



Department for Transport

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Mr Doug Paulley

By e-mail:

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@dft.gsi.gov.uk

18 December 2013

Dear Mr Paulley

Re: FOI Request F0010732 - Internal Review

I am writing with regard to your request for information which you originally made to the Department for Transport on 24 September 2013. The Department replied on 25 October 2013 and, following that reply, you clarified your request as follows:

Which statutory organisation, if any, is tasked with enforcing the PSVAR regulations?

Which statutory organisations have taken legal action under the PSVAR regulations, in particular in relation to the requirements on drivers to take specific actions to ensure accessibility for wheelchair users and other disabled people?

The Department responded to the above follow-up request on 22 November 2013. The same day, you contacted the Department to say that it had misunderstood your request. You confirmed that your request related not to the Public Service Vehicle Accessibility Regulations 2000, but to the Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) (Amendment) Regulations 2002. You asked that the Department respond to your actual request.

The Code of Practice issued under Section 45 of the FOI Act advises that any written reply from the applicant expressing dissatisfaction with an authority's response to a request for information should be treated as a complaint. I have therefore treated your communication of 22 November as though it were a complaint, and have carried out an independent Internal Review of the Department's handling of your request. My findings are set out below. I am also providing a substantive response to your request.

Case background

You originally wrote to the Department on 24 September 2013 to make the following request for information:

I understand that the Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) (Amendment) Regulations 2002 place obligations on bus drivers under criminal law. It is my understanding that failure to comply without good reason is a criminal offence.

- 1) *Please can you tell me who enforces these regulations, and how?*
- 2) *If a driver refuses to operate the access ramp for a disabled passenger, fails to ensure a wheelchair user is adequately restrained on the bus, or fails to provide the necessary assistance as mandated by these regulations, what right of redress does the passenger have?*
- 3) *As it is an obligation under criminal law, is it a police matter?*
- 4) *Please can you point me to the document, or section of a document, that states the mechanism for enforcement?*

The Department responded to this request on 25 October. As regards your questions 1), 2) and 3), the Department referred to ICO guidance which states that, “a public authority does not have to answer questions if this would mean creating new information or giving an opinion or judgment that is not already recorded”. The Department confirmed that it held no recorded information relevant to these questions, although it did provide some advice outside of the FOI Act.

As regards your question 4) - which the Department did respond to under the FOI Act - the Department confirmed that it held no recorded information relevant to “a document, or section of a document, that states the mechanism for enforcing the Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) (Amendment) Regulations 2002”. It explained that no formal guidelines on the enforcement arrangements for this Regulation have been produced.

Following receipt of the Department’s response, on 26 October you wrote to the Department again, as follows:

*Can I perhaps refine or clarify my request for information.
The request is as follows.*

Which statutory organisation, if any, is tasked with enforcing the PSVAR regulations?

Which statutory organisations have taken legal action under the PSVAR regulations, in particular in relation to the requirements on drivers to take specific actions to ensure accessibility for wheelchair users and other disabled people?

The Department issued its response to this second (or clarified) request on 3 December. In doing so, the Department interpreted your references to “the PSVAR regulations” as being to the Public Service Vehicle Accessibility Regulations (PSVAR) 2000.

Having received that response letter, you contacted the Department to state that it had misunderstood your request; and that you had been referring to the Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) (Amendment) Regulations 2002. You reiterated your request:

Which statutory organisation, if any, is tasked with enforcing the Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) (Amendment) Regulations 2002?

Which statutory organisations have taken legal action under the Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) (Amendment) Regulations 2002, in particular in relation to the requirements on drivers to take specific actions to ensure accessibility for wheelchair users and other disabled people?

The Department's handling of your request of 26 October

Having viewed your request of 26 October in the context of your previous correspondence with the Department (as set out on the WhatDoTheyKnow.com web-site [here](#)) it is reasonably clear to me that your request did relate to the Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) (Amendment) Regulations 2002. I apologize for the misunderstanding, on the Department's part, that you were referring to a different set of Regulations.

While the Department clearly misunderstood your request, I am satisfied that the error was a genuine one. It has been explained to me that The Public Service Vehicle Accessibility Regulations (PSVAR) have been known as 'PSVAR' by all bus stakeholders since the year 2000. They relate to the construction of buses, rather than the conduct of drivers. As far as the official who handled your requests was aware, the Conduct Regulations have never been referred to as 'PSVAR'. In addition, the official handling your request had thought that he had already addressed your questions regarding the Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) (Amendment) Regulations 2002 in the Department's initial response letter of 25 October; and had therefore assumed, incorrectly, that your follow-up request related to different Regulations.

Substantive Response

Having established that your information request of 26 October referred to the Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) (Amendment) Regulations 2002, I have liaised with the relevant policy team and am able to provide the following substantive response.

Which statutory organisation, if any, is tasked with enforcing the Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) (Amendment) Regulations 2002?

No body is tasked with enforcing these Regulations, although they may be enforced by any relevant prosecuting authority that has an interest. In principle, that may include the Crown Prosecution Service which may do so on the application of the police (or in certain circumstances may take-over a private prosecution). Other authorities with a transport interest may also prosecute, such as Transport for London (in London), the Traffic Commissioners (the enforcement bodies for the bus and coach industry) or the Vehicle and Operator Standards Agency (VOSA) for non-compliance with vehicle regulations. This may not be an exhaustive list. However, your question asked "which statutory organisation, if any, is *tasked with* enforcing the Regulations" (my emphasis). The answer is 'none', because no enforcement body was ever designated.

Which statutory organisations have taken legal action under the Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) (Amendment) Regulations 2002, in particular in relation to the requirements on drivers to take specific actions to ensure accessibility for wheelchair users and other disabled people?

The Department does not hold recorded information relevant to this part of your request.

A check of paper and electronic files has been carried out and no relevant recorded information has been found. It has been explained to me, first of all, that no statutory organisation or person is obliged to inform the Department of any legal action it may have taken under the Regulations. There is no legal duty for a local authority, TfL, any other organisation, or a member of the public, to notify the Department if enforcement action is taken under this regulation.

Nevertheless, I understand that if legal action *had* been taken against a driver/operator under the Regulations, it is quite likely that the Department would be aware of any such action. This is because of the Department's close links to both the bus industry and passenger representatives. Since the Department is not aware that any legal action has been taken under the Regulations, although we cannot be certain, the probability is that there has been no such action. (It is worth noting that two recent court cases concerning how wheelchair users were treated on buses were brought using the Equality Act 2010, rather than the Conduct Regulations.)

Once again, I apologize for the fact that the Department initially misinterpreted your request.

If you are not content with the outcome of this Internal Review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Yours sincerely,

P Parr