



Date: 19 July 2005

Dear

### **Freedom of Information**

I am writing to confirm that the Driver and Vehicle Licensing Agency (DVLA) has now completed its search for the information you requested on 20 June 2005. Your request has been dealt with under the terms of the Freedom of Information Act (FOIA) 2000.

In answer to your request:

*I request under the Freedom of Information Act, the guidelines which DVLA Enforcement Managers use to assess requests such as mine.*

Having read your correspondence, it is clear that you have submitted a number of reasons that you feel mitigate the Continuous Registration (CR) enforcement action taken against you in respect of vehicle registration number xxxx. The points of mitigation you have submitted are:

1. The vehicle is a classic motorcycle from the 1950's.
2. Under current regulations it qualifies for a free licence.
3. The vehicle has been stored off road for ten years.
4. It was licensed last summer, ridden for a few weeks and then put into store.
5. I have been subject to considerable domestic upheaval in the past year.
6. I have no record of receiving a reminder that the licence was due to expire.

It may help if I explain that each case is dealt with individually and on its own merits. Upon initial creation of a CR enforcement case, a Late Licensing Penalty (LLP) letter is automatically issued to the registered keeper of a vehicle for late renewal of a vehicle licence or failure to declare that the vehicle is being kept off road. LLPs are issued in accordance with the licensing status of a vehicle as recorded on the vehicle register. The LLP letter provides the recipient with the opportunity to supply mitigating evidence.

On submission of mitigating evidence, an assessment is made using the enforcement operating instructions issued to Agency enforcement staff. Each reason provided requires an individual assessment. As requested, I have enclosed the instructions issued to enforcement staff which provide for assessment of a case against the mitigation you have submitted in points 1 – 4 and also point 6. Please see the attached Annexes A, B & C.



The mitigation you presented in point 5 would be assessed against criteria that may be considered as exceptional circumstances. Although each case is considered on its merits the guidelines assist in the assessment of whether exceptional circumstances exist. Information concerning the guidelines employed when assessing exceptional circumstances in enforcement cases is being withheld as it falls under the exemption in Section 31 (1) (d) of the FOIA.

It is considered that disclosing information relating to exceptional circumstance guidelines utilised in respect of enforcement cases would, or would be likely to, prejudice the collection of Vehicle Excise Duty (VED) as knowledge of what may constitute exceptional circumstances (and hence when supplement liability is unlikely to be pursued) would be likely to lead to an increase in late, or possibly non, payment of duty.

This exemption can only be relied upon where, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Having considered the public interest test, I have decided to withhold the information for the reasons provided in Annex D.

If you are unhappy with the way the Agency has handled your request, you may ask for an internal review. You should contact the Local Operations Directorate Freedom of Information Champion, xxx.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. Further guidance on DfT complaints procedures is given in Annex E.

If you have any queries about this letter, please contact me, quoting the above reference in any future communications.

Yours sincerely

### 12.13 Claiming Exemption from Duty

Any vehicle where the last licence was an exempt licence will not have a section 7A case created and as such no section 31A case will be created for these vehicles. The only time a target should claim exemption is when they have recently been granted disabled exemption or can now prove that the vehicle was manufactured before 1973 and thus qualifies for historic exemption.

Where the previous licence was not exempt the case should proceed even if the keeper can now show they or the vehicle is now entitled to exemption. This is because they still failed to relicence or declare SORN on expiry of a fee paying licence as required.

On a section 7A case the clerk should issue the '7EXP' letter from LOCS that outlines the registered keepers responsibilities and stating that the penalty must still be paid. Once issued the case will be automatically B/F'd and the clerk should add a screen note detailing the reply received.

☞ **Chapter 1, Section 5.1 – Sending a Standard Letter from LOCS**

☞ **Chapter 1, Section 2.7 – Screen Notes**

A similar response on a section 31A case should be treated in the same way except for the letter that should be sent is '31OCSS' which can again be issued from LOCS. The case will be automatically B/F'd and again a screen note should be added.

While it should not happen if it is shown on any case that the last licence was an exempt licence but a continuous registration case has been created it should not be pursued. This is because the continuous registration legislation only applies to a vehicle after expiry of a licence where excise duty has been paid or on expiry of a SORN declaration (or multiple SORN declarations) that followed a fee paying licence. Where the target has responded the clerk should issue the '7NFA' letter on a 7A case or the '31NFA' letter on a section 31A case, both letters are available in LOCS. If a reply has not been received or after the letter is issued the case should be closed as 'NO' no offence and a screen note added detailing the reason for closure.

☞ **Chapter 1, Section 8 – Case Closure**

### 12.17 Vehicle Kept in Storage

In some cases the target may reply stating that the vehicle is currently in storage. This does not absolve them from any responsibility under continuous registration as they are still the registered keeper of the vehicle. When the vehicle is unlicensed and being kept off the road, no matter where, SORN should be declared.

On a section 7A case the clerk should send the '7EXP' letter from LOCS that informs the target of their responsibilities as the registered keeper, it also states that the penalty must still be paid. Once the letter is issued the case will be automatically B/F'd and the clerk should add a screen note stating the reply received.

☞ **Chapter 1, Section 5.1 – Sending a Standard Letter from LOCS**

☞ **Chapter 1, Section 2.7 – Screen Notes**

If a similar response is received to a section 31A OCS letter the case should also be pursued. The clerk should issue the '31OCSS' letter from LOCS that outlines the registered keepers responsibilities and states that the case will be settled by court action unless payment of the OCS is submitted immediately. Once sent the case will be automatically B/F'd and the clerk should add a screen note detailing the reply received.

### 12.9 No Reminder Received

It is quite common for a target to claim that they did not or could not relicense or declare SORN because they did not receive a reminder. This is not an acceptable reason failing to comply with the law as there are other ways to relicense or make a SORN declaration.

The Agency has no legal obligation to send reminders although every effort is made to do so, in fact nearly three million are issued every month. There is a long standing precedent dating back to the case of Caldwell –V– Hague (1914) where it was stated 'It is the duty of the licence holder to renew the licence when it expires and it is no defence that he had not been given a reminder by the authorities'. This ruling still stands and has not been successfully challenged since.

On a section 7A case the clerk should send the '7NV11' letter from LOCS. This informs the target of their responsibilities and that while the Agency makes every effort to send reminders they are a courtesy and are not guaranteed, they are also told that the penalty still stands. When issued the case will be automatically B/F'd and the clerk should add a screen note detailing the reply received.

- ☞ Chapter 1, Section 5.1 – Sending a Standard Letter from LOCS
- ☞ Chapter 1, Section 4.5 – Setting a Manual B/F Date
- ☞ Chapter 1, Section 2.7 – Screen Notes

While this reply should be rare on a section 31A case (normally a target would make the reply in response to the initial letter) it should continue in the same manner. The clerk should issue the '31OCSS' letter explaining the offence and the registered keepers responsibilities, it also states that the case is to be settled by court action unless payment of the OCS is submitted immediately. Once sent the case will be automatically B/F'd and the clerk should add a screen note detailing the reply received.

## Annex D

**Exemption – Section 31(1): 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-**

**(d): the assessment or collection of any tax or duty or of any imposition of a similar nature.**

| <b>Factors for disclosure</b>   | <b>Factors for withholding</b>  |
|---|---|
| <ul style="list-style-type: none"> <li>• To demonstrate that DVLA deals with all enforcement cases with a consistent, even-handed and fair approach.</li> <br/> <li>• To demonstrate that discretion can be shown in limited exceptional circumstances, when mitigation is presented in enforcement cases.</li> </ul> | <ul style="list-style-type: none"> <li>• To ensure that DVLA are able to collect Vehicle Excise Duty (VED) and to pursue those who fail to comply with their statutory obligations by enforcing Continuous Registration (CR) legislation.</li> <br/> <li>• More specifically, to ensure that information about circumstances where enforcement action is not commenced or continued is not utilised to avoid or frustrate that action.</li> <br/> <li>• To ensure DVLA’s policy of enforcement in relation to the Continuous Registration (CR) regulations remains effective and continues to deter or prevent the evasion of VED, and the inaccuracy of the vehicle register.</li> </ul> |

**Reasons why public interest favours withholding information**

- To disclose information concerning mitigation accepted in enforcement cases would prejudice the collection of Vehicle Excise Duty (VED) as knowledge of what may constitute exceptional circumstances (and hence when supplement liability is unlikely to be pursued) would be likely to lead to an increase in late, or possibly non, payment of duty.