

Request for Internal Review (received 24 March 2022) - Reference: DFI/2022-0018

I received a number of quarterly figures under the ref number quoted above.

Having studied these figures I identified a trending pattern of high fail rates for each quarter listed.

I have asked the DVA if said figures are attributed to one particular examiner or to multiple examiners.

This request has been refused stating that it is possible then to work out which examiner the fail figures related to and the DVA has referred me to you for review of their decision.

I have taken legal advice and we are of the view that out of a list of 90+ examiners it is in no way possible for us to work out which examiner these figures are attributed to.

I have not asked the DVA to name any examiner.

Therefore again under FOI I am requesting if the said figures I listed under the above ref number are attributed to a single examiner or multiple examiners.

Response (issued 14 April 2022)

You wrote to me on 24 March 2022 requesting an internal review of the handling of your Freedom of Information Act 2000 (FOIA) request for information regarding Driving Examiners. This was received in the Department on 14 January 2022. You had received a response to your request on 10 February 2022, from Mr. Jeremy Logan, reference DFI/2022-0018.

As Head of Information Management, my role in carrying out an 'Internal Review' following a complaint or 'appeal', is pursuant to the Secretary of State for Constitutional Affairs' Code of Practice [which now comes under the responsibility of the Secretary of State for the Department of Justice] on the discharge of public authorities' functions under Part 1 of the Freedom of Information Act 2000 and, by extension, the Environmental Information Regulations. Section 39 of the Code of Practice requires "a fair and thorough review of the handling issues and of decisions taken pursuant to the [Freedom of Information] Act, including decisions taken about where the public interest lies in respect of exempt information." Under the Environmental Information Regulations, this review of the handling of your request for information is a "reconsideration", a public authority obligation contained

within Regulation 11 (Representations and Reconsideration). I have no role or locus with regards to any issues arising out of the substance of any information sought or the resolution of complaints, which may be the subject matter of the information.

I have examined the information relating to your request and completed my review. I can now inform you that, having reviewed the handling of your request, the Department did fulfil its obligation under the FOIA. I would like to take this opportunity to explain my decision.

I am aware that there has been some discussion of the difficulties associated with anonymising personal data in earlier emailed correspondence. The focus of your complaint, in this case, is that you believe it is possible for the Department to provide you with confirmation about individuals employed by the Department and what you identify as a “trending pattern of high fail rates”, without compromising anonymisation of personal data.

I regret to inform you that I believe that the Department has already provided all the information that can be disclosed safely and anonymously. Combining any of the data contained within the tables already provided, would lead to a situation where staff could be identified by members of the public seeking to associate any disclosure with a living individual, even if erroneously.

The Department's has received a number of requests in relation to pass/fail rates and Driving Examiners at DVA Driving Test Centres in recent months. There have been a number of claims made, and inferences drawn, about individual Driving Examiners and individual Test Centres, closely associated with the personal data of DVA staff members.

One of the key considerations for public authorities, when considering disclosure of personal data, is the impact that any disclosure would have upon the individual. The Department has to consider whether disclosing information would cause distress to any of its employees, who could be identified or misidentified as the Driving Examiner(s) failing the greatest numbers of candidates. There can be little doubt that, in a number of Test Centres, staff do already feel that they are unfairly subject to increased and personalised scrutiny. It would be irresponsible of the Department to add to any distress felt by such junior staff, who have a reasonable expectation that their personal data would be protected. Any such disclosure, by its very nature, would be unfair, and would breach the fairness element of the first data protection principle.

There have been a number of requests and other correspondence seeking to associate individual members of staff, at particular DVA Test Centres. Given this, any information placed in the public domain identifying, from the anonymised data provided, Driving Examiners with highest total failure rates, would be associated with those staff about whom there appears to be an ongoing series of complaints and other correspondence. Those who

have expressed particular interest in the activities of any individual Driving Examiner will assume that the object of their correspondence is responsible for this higher rate of failures.

I cannot agree to this information being amalgamated into providing a single list for all the NI Driving Examiners. Collating the data into a single list could encourage this data to be used against some Driving Examiners. Should incorrect assumptions be drawn from such a disclosure, the only means of correcting these assumptions would be via the further disclosure of other personal data.

Consequently, I am content that the Department provided all the information it was able to in response to your request. In response to your query on whether the Department can confirm if the figures referred to relate to a specific driving examiner, disclosure of that information would be in breach of the fairness element of the first data protection principle. Consequently, the information cannot be provided as it is exempt under s 40(2) of the FOIA.