

Internal Review Request (received 26 June 2025) - Reference: DFI/2025-0265

I write to formally request an internal review of the Department's refusal of my Freedom of Information request (Reference: DFI/2025-0265) dated 26 June 2025, concerning access to the audio recording or transcript of the detention hearing held on 11 June 2025 at Killymeal House, Belfast, regarding vehicle 07MN6684.

While I note that the Department has cited Section 32(2) of the Freedom of Information Act 2000, I believe that the application of this exemption in this instance is disproportionate, and that the public interest in disclosure outweighs any justification for withholding the material.

Response (issued 21 July 2025)

You wrote to me on 26 June 2025 requesting an internal review of the handling of your Freedom of Information Act 2000 (FOI) request for information regarding an audio recording or transcript of a Transport Regulation Unit hearing in Killymeal House, Belfast on 11 June 2025, received in the Department on 14 June 2025. You received a response to your request on 26 June 2025, from Jackie Robinson, Director of Transport Regulation and Public Transport Policy, under the reference DFI/2025-0265.

As Departmental Information Manager, 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 Freedom of Information Act 2000. I would like to take this opportunity to explain my decision.

The Freedom of Information Act 2000 established general public rights of access to information held by public authorities. Any information that is disclosed under FOI is deemed to have been published, it is made available to the World at large, not just the requester.

Because FOI relates to public rights of access to information, there is no provision, under the legislation, for privileged disclosure. Where privileged disclosure to the requester alone is required, other avenues are available. Under FOI, information must either be released to everyone, or it must be withheld.

In the Department's response to your request, you were informed that the Department was withholding the recording or transcript that you had requested under the exemption provided by s32, which provides a necessary protection from disclosure for what are deemed to be court records.

Courts and inquiries are not subject to FOI. When court records are made available, it is either in a privileged manner, to those individuals involved in the litigation or, with regard to particularly significant cases, which may be cited as precedents, in published volumes of Court Reports.

The s32 exemption ensures that FOI requests cannot "be used to circumvent [the] existing", well established, "court access and discovery regimes". It is an absolute exemption, which means that there is no requirement to consider any public interest factors regarding disclosure, if the information is within the scope of the exemption it can be withheld.

While Transport Regulation Unit hearings do not take place in a formal court setting, with a judge, they constitute a formal inquiry governed by statute, the records of which fall within the scope of FOI's s32 exemption. You had requested any recording or transcript that the Department holds of the Transport Regulation Unit hearing. Under FOI such records, created by the body conducting an inquiry only for the purposes of that inquiry, are clearly subject to the application of the s32 exemption to prevent disclosure.

Having considered the nature of the requested information, and the circumstances in which it has been created, I am satisfied that this information is not suitable for disclosure to the public via the Freedom of Information Act 2000. The information is exempt under s32 of that Act, it falls squarely within the scope of that exemption.

While I am, confident that the Department is correct to withhold this information under the Freedom of Information Act 2000, this is only a refusal to disclose information to the World at large and not to you personally. There may be a means by which you can access this information on a privileged basis.

Similar to the rules in relation to requests for records of court cases, the presiding officer may decide to make recordings or transcripts of inquiry hearings available. This is an entirely discretionary power, and outside of the provisions of FOI. However, my understanding is that such a disclosure would only occur in exceptional circumstances, and may include costs, as is the case when court recordings or transcripts are provided. I would not wish to suggest that this is a likely route to achieve the information that you are seeking.

Another avenue was also explained to you in the response issued to your request. You were advised the following:

while Freedom of Information legislation does not allow for privileged disclosure of information, and your request has been refused on that basis, ... an alternative potential avenue for privileged disclosure of the requested information does exist, and I invite you to consider whether this might meet your needs.

I understand that you are undertaking a legal challenge to the Department. If this is the case, I believe that you would be well advised, through your solicitor, to seek this material as part of any formal pre-action legal discovery associated with your challenge. Any requests for information as part of the legal discovery process should be made, in the first instance, to the Departmental Solicitor's Office.

I will, in addition, refer to the relevant Departmental guidance, [A Guide to Public Inquiries Goods Vehicle Operator Licensing](#), which stated the following about the recording of TRU hearings and the potential preparation of any transcript.

The proceedings will be recorded so that a transcript can be produced should one be required (normally transcripts are ordered only in cases where there is an appeal against the Department's decision). Please note that during the inquiry personal information may be recorded and could be put into the public domain unless you ask for this information to be given in private. Any such request may be granted at the discretion of the Department.

It is clearly the case that, should you appeal the outcome of the hearing to the Upper Tribunal, a transcript of the hearing will be provided as part of this process, but that the Department would not routinely produce a transcript from a recording.

I would stress, therefore, that even having your request refused under FOI and if the presiding officer had determined not to make a recording or transcript available to you, there is a means by which you, via your legal representatives, may legitimately seek the information that is of interest to you.