

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 December 2022

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

Address: The Axis Building
112 Upper Parliament
Nottingham
NG1 6LP

Decision (including any steps ordered)

1. The complainant requested information about an investigation into Breezemount Services Ltd. The Driver and Vehicle Standards Agency (the DVSA) refused to confirm or deny whether the requested information is held by virtue of section 30(3) (Investigations and proceedings) of the FOIA. The Commissioner's decision is that the DVSA is entitled to rely on section 30(3) of FOIA to refuse to confirm or deny that it holds the requested information, and that the balance of the public interest favours maintaining the exemption. The Commissioner does not require any steps to be taken.

Nomenclature

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

Request and response

3. On 7 March 2022 the complainant wrote to the DVSA regarding an investigation into Breezemount services Ltd and requested information in the following terms:

"I therefore wish to know the details of the investigation that should be public record.

In particular

What sanctions or restrictions were placed upon Breezemount services operators licence.

Were any company directors removed from office or sanctioned to prevent them operating a transport company.

Were Breezemount services Ltd fined and by how much and what for.

Which particular road traffic regulations did Breezemount services break".

4. DVSA responded on 17 March 2022 and refused to confirm or deny whether the requested information is held by virtue of section 30(3) of the FOIA. This position was upheld in the DVSA's internal review response dated 26 April 2022.

Reasons for decision

5. This reasoning covers whether the DVSA is entitled to rely on section 30(3) of the FOIA to refuse to confirm or deny whether the requested information is held.
6. Section 30(3) of FOIA provides an exclusion from the duty to confirm or deny whether information is held in relation to any information which, if held, would fall within any of the classes described in sections 30(1) or 30(2) of the FOIA.
7. The Commissioner considers that the phrase 'at any time' means that information can be exempt under section 30(1) or 30(2) of the FOIA if it relates to a specific ongoing, closed or abandoned investigation.
8. Consideration of section 30(3) is a two-stage process. First, the exemption must be shown to be engaged. Secondly, as section 30 is a qualified exemption, it is subject to the public interest test: whether, in all the circumstances of the case, the public interest in maintaining the

exemption outweighs the public interest in confirming or denying whether the requested information is held.

9. The first step is to address whether, if the DVSA holds information falling within the scope of the complainant's request, it would fall within the classes specified in section 30(1) or 30(2) of the FOIA.

10. The DVSA has confirmed that it has:

"many responsibilities including carrying out checks on commercial drivers and vehicles to make sure they follow safety rules and keep their vehicles safe to drive. We also support the Traffic Commissioners for Great Britain to license and monitor companies who operate lorries, buses and coaches, and to register local bus services. There are many powers granted to DVSA staff by the secretary of state to DVSA [sic] fulfil their responsibilities including empowering DVSA examiners to enter any premises to test vehicles and conduct vehicle inspections and detain vehicles for this purpose. It empowers examiners to inspect drivers records and tachograph data to ensure compliance with the regulations:

Regulation 74 of the Road Vehicles (Construction and Use) Regulations 1986

Road Traffic Act 1991

Road Traffic Act 1988

Transport Act 1985

Road Vehicles (Powers to Stop) Regulations 2011 (SI 2011 No. 996)

Road Vehicles (Prohibitions) Regulations 1992 (SI 1992 No. 1285)

EC Regulation 561/2006 of the European Parliament and of the Council, Transport Act 1968

EU regulation 165/2104 Transport Act 1968 Community Drivers' Hours and Recording Equipment Regulations 2007

The Passenger and Goods Vehicles (Recording Equipment) Regulations 2005 (S.I.2005/1904)

11. In this case, the request is for information about an investigation into a named company in respect of allegations that the company was breaching road traffic legislation.
12. The Commissioner has not reproduced the entire request within this notice, however, based on the wording of the request and the explanations provided by the DVSA, the Commissioner is satisfied that any information, if it were held, would be held for the purpose of an investigation of the type described in either section 30(1) or section 30(2) of the FOIA. As such, the Commissioner is satisfied that section 30(3) of the FOIA is engaged in this case.

Public interest test

13. Section 30(3) is a qualified exemption. This means that the Commissioner must consider the public interest test contained at section 2 of FOIA and whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in confirming or denying whether the requested information is held.
14. The DVSA has acknowledged that there is a public interest in confirming or denying whether the information is held as it would demonstrate transparency in any action it takes when investigating potential breaches into road traffic legislation.
15. The complainant considers that there is a public interest in the subject matter as breaches of road traffic legislation by an organisation puts the public at risk in terms of potential unsafe drivers on the road.
16. The DVSA considers there is a significant public interest in neither confirming or denying whether the requested information is held to prevent a detrimental effect on its ability to enforce the law relating to operators. DVSA also considers that if it were to confirm or deny whether the requested information is held it could assist offenders in evading detection. This would, in turn have an adverse effect on its ability to detect and prosecute any offences.
17. The DVSA is of the view that the public interest in this case lies in protecting the success of its investigations, which is dependent on effective intelligence to identify any wrongdoing. The DVSA pointed out that any information released under the FOIA is effectively information in the public domain. It stated that:

"Disclosure of information about our investigations could allow interested parties to affect the integrity of our investigations, ultimately compromising their accuracy. This in turn could prevent us from taking required actions to safeguard the public. Compromising public safety would undermine the public's trust in us to safeguard them whilst on the road".
18. In reaching a view on where the public interest balance lies in this case, the Commissioner has taken into account the nature of the requested information as well as the views of both the complainant and the DVSA.
19. The Commissioner accepts that it is important for the general public to have confidence in the DVSA's investigative capabilities. Accordingly, there is a general public interest in disclosing or, in this case, confirming or denying whether a public authority holds information that promotes accountability and transparency in order to maintain that confidence and trust.

20. However, the Commissioner recognises that there is a very strong public interest in protecting the investigative capabilities of public authorities. The Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption – that is, in this case, the public interest in the DVSA being able to effectively conduct its function of carrying out criminal investigations.
21. Having given due consideration to the opposing public interest factors in this case, the Commissioner's view is that the public interest arguments in favour of maintaining the refusal to either confirm or deny whether information is held outweigh those in favour of the DVSA issuing such a confirmation or denial. Therefore, the Commissioner finds that the DVSA was entitled to rely on the section 30(3) of the FOIA.

Right of appeal

22. 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

23. 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.
24. 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

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