

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

### **Decision notice**

**Date:** 19 February 2014

**Public Authority:** Vehicle & Operator Services Agency

**Address:** Corporate Office  
2<sup>nd</sup> Floor, Berkeley House  
Croydon Street  
Bristol, BS5 0DA

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

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1. The complainant has requested information relating to a complaint he made about a local bus company.
2. The Commissioner's decision is that Vehicle & Operator Services Agency (VOSA) has correctly applied section 31(1)(g) & (2)(b, c & d) to the withheld information.
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 27 February 2013 the complainant wrote to VOSA to complain about a local bus company. His complaint focussed on requesting information about the operation of a service provided by a bus company in his local area. He alleged it was not operating according to its licensed timetables. VOSA responded asking for further information to support his complaint.
5. The complainant submitted a number of documents to VOSA including meetings with the bus company's management and letters/petitions to the council. VOSA wrote to the complainant on 25 April 2013 acknowledging receipt of the documents and advising that his concerns were 'being addressed in the appropriate manner'. VOSA further advised that due to restrictions imposed by the Freedom of Information and Data Protection Acts, it may not be possible to notify him of the outcome of the investigation.

6. On 8 July 2013, the complainant wrote to VOSA stating he had not had a response to his complaints about the bus company. On 22 July 2013 VOSA responded apologising and advising that the letter had been passed to the Information Access Team.
7. On 23 July 2013 VOSA wrote to the complainant and confirmed that his letter was being dealt with under the FOIA.
8. On 5 August 2013 VOSA responded and refused to provide the requested information citing section 31(1)(g) & (2)(b, c & d) of the FOIA as its basis for doing so.
9. Following an internal review VOSA wrote to the complainant on 14 August 2013 in which it maintained its original position.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 20 August 2013 to complain about the way his request for information had been handled.
11. The Commissioner considers the scope of this case to be to determine if VOSA has correctly applied section 31(1)(g) & (2)(b, c & d) to the withheld information.

### **Reasons for decision**

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12. Section 31 of the FOIA states that

*"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice— ...*

*(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)" information is exempt if it would or would be likely to prejudice any public authority in the exercise of its functions for any of the purposes specified in subsection (2).*

13. The purposes specified at subsection (2)(b, c & d) are:

*(b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,*

*(c) the purpose of ascertain whether circumstances which would justify regulatory action in pursuance of any enactment exist or arise,*

*(d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on.*

14. The Commissioner finds that the use of the word "ascertaining", i.e. determining definitely or with certainty, limits the application of this exemption to those cases where the public authority to which the prejudice is being claimed, has the power to formally ascertain compliance with the law and judge whether any person's conduct is improper. The Commissioner acknowledges that this is likely to limit the use of these limbs of the exemption to law enforcement or regulatory bodies, of which VOSA is one.
15. In order to show that it exercises the appropriate functions to rely on subsection 2 (b), (c) and (d), VOSA explained its role and how it interrelates with the Traffic Commissioners (who are a separate public authority under the Act).
16. VOSA is an executive agency of the Department for Transport and its statutory responsibilities comprise of ensuring the road worthiness and safety of all the vehicles on the road and enforcing relevant legislation. It provides a range of licensing, testing and enforcement services with the aim of improving the roadworthiness standards of vehicles.
17. The Traffic Commissioners are appointed by the Secretary of State under section 4(2) of the Public Passenger Vehicles Act 1981 (PPVA) and are statutorily independent of VOSA. Under the PPVA, Traffic Commissioners are responsible for granting Passenger Carrying Vehicles (PCVs) operator licences. Traffic Commissioners, as the industry regulators, are responsible for monitoring compliance with licence conditions and under section 17 of PPVA can take disciplinary action against a licence holder if they consider it appropriate.
18. Section 31(1)(g) states that, information is exempt if it would or would be likely to prejudice any public authority in the exercise of its functions for any of the purposes specified in subsection (2). The purpose specified at subsection (2) (c) is the purpose ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise. The Commissioner is satisfied that VOSA does have a relevant function, as it is a body which regulates and licenses public service operators. The Commissioner must therefore first determine whether the prejudice claimed is likely to occur and if he is satisfied that it is he must then consider the public interest in this case.
19. VOSA explained that monitoring exercises will normally be mounted where there have been complaints (including complaints from both the

public and competitors). Due to limited resources, these exercises will only take place when multiple complaints have been received. VOSA staff support the Traffic Commissioners and monitoring exercises are undertaken by their enforcement staff.

20. If enforcement staff determine that further action is required, the case will be passed to the appropriate Traffic Commissioner. The Traffic Commissioner may then decide to call an operator to a public inquiry. Whilst a Traffic Commissioner will take monitoring exercises into account, these exercises are only one aspect for calling a public inquiry. It is at these inquiries that the Traffic Commissioner considers professional repute, commercial viability and whether or not conditions contained within licenses are followed. The statutory provision that gives the Traffic Commissioners' the right to conduct public inquiries can be found in Section 54 of the Public Service Vehicles Act 1981.
21. As with any prejudice based exemption, a public authority may choose to argue for the application of regulation 31(1)(g) on one of two possible limbs – the first requires that prejudice 'would' occur, the second that prejudice 'would be likely' to occur.
22. VOSA explained that release of any details of VOSA's investigations or enquiries would be likely to prejudice the regulatory action that the Traffic Commissioner may consider taking against the bus company, as it will be used in evidence in the quasi-judicial public inquiry. If the details were to be placed in the public domain at this stage, the operator could claim they had not had the opportunity to put forward a defence and may prevent the Traffic Commissioner from using any evidence in a public inquiry. It would be the same as releasing police information, to be used in a court case, before a judge had had an opportunity to consider it as part of the judicial process.
23. VOSA further argued that prejudice is also likely to occur because the information gathered by VOSA must be taken into account by the Traffic Commissioner, when deciding if regulatory action is required. The decision to call a public inquiry can only be made by a Traffic Commissioner.
24. VOSA must ensure that their regulatory work dovetails with the Traffic Commissioner, as the industry regulator and believes that there is a real and substantial risk of prejudice in this case if the information were to be released now.
25. Generally speaking, the Commissioner accepts that if an investigation was ongoing at the time of a request, the greater the likelihood that

disclosure would detrimentally affect a regulator's ability to gather information from those organisations that it regulates.

26. Furthermore where the investigation had been concluded relatively recently, the likelihood of disclosure impacting on VOSA's regulatory functions would remain relatively high. In this case VOSA has explained that at the time of the original request the investigation into the complainant's concerns was ongoing.
27. The Commissioner therefore considers that in this case, the fact that the investigation was ongoing at the time of the request, would strengthen the likelihood of the prejudice occurring.
28. The Commissioner accepts VOSA's arguments that prejudice to its regulatory functions would be likely to occur if the information were to be disclosed.
29. As section 31 is a qualified exemption, the next step is for the Commissioner to consider whether in all of the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosure.

### **Public interest arguments in favour of disclosure**

VOSA accepts that there is a general public interest in disclosing information to further the accountability of public transport operators. It provided a very general argument relating to VOSA's role about disclosure allowing the public to be aware of the means available to VOSA in relation to methods used by it to aid road and vehicle safety and the prevention and detection of crime.

### **Public interest arguments in favour of maintaining the exemption**

30. VOSA stated it believes that it is in the greater public interest to withhold any details of its proceedings until or if a public inquiry is called; as a public inquiry will enable the Traffic Commissioner to take any appropriate action against an operator. It stated that VOSA must retain its position as 'trusted' holder of certain information in order to obtain details from other parties in line with its statutory functions.
31. VOSA stated that it would not wish to compromise any action that may be rightly considered by the Traffic Commissioner, either now or in the future. The Traffic Commissioner can consider any information received within the last five years should the operator's compliance record warrants it. There is therefore a strong public interest in not disclosing any information which might undermine its regulatory processes.

### **Balance of the public interest arguments**

32. Having weighed the public interest arguments, the Commissioner has taken account of the very strong public interest in not undermining the enforcement role of VOSA or its regulatory processes particularly noting that, as in this case, the investigation of the complainant's concerns was ongoing at the time of the request.
33. The Commissioner is satisfied that the public interest is likely to be addressed by the publication of any inquiry, if this was to take place, and any action subsequently taken.
34. VOSA informed the Commissioner that if a date has been set for a public inquiry this will appear in a statutory publication called the Notices and Proceedings (N&P). The outcome of the public inquiry will also appear in this publication. These publications are available on GOV.uk (<https://www.gov.uk/notices-and-proceedings-for-the-east-of-england>) or by registering with [self.service@otc.gsi.giv](mailto:self.service@otc.gsi.giv) can be available by email.
35. Although the public interest arguments presented by both sides are sparse, the Commissioner considers that, in all the circumstances of the case, the public interest favours maintaining the exemption. He is satisfied that disclosure could undermine VOSA's regulatory functions and it would not be in the public interest to do so. He has also accorded significant weight to the fact that the issue was live at the time of the request and the fact that should a public inquiry take place any action taken by the Traffic Commissioner will be made publically available at the end of its inquiry.

## Right of appeal

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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: 0300 1234504

Fax: 0116 249 4253

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)

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.

**Signed .....**

**Pamela Clements**  
**Group Manager, Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**