption is engaged.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the information requested at part 3 of the request.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 22 November 2019 the complainant made a request to the DVLA in the following terms:

"1) Are the Red Dealer Plates #30304 and 72481 currently valid to use? If either (or both) of these are not valid, can you confirm the date of expiration.

2) Can you confirm the date of expiration of the following plates (information initially obtained from FOIR7855).

89031

89032

64181

58031

3) Further to FOI7216, can you confirm how many offences under VTL301G have actually been prosecuted for the last five years, by year (so 2014-2019). Please provide this information both nationally, for the County of Surrey, for Kingston-upon-Thames and for the KT6 area."

6. The DVLA responded on 29 January 2020 and provided the information requested at parts 1 and 2 of the request. The DVLA confirmed it held the information for part 3 of the request but that it was exempt from disclosure under section 31(1)(d) of the FOIA as it would be likely to prejudice the collection of Vehicle Excise Duty (VED).
7. The complainant asked for an internal review on 29 January 2020. The complainant did not receive a response to this request and the Commissioner wrote to the DVLA on 1 June 2020 about this but no internal review as forthcoming. The Commissioner has therefore exercised her discretion to accept this case for investigation.

Scope of the case

8. The complainant contacted the Commissioner following the lack of internal review to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of her investigation to be to determine if the DVLA has correctly withheld information the information requested at part 3 on the basis of section 31(1)(d) of the FOIA.

Reasons for decision

10. The information that has been withheld is the number of offences under VTL301G that have been prosecuted in the years 2014-2019, broken down by year and nationally and within Kingston-upon-Thames, Surrey and the KT6 postcode.
11. VTL301 is the application form required for applying for a first trade licence (or 'red plate'). In order to be eligible for a trade licence there are specific criteria that should be met, generally it will be motor dealers or traders that will be eligible. Trade plates can then only be used for specified purposes. They are often used by car dealers so they do not have to tax and insure each individual vehicle they have as the tax is paid on the plate not the vehicle.
12. The DVLA has argued that the withheld information is exempt on the basis of section 31(1)(d) of the FOIA. Section 31 provides a general exemption for information which relates to law enforcement. Section 31(1)(d) relates specifically to the assessment or collection of any tax or duty. To engage section 31(1)(d) the public authority must therefore be reasonably able to demonstrate that disclosure of the requested information would or would be likely to prejudice the collection of taxes.
13. As with any prejudice based exemption, a public authority may choose to argue for the application of regulation 31(1)(d) on one of two possible limbs – the first requires that prejudice 'would' occur, the second that prejudice 'would be likely' to occur.
14. The DVLA has stated that they believe the likelihood of prejudice arising through disclosure is one that is likely to occur, rather than one that would occur. Whilst this limb places a weaker evidential burden on the DVLA to discharge, it still requires it to be able to demonstrate that there is a real and significant risk of the prejudice occurring.
15. The Commissioner has first considered whether the DVLA is formally tasked with the collection of taxes.
16. The DVLA explained the specific duty in question is VED, sometimes referred to as 'road tax'. The DVLA confirmed it has the responsibility of collecting and enforcing payment of VED on behalf of the Secretary of State for Transport with all VED collected being paid to HM Treasury. The Agency collects around £6 billion per year in VED on behalf of the Exchequer.
17. In this case the Commissioner is satisfied the DVLA is formally tasked with the collection of VED. The Commissioner has therefore gone on to consider how disclosure of the withheld information would be likely to prejudice this function.

18. The DVLA referred the Commissioner to a previous decision notice (reference FS50178905) in which the Commissioner agreed that section 31(1)(d) of the FOIA was correctly applied to information relating to the collection and enforcement of VED. At paragraph 40 of this decision notice the Commissioner agreed that disclosure of information relating to how the DVLA enforces the collection of VED would be likely to prejudice the collection of VED. The Commissioner concluded at paragraph 41 that section 31(1)(d) was engaged.
19. In this case the DVLA has argued that publishing the numbers and breakdowns of prosecutions could prejudice its ability to enforce and collect VED if the numbers revealed are lower than expected as this may lead to an inference that the DVLA does not take action. The Commissioner would argue that it could also be inferred that a low number would be due to the fact there is little or no fraudulent applications so there is no action to take. Similarly if the numbers are high this could be interpreted in different ways – it could be that the numbers represent all of the fraudulent applications and show the DVLA prosecutes every offence or it could be assumed that is it only a percentage of the cases.
20. In short, revealing the number of prosecutions, whether high or low, without any information behind the decision making as to what cases to enforce and what cases not to enforce does not obviously provide a means of evading the payment of VED and impacting on the DVLA's collection of tax.
21. The decision notice referred to by the DVLA related to a request for what constitutes 'exceptional circumstances' in relation to the appeals process regarding its Continuous Registration (CR) scheme. In relation to this specific information, the Commissioner did find that "public awareness of these particular exceptional circumstances would be likely to reduce the deterrent effect of the LLPs [Late Licensing Penalty] and in doing so, reduce the incentive of the individual to either license their vehicle or declare SORN, which in turn would be likely to prejudice the collection of VED." In that case it is clear to see how disclosure of the information would be likely to inform individuals as to the exceptional circumstances which may be more likely to result in a successful appeal.
22. The Commissioner considers another decision notice to be more pertinent to this case (reference FS50867774). In this case the withheld information was the number of enforcement cases per month and the Commissioner found that there was no clear evidence to show how this information could be used to evade enforcement action.
23. The Commissioner considers the decision notice referred to above to be much more analogous to this situation as it refers to number of

enforcement cases whereas the decision notice referred to the by the DVLA related to information on exceptional circumstances that may be accepted in an appeals process. The Commissioner considers there is a significant difference between numbers of enforcement cases and prosecutions where there is no information on decisions and how the DVLA determines what cases, if any, to enforce or prosecute and requests for information which cover information that explains how an individual may evade paying VED.

24. For that reason, the Commissioner does not consider the DVLA has demonstrated how the particular information withheld at part 3 of this request would be likely to result in the prejudice claimed. The Commissioner does not therefore considered that regulation 31(1)(d) of the FOIA has been correctly engaged in this case.

Right of appeal

25. 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@justice.gov.uk

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

26. 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.
27. 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

Jill Hulley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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