

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 February 2022

Public Authority: Driver and Vehicle Licensing Agency
(Department for Transport)

Address: Longview Road
Morrison
Swansea
SA6 7JL

Decision (including any steps ordered)

1. The complainant has requested the driving licence application information of Elaine Parent.
2. The DVLA refused to comply with the request, citing section 14(1) (vexatious requests) of FOIA. The DVLA then changed its position to neither confirm nor deny that it held the requested information, citing section 41(2) (information provided in confidence).
3. The Commissioner's decision is that section 41(2) is engaged but that the public interest lies in confirming or denying that the information is held.
4. The Commissioner requires the DVLA to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response, which must confirm or deny whether the information is held, and either disclose the requested information or issue a valid refusal notice compliant with section 17 of FOIA.
5. 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 FOIA and may be dealt with as a contempt of court.

Background information

6. The DVLA is not listed as a separate public authority in Schedule 1 of FOIA because it is an Executive Agency of the Department for Transport.
7. However, as it has its own FOI unit and as both the complainant and the Commissioner have corresponded with the DVLA during the course of the request and complaint, the Commissioner will refer to the DVLA for the purposes of this notice.

Request and response

8. On 8 May 2021, the complainant wrote to the DVLA and requested information in the following terms:

"I am a researcher and journalist examining the life of ELAINE ANTOINETTE PARENT (Born: 4th August, 1942 Died: 6th April, 2002) with a particular interest in her activities in the UK.

In the last six years of her life, she was a fugitive and was dubbed by the authorities as "The Most Wanted Woman In The World".

From interviewing US investigators, former friends and distant family members of Elaine Parent, I have a reasonable idea of what her activities involved.

During her time in the UK, Elaine Parent created the false identity SYLVIA ANN HODGKINSON. Elaine applied for numerous documents under that name including a British driving licence.

I have received from Interpol Washington a copy of the driving licence and wish to obtain any documentation and/or correspondence surrounding her application and any investigation concerning it.

The serial number of the driving licence appears to be HODGK 453276 SA9VW. The last five characters are unclear so I have attached a copy of the image for your examination.

The driving licence was registered to the following address:

[Redacted]

For data protection purposes, the London Met Police could find no evidence that a Sylvia Ann Hodgkinson existed. Also Elaine Parent is now deceased. I have attached a copy of her death certificate and an article about her suicide.

If you have any further questions about this request, I will be happy to assist."

9. The DVLA responded on 26 May 2021. It explained that the complainant was aware of its position concerning driving license application information of deceased individuals.¹ The DVLA therefore considered the request vexatious and refused to comply with it.
10. Following an internal review the DVLA wrote to the complainant on 1 July 2021. It upheld its previous position.

Scope of the case

11. The complainant contacted the Commissioner on 1 July 2021 to complain about the way that their request for information had been handled.
12. The Commissioner offered the DVLA the opportunity to reconsider its handling of the request. Having done so, the DVLA issued a revised refusal notice to the complainant on 31 January 2022. It explained that it was no longer relying upon section 14(1) but it would neither confirm nor deny that it held the requested information in line with section 41(2).
13. The Commissioner therefore considers the scope of his investigation to be to determine if the DVLA was entitled to rely upon section 41(2) in order to neither confirm nor deny that it held information in response to the request.

Reasons for decision

Section 41 – Information provided in confidence

14. Section 41(1) of the FOIA states that information is exempt from disclosure under the FOIA if:
 - a) it was obtained by the public authority from any other person (including another public authority), and

¹ [fs50590149.pdf \(ico.org.uk\)](#); [fs50718839.pdf \(ico.org.uk\)](#)

b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

Neither confirm nor deny

15. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in a request.
16. However, there may be occasions whereby complying with section 1(1)(a) would itself disclose information which would be covered by the relevant exemption. In circumstances such as this the public authority may respond by neither confirming nor denying whether it holds the requested information.
17. The decision to use a neither confirm nor deny response will not be affected by whether a public authority does, or does not hold the requested information. The key issue for neither confirm nor deny in most cases will be theoretical considerations about the consequences of confirming or denying whether the information is held.
18. To reiterate, the Commissioner does not need to consider whether the DVLA actually holds the information or the disclosure of any requested information that may be held. The Commissioner need only consider whether the DVLA is correct when it says that, to confirm or deny that information is held in response to this request would, in itself, result in an actionable breach of confidence.
19. In its recent decision,² the Information Tribunal instructed the DVLA to confirm that it held information in response to the complainant's previous request. The Tribunal felt that information relating to the driving license of Salman Abedi was already in the public domain and therefore confirmation or denial could not, in itself, represent an actionable breach of confidence.
20. The Tribunal considered 'whether the mere confirmation that the information is held (without a disclosure of that information) would be to disclose the gist of the information' and, 'whether the information concerned has the necessary quality of confidence. This means, amongst other things, that it must not be information which is available to the public.'

² [EA/2021/0176 \(tribunals.gov.uk\)](https://www.tribunals.gov.uk/EA/2021/0176)

Would the information, if held, have been obtained from another person?

21. Yes. If held, the information would have been obtained by the DVLA from a third party, Elaine Parent. The license, if issued, may have been obtained in a different name.

Would confirmation or denial that the information is held constitute an actionable breach of confidence?

22. In line with the decision reached in *Coco v A N Clark (Engineers) Limited* [1968] FSR415, a disclosure will constitute an actionable breach of confidence if it meets three criteria:

- a) The information has the necessary quality of confidence.
- b) The information was communicated in circumstances importing an obligation of confidence.
- c) Unauthorised disclosure would cause a specific detriment to either the party which provided it or any other party.

The decision reached in *Coco v Clark* is referenced within the ICO's guidance, 'Information provided in confidence (section 41)'³.

The information has the necessary quality of confidence.

23. Information will have the necessary quality of confidence if it is more than trivial and is not otherwise accessible.
24. As a criminal, there is no guarantee that Elaine Parent obtained a driving license from the DVLA, or did so with honest intentions. The Commissioner acknowledges the complainant is in possession of a driving license from Interpol Washington. There have been documentaries, tv movies and articles written about Elaine Parent. Even so, the Commissioner has been unable to verify whether there is information in the public domain that confirms Elaine Parent applied for a driving license from the DVLA.
25. The DVLA has explained that 'The DVLA considers that the information provided to it as part of a driving licence application and any supporting evidence has the necessary quality of confidence because it is more than trivial as it relates to a personal matter and is not otherwise accessible (i.e. only the DVLA holds this information). Additionally, the DVLA

³ [information-provided-in-confidence-section-41.pdf \(ico.org.uk\)](https://ico.org.uk/information-provided-in-confidence-section-41.pdf)

considers that, given the nature of the information, the confider of that information attached some importance to it.'

26. The Commissioner has considered the type of information provided in a driving license application, which is likely to contain health data, and the purpose for which this information is provided. The Commissioner is satisfied that the information, if held, is more than trivial and is not otherwise accessible.

The information, if held, was communicated in circumstances importing an obligation of confidence

27. The Commissioner considers that an obligation of confidence can be expressed explicitly or implicitly. Whether there is an implied obligation of confidence will depend upon the nature of the information itself and/or the relationship between the parties.
28. The DVLA has explained that when an individual provides information to it as part of the driving license application process, they do so under an implied duty of confidence; namely that the DVLA will not make that information public.
29. The DVLA has explained that there is also an explicit obligation of confidence between the confider and the DVLA. Specifically, on the back of the D1 form (the application pack for a car, moped or motorcycle driving licence) the DVLA outlines when it may share personal data. Further information can be found in the DVLA's detailed guidance 'Release of information from DVLA's registers.'⁴ Both pieces of guidance say that such information is not made publicly available and would only be provided, in controlled circumstances, to law enforcement bodies and the courts; to the individual, or their personal representative; or to relevant medical professionals to help establish the applicant's medical fitness to hold a driving licence.
30. Again the Commissioner has considered the type of information provided in a driving license application and the purpose for which this information is provided. The Commissioner is satisfied that the information, if held, would have been communicated in circumstances importing an obligation of confidence.

⁴ [inf266-release-of-information-from-dvlas-registers.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/266666/inf266-release-of-information-from-dvlas-registers.pdf)

Unauthorised disclosure would cause a specific detriment to either the party which provided it or any other party.

31. The DVLA has explained that it 'must satisfy itself that an individual is entitled to drive and to do that it must rely on information it receives.' The DVLA is entirely reliant on its customers to provide the correct information at every stage of their interaction with the DVLA.
32. The DVLA has explained 'If the DVLA cannot be trusted to keep the information it receives confidential, individuals may be reluctant to provide the information we require to properly consider the grant of a driving licence. This would prevent the DVLA from effectively performing its statutory function of licensing drivers.' In addition to licensing more than 49 million drivers, the DVLA maintains the registration and licensing system for the UK's 40 million active vehicles.
33. The Commissioner acknowledges the DVLA's concerns. In FS50590149, the complainant requested information about whether the DVLA, at any time, took steps to revoke Charles Kennedy's driving license. Charles Kennedy died in 2015 and that request was made in 2015. The DVLA refused to confirm or deny that it held such information and the Commissioner agreed that, do so, would damage public trust in the DVLA and cause detriment to the DVLA.
34. However, this case has exceptional circumstances. The individual in question was a wanted criminal, who may or may not have procured a driving license fraudulently. She also died in 2002. The Commissioner is not convinced that the public, looking at the circumstances of the case, would be dissuaded from providing accurate information to the DVLA in it confirmed or denied it held information in response to Elaine Parent. If an individual is going to be dishonest in their driving license application, the confirmation or denial that the requested information is held is unlikely to affect this.
35. Even though the Commissioner has previously upheld the DVLA's decision to neither confirm nor deny that information relating to deceased individuals is held, it needs to consider each request that it receives on a case by case basis. The Commissioner is not convinced that confirmation or denial in this instance, taking into account the notoriety of the individual, for academic or journalistic purposes, would cause the same detriment to public trust in the DVLA as in the Charles Kennedy case.
36. The DVLA has also expressed concern that 'If the DVLA places such information into the public domain, this would be likely to increase the likelihood of similar 'fishing' style requests being made to us.' Again, any future requests for similar information would need to be considered on a case by cases basis. If the DVLA chooses to rely upon the argument that

disclosure would damage the trust the public places in the DVLA, it will first need to consider if there are exceptional circumstances that separate the individual to whom the request relates from the general public.

37. In *Bluck v the Information Commissioner & Epsom St Helier University NHS Trust* EA/2006/0090, the Tribunal confirmed that action for a breach of confidence can be taken by the personal representative of the deceased person and therefore section 41 can apply after the death of an individual.
38. The Commissioner has previously accepted the duty of confidence can survive the death of the confider. Furthermore, it is not necessary to establish there is a personal representative of the deceased to accept that section 41 can be engaged.
39. In the DVLA's submission it has stated 'while the subjects of the request may have died, unauthorised disclosure of the requested information by the DVLA, if held, would be detrimental to the estate/personal representative.' The DVLA hasn't expanded any further on this point.
40. As part of their research the complainant has determined that none of the parties named in the request have surviving family and therefore, disclosure would not represent an actionable breach of confidence. However, the Commissioner's guidance 'Information about the deceased'⁵ states 'The important thing is to establish in principle that a personal representative might exist who can take such action. A public authority should not lay itself open to legal action simply because at the time of the request it is unable to determine whether or not a deceased person has a personal representative.'

The Commissioner's view

41. The DVLA has explained that in order to verify a driving license application relates to a specific individual it requires a full name and date of birth. The Commissioner notes that the complainant has provided a partial match for a driving license number. The DVLA has explained if a driving license was granted using false information 'it is highly likely that the search would return other individuals with the same name thereby processing their personal data unnecessarily. It would not be fair, lawful or appropriate for DVLA to interrogate its driving licence database simply because someone has a curiosity about the information held about another individual.'

⁵ [information-about-the-deceased-foi-eir.pdf](#)

42. Public authorities have two obligations according to section 1 of FOIA: to confirm whether it holds the information requested and to communicate that information to the requestor. It is not unlawful for the DVLA to study its database for the purposes of complying with its section 1 obligations, bearing in mind the exemptions that exist within the Act to protect third party information and information provided in confidence.
43. The Commissioner agrees that this information, if held, is not otherwise available to the public and therefore would have the necessary quality of confidence. If held, the information would also have been communicated in circumstances importing an obligation of confidence.
44. However, the Commissioner is not satisfied that confirmation or denial that this information is held would damage the trust that the public place within the DVLA. However, it may cause damage to the estate of the deceased. An individual is named within the request and, if the DVLA confirms that it holds information in response to the request, it is confirming the existence of information which would, in itself, represent an actionable breach of confidence. Therefore the exemption is engaged.

The common law duty of confidence and the public interest

45. While section 41(1) of the FOIA is an absolute exemption, and therefore not subject to the public interest test, the common law duty of confidence contains an inherent public interest test. This test assumes that information should be withheld (or in this case a neither confirm nor deny response provided) unless the public interest in disclosure outweighs the public interest in maintaining the duty of confidence.

Public interest in maintaining the confidence

46. The DVLA has recycled its arguments about maintaining the public trust, and the confidence that is placed in the DVLA.
47. It has also reiterated its concern that compliance with section 1, in relation to this request, would encourage fishing requests to the DVLA.

Public interest in confirming or denying that the requested information is held

48. The DVLA has failed to acknowledge any arguments in favour of confirming or denying that the information is held. The Commissioner notes that there is always a public interest in upholding the values of transparency and accountability that underpin FOIA.
49. Elaine Parent remained at large and perhaps living in the U.K for years before her death in 2002. Confirmation or denial that this information is held would confirm if she applied for a driving license, and help to create a picture of her life in the UK and her movements. However, the

Commissioner is mindful that there is no active inquiry or investigation which this information could assist.

The balance of the public interest

50. The Commissioner considers the balance of the test referred to within paragraph 45 to be very fine. On the one hand, the DVLA's submission has focused on an argument that the Commissioner does not accept. On the other hand, the common law duty of confidence assumes that the confidence should be maintained unless the public interest in disclosure is exceptional.
51. In this case, the Commissioner considers that the public interest lies in confirming or denying that the information is held. The Commissioner's decision has been tipped by the DVLA's bid to engage section 41 on an argument that the Commissioner does not accept. Furthermore, in considering whether confirmation or denial that the information is held would represent an actionable breach of confidence, the Commissioner must consider the likelihood that any action for breach of confidence would succeed. Given that Elaine Parent is likely to have obtained any driving license fraudulently, and the nature of her crimes, the Commissioner considers this doubtful.
52. The Commissioner also notes the tribunal's decision in a request made to the Home Office about Elaine Parent⁶ stated 'We consider the story is an extraordinary one...the steps taken by the authorities in this country and the USA are part of that story and we consider that there is a substantial public interest in their disclosure.' The public authority in question was the Home Office and the request focused on any extradition request made in relation to Elaine Parent. Though he is under no obligation to do so, it would remiss of the Commissioner not to take the tribunal's comments on the public interest in EA/2016/0047 into account.
53. The Commissioner is also mindful of his own guidance which states 'If the information would reveal evidence of misconduct, illegality or gross immorality (such as misfeasance, maladministration or negligence) then this will carry significant public interest weight in favour of disclosure.' Whilst confirmation or denial will not do anything to increase the safety of the public, it will, as the tribunal has noted above, help to build a picture as to how the UK authorities dealt with this individual.

⁶ [EA/2016/0047 \(tribunals.gov.uk\)](https://www.tribunals.gov.uk/EA/2016/0047)

Right of appeal

54. 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

55. 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.
56. 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
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