Dear xxxxxxxxxx

RE: Freedom of Information Request P00009968

Thank you for your information request of 21 March 2013. You requested the following information:

1) With respect to the Department’s terms and conditions of employment, the current policy in relation to public and privilege holidays that fall during a period of maternity, paternity or adoption leave

2) Any prior policy pertaining to public and privilege holidays that fall during a period of maternity, paternity or adoption leave

3) The date the previous policy was amended to the current policy

4) Any internal correspondence and documents relating to an amendment to this policy - in particular any correspondence providing an explanation for changing policy (e.g. Bulletin 42, issued by the Cabinet Office in September 2011 http://bit.ly/163hSMt )

Your request has been considered under the Freedom of Information Act 2000.
I am writing to confirm that the Department, including its six executive agencies has now completed its search for the information.

The information is contained in Annex A below.

In keeping with the spirit and effect of the Freedom of Information Act, all information is assumed to be releasable to the public unless exempt. A copy of this response and the information provided may now be published on our website together with any related information that will provide a key to its wider context.

If you are unhappy with the way the Department has handled your request or with the decisions made in relation to your request you may complain within two calendar months of the date of this letter by writing to the Department’s Information Rights Unit at:

Zone D/01  
Ashdown House  
Sedlescombe Road North  
Hastings  
East Sussex TN37 7GA  
E-mail: FOI-Advice-Team-DFT@dft.gsi.gov.uk

Please see attached details of DfT’s complaints procedure and your right to complain to the Information Commissioner.

If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications.

**Your right to complain to the Department and the Information Commissioner**

You have the right to complain within two calendar months of the date of this letter about the way in which your request for information was handled and/or about the decision not to disclose all or part of the information requested. In addition a complaint can be made that DfT has not complied with its FOI publication scheme.

Your complaint will be acknowledged and you will be advised of a target date by which to expect a response. Initially your complaint will be re-considered by the official who dealt with your request for information. If, after careful consideration, that official decides that his/her decision was correct, your complaint will automatically be referred to a senior independent official who will conduct a further review. You will be advised of the outcome of your complaint and if a decision is taken to disclose information originally withheld this will be done as soon as possible.
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. The Information Commissioner can be contacted at:

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

1) With respect to the Department’s terms and conditions of employment, the current policy in relation to public and privilege holidays that fall during a period of maternity, paternity or adoption leave

<table>
<thead>
<tr>
<th>Dept/Agency</th>
<th>Maternity Leave</th>
<th>Additional Paternity Leave</th>
<th>Adoption Leave</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department for Transport (Central) (DfT(C)), Driving Standards Agency (DSA), Highways Agency (HA), Vehicle Certification Agency (VCA, and Vehicle and Operator Services Agency (VOSA)</td>
<td>If you have been absent on maternity leave you will not be entitled to record any of that absence as annual leave. Your annual leave allowance will remain unaltered by any period of maternity leave (ordinary or additional) that you take, and you will also accrue privilege and public holidays.</td>
<td>The employee’s contract remains in place and the employee will continue to accrue all contractual benefits except for salary, when they are on this leave. Annual Leave and Public/Privilege days will continue to accrue.</td>
<td>Your annual leave allowance will remain unaltered by any period of adoption leave (ordinary or additional) that you take, and you will also accrue privilege and public holidays.</td>
</tr>
<tr>
<td>Driver and Vehicle Licensing Agency (DVLA)</td>
<td>If you have been absent on maternity leave you will not be entitled to record any of that absence as annual leave. Your annual leave allowance will remain unaltered by any period of maternity leave (ordinary or additional) that you take and you will also accrue privilege and public holidays.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
holidays.
Your manager will calculate how many public and privilege holidays occurred during your maternity leave and add your entitlement to the TOIL quota on your SAP record. This entitlement will be on a pro rata basis if you are part time.

The formula for calculating the number of hours for a part timer is:

7.4 hours (7.2 for staff in London) divided by 37 (36 for staff in London) x hours worked per week = No of hours per public & privilege day.

No of hours per public & privilege day x No of p & p holidays during maternity leave = TOIL entitlement to be credited to SAP record

| Maritime and | Your annual leave allowance will | Staff on adoption leave |
| Coastguard Agency (MCA) | remain unaltered during your period of maternity leave, i.e. you will continue to accrue your contractual annual leave entitlement during your ordinary and additional maternity leave. In addition, you will also accrue the relevant proportion of public and privilege leave days for the duration of your maternity leave. | (ordinary and additional) also accrue public and privilege days. |

2) Any prior policy pertaining to public and privilege holidays that fall during a period of maternity, paternity or adoption leave

<table>
<thead>
<tr>
<th>Dept/Agency</th>
<th>Maternity &amp; Adoption Leave</th>
<th>Adoption Leave</th>
</tr>
</thead>
<tbody>
<tr>
<td>DfT(C), DVLA, HA, MCA, VCA</td>
<td>If you have been absent on maternity leave you will not be entitled to record any of that absence as annual leave. Your annual leave allowance will:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• remain unaltered by any period of ordinary maternity leave that you take; but</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• be reduced pro rata (subject to the Working Time Regulations - Annex C by any period of additional maternity leave that you take.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>You will not be entitled to take an extra day of ordinary or additional maternity leave in lieu of any bank, public or privilege holiday which occurs during the period of any ordinary or additional maternity leave.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>If you have been absent on adoption leave you will not be entitled to record any of that absence as annual leave. Your annual leave allowance will:</td>
<td></td>
</tr>
</tbody>
</table>
remain unaltered by any period of adoption leave that you take; but
be reduced pro rata (subject to the Working Time Regulations - Annex C by any period of
additional maternity leave that you take.

You will not be entitled to take an extra day of ordinary or additional adoption leave in lieu of any
bank, public or privilege holiday which occurs during the period of any ordinary or additional
adoption leave.

### DSA & VOSA

No prior policies are held by DSA or VOSA

### 3) The date the previous policy was amended to the current policy

<table>
<thead>
<tr>
<th>Dept/Agency</th>
<th>Date/Comment For Maternity and Adoption</th>
</tr>
</thead>
<tbody>
<tr>
<td>DfT and VCA</td>
<td>The current policy reflects the old and new policies with the new policy applying to women with an expected week of confinement after 5 October 2008. The Department does not hold a record of when the policy was amended to reflect the change in entitlement.</td>
</tr>
<tr>
<td>DVLA</td>
<td>14 January 2010.</td>
</tr>
<tr>
<td>DSA</td>
<td>DSA does not hold a record of when the policy was amended to reflect the change in entitlement</td>
</tr>
<tr>
<td>HA</td>
<td>The maternity and adoption leave policies were changed in 2008 and came into effect for women whose expected week of confinement was on or after 5th October 2008, or those who were adopting with effect from 5th October 2008.</td>
</tr>
<tr>
<td>MCA</td>
<td>The previous policy ran from 9 September 2008 to 6 May 2011</td>
</tr>
<tr>
<td>VOSA</td>
<td>VOSA do not hold a record of when the policy was amended to reflect the change in entitlement.</td>
</tr>
</tbody>
</table>
The additional paternity leave policy was updated across the DfT Group in August 2012.

4) Any internal correspondence and documents relating to an amendment to this policy - in particular any correspondence providing an explanation for changing policy (e.g. Bulletin 42, issued by the Cabinet Office in September 2011 http://bit.ly/163hSMt)

<table>
<thead>
<tr>
<th>Dept/Agency</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>DfT(C)</td>
<td>Information held and falling within scope of this request is covered by legal professional privilege and is therefore being exempted from disclosure under section 42(1). Before applying this exemption DfT(C) has conducted a public interest test and considered the arguments for and against disclosure of the information. Details why DfT(C) believes that arguments for withholding the information outweigh the arguments for disclosure and these are attached at Annex B. The Department does not hold any other related documents.</td>
</tr>
<tr>
<td>DSA:</td>
<td>A copy of a letter issued to appropriate staff in November 2010, covering the issue of public and privilege holidays is at Annex B.</td>
</tr>
<tr>
<td>DVLA</td>
<td>Some information falling within scope of this request is covered by legal professional privilege and is therefore being exempted from disclosure under section 42(1). Before applying this exemption DVLA has conducted a public interest test and considered the arguments for and against disclosure of the information. Details why DVLA believes that arguments for withholding the information outweigh the arguments for disclosure are attached at Annex B along with the following DVLA internal circulars which fall within scope and disclosable:</td>
</tr>
<tr>
<td></td>
<td>• 14/01/2010 - Group Unit and Project Managers Circulars. 01/10</td>
</tr>
<tr>
<td></td>
<td>• 14/01/2010 - Pay Conditions of Service Circular. 02/10</td>
</tr>
<tr>
<td>Date</td>
<td>Pay Conditions of Service Circular. 13/10</td>
</tr>
<tr>
<td>------------</td>
<td>------------------------------------------</td>
</tr>
<tr>
<td>MCA</td>
<td>The MCA wrote to all staff that might have been affected when the previous policy was introduced in 2008. A copy of the pro-forma letter is at Annex B.</td>
</tr>
<tr>
<td>VCA</td>
<td>VCA do not hold records relating to this change of policy.</td>
</tr>
</tbody>
</table>
Annex B – Documents relating to question 4

DfT(C)

Section 42 Legal professional privilege

(1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.

(2) The duty to confirm or deny does not arise if, or to the extent that compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) in respect of which such a claim could be maintained in legal proceedings.

<table>
<thead>
<tr>
<th>Factors for disclosure</th>
<th>Factors for with-holding</th>
</tr>
</thead>
<tbody>
<tr>
<td>• There is accountability for the advice provided to DfT(C) business units.</td>
<td>• Effective legal advice requires absolute candour between client and lawyer. This candour is less likely where there is knowledge that the correspondence is likely to be disclosed.</td>
</tr>
<tr>
<td>• There is proper scrutiny of the Department’s actions.</td>
<td>• The advice provided is part of ongoing policy and it cannot be considered to have served its purpose.</td>
</tr>
</tbody>
</table>

Reasons why public interest favours withholding information

On the basis that confidentiality in the relationship between client and lawyer is expected, the Department considers that to release this information would have a detrimental effect on the candour of future legal advice. The result of any breakdown in the relationship between client and lawyer would have a detrimental effect on the Department’s policy development and as a consequence a negative effect on the service the Department provides.
Section 42 Legal professional privilege

(3) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.

(4) The duty to confirm or deny does not arise if, or to the extent that compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) in respect of which such a claim could be maintained in legal proceedings.

Factors for disclosure

- There is accountability for the advice provided to DVLA departments.
- There is proper scrutiny of government Agency's actions.

Factors for with-holding

- Effective legal advice requires absolute candour between client and lawyer. This candour is less likely where there is knowledge that the correspondence is likely to be disclosed.
- The advice provided is part of ongoing policy and it cannot be considered to have served its purpose.

Reasons why public interest favours withholding information

On the basis that confidentiality in the relationship between client and lawyer is expected, DVLA consider that to release this information would have a detrimental effect on the candour of future legal advice. The result of any breakdown in the relationship between client and lawyer would have a detrimental effect on DVLA policy development and as a consequence a negative effect on the service DVLA provides.
Accrual of public and privilege holidays during maternity leave

Enquiries - Your HR Business Partner

1. Pay/Conditions of Service circular 02/10: Accrual of public and privilege holidays during maternity leave will be issued shortly. The circular advises individuals about the new legal advice, which effectively means that public and privilege holidays can be accrued during:

- periods of Ordinary Maternity Leave (OML) (the first 6 months) affecting individuals with babies due between 6 April 2003 and 4 October 2008 and
- periods of OML and Additional Maternity Leave (AML) affecting individuals with babies due on or after 5 October 2008.

2. There are approximately 700 staff affected by this new advice. This circular gives details of the procedures, which have been agreed with SSC to credit individuals affected by this advice with their correct public and privilege entitlement.

Individuals whose child was due or adopted (with a date of matching) between 6 April 2003 and 4 October 2008

3. The amount of leave will vary considerably from person to person, as some staff will have had more than one period of maternity leave since 2003. We are calculating for each individual what their entitlement is. This will vary from 1 day to 9½ days per period of OML, and some individuals will have had more than one period of maternity leave. Rather than ask individuals to apply we have agreed a process to give them what they are entitled to.

4. Line/people managers do not need to take any action for these individuals regardless of how many periods of maternity leave have been taken.

5. Action will be taken by SSC to credit the affected staff with the appropriate entitlement onto their SAP Time Off In Lieu (TOIL) record. The entitlement will be calculated according to the individual’s working pattern, so if the individual was part time the entitlement will be on a pro rata basis. By using the TOIL quota there is no requirement to use the balance by a particular date.

6. Individuals will not be able to apply to take any of this additional TOIL leave until after 31 January, which is when SSC will have completed uploading all the TOIL quotas.

7. HR Business Partners will have a list of those staff affected and the TOIL entitlement they have been credited. This will enable line/people managers to check on an individual’s entitlement. Individuals will be advised to inform their line/people manager when their TOIL entitlement has been updated.

Individuals whose child was due or adopted (with a date of matching) on or after 5 October 2008
8. Individuals will be entitled to public and privilege holidays during both their ordinary and additional maternity leave.
9. Line/people managers will need to raise a service ticket for SSC to credit any individuals in this category with the public and privilege holidays that occurred during their ordinary and additional maternity leave. Their entitlement should be calculated according to their working pattern prior to their return to work and their entitlement added as a TOIL quota on their SAP record on the portal. If the individual was part time before their maternity leave and public and privilege holiday entitlement will be on a pro rata basis.
10. Line/people managers may need to revisit those individuals that have already returned from maternity leave, and not been credited with this entitlement and raise a service ticket for SSC to action as in paragraph 9.
11. Individuals will be able to take this additional TOIL leave as soon as SSC have actioned the service ticket.

**Taking the TOIL leave**

12. Individuals affected by this advice should apply to take this TOIL entitlement in the usual way. It will be up to line/people managers to agree requests to take this leave in the usual way taking into account business needs. Individuals may also apply to take their TOIL entitlement as part of the month they are required to return to work following their maternity leave.
13. This circular has been agreed with the Trade Union.

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**14/01/2010 - Pay Conditions of Service Circular. 02/10**

**Accrual of privilege and public holidays during maternity leave**

**Enquiries - Your line/people manager**

1. This circular affects you if you have had a child which was due on or after 6 April 2003.

**If your child was due or adopted (with a date of matching) between 6 April 2003 and 4 October 2008**

2. New legal advice has confirmed that if your child was due between 6 April 2003 and 4 October 2008 you were entitled to receive any public and privilege holidays which occurred during your Ordinary Maternity Leave (OML) – the first 6 months of your maternity leave, following your return to work.
3. HR has identified the records of everyone affected by this advice and are calculating the appropriate public and privilege holiday entitlement. If you were part time this will be on a pro rata basis. If this applies to you, arrangements are being made with SSC for the time accrued for public and privilege holidays which occurred during your OML to be added to your Time Off In Lieu (TOIL) quota on your SAP record on the portal. SSC will arrange for this to be done by 31 January.
4. There is no action required by you or your manager. Please do not contact SSC to check if you have received your entitlement before 31
January 2010. If you have a query after this date you should speak to your line/people manager.

5. Please inform your line/people manager when your SAP record has been updated with your TOIL quota. You can view your TOIL balance on the portal under ‘show time accounts’ with your annual leave balance. You will not be able to take any of this additional TOIL leave until after 31 January when SSC will have completed uploading all the TOIL quotas.

If your child was due or adopted (with a date of matching) on or after 5 October 2008

6. You are entitled to public and privilege holidays that occurred during your OML and your Additional Maternity Leave (AML) when you return to work.

7. On your return to work, your line/people manager will need to raise a service ticket, requesting that any public and privilege holidays that occurred during your maternity leave are added to the TOIL quota on your SAP record on the portal. Your entitlement will be calculated according to your working pattern prior to your return to work. If you were part time before your maternity leave your entitlement will be on a pro rata basis.

8. If you have already returned to work, and you have not received your entitlement for the public and privilege holidays that occurred during your maternity leave, speak to your line/people manager. Your line/people manager will need to raise a service ticket for SSC to action, as outlined in paragraph 7.

9. You will be able to take your additional TOIL leave as soon as SSC have actioned the service ticket.

Taking your TOIL leave

10. Once your SAP record has been updated with your public and privilege holiday entitlement, you will be able to apply to your line/people manager to take your TOIL leave in the usual way. You may also apply to take your TOIL entitlement as part of the month you are required to return to work following your maternity leave.

11. This circular has been agreed with the Trade Union.

**11/11/2010 - Pay Conditions of Service Circular. 13/10**

Accrual of public and privilege holidays during paternity leave

**Enquiries - Your line/people manager**

1. This circular affects you if you have had paternity leave for a child due on or after 6 April 2003.

2. If your child was due on or after 6 April 2003 you were entitled to receive any public and privilege holidays which occurred during your paternity leave.

3. HR has identified the records of everyone affected by this new advice and are calculating the appropriate public holiday entitlement. If you were part time this will be on a pro rata basis. If this applies to you, arrangements are being made with SSC for the time accrued for
public holidays, which occurred during your paternity leave, to be added to your Time off in Lieu (TOIL) quota on the SAP record on the portal. SSC will arrange for this to be done by 30 November.

4. Privilege days are flexible and so should have been applied for in the usual way on your return from paternity leave.

5. There is no action required by you or your manager. Please do not contact SSC to check if you have received your entitlement before 30 November. If you have a query after this date you should speak to your line/people manager.

6. Please inform your line/people manager when your SAP record has been updated with your TOIL quota. You can view your TOIL balance on the portal under ‘show time accounts’ with your annual leave balance. You will not be able to take any of this TOIL leave until after 30 November when SSC will have completed uploading all the TOIL quotas.

7. From the date of this circular, line/people managers will need to raise a service ticket for SSC to credit anyone who takes paternity leave over a public holiday with the appropriate TOIL balance. This should be added to the TOIL quota on the SAP record on the portal and will be on a pro rata basis for part time staff.

**Taking your TOIL leave**

8. Once your SAP record has been updated with your public holiday entitlement, you will be able to apply to your line/people manager to take your TOIL leave in the usual way.

9. The TUS are aware of these arrangements.
PROTECT - PERSONAL

Dear XXXXXXX,

PUBLIC AND PRIVILEGE LEAVE ACCRUAL DURING ORDINARY MATERNITY LEAVE

Our records indicate that you have taken a period of Maternity Leave between 6\textsuperscript{th} April 2003 and 5\textsuperscript{th} October 2008. We have been informed by Cabinet Office that during the period of Ordinary Maternity Leave you should have accrued public and privilege leave. As a result of this a TOIL balance will be created within the Shared Services Portal and you will be given the equivalent in hours of \textbf{XX days} leave. The upload will occur before 31\textsuperscript{st} December 2010.

Any period of additional maternity leave (AML) is unaffected and if you took AML you did not qualify for any public and privilege leave accrual during that period.

I would encourage you to discuss this additional allowance with your line manager to make them aware of its existence. Any application to take this TOIL will be at your line manager’s discretion.

Yours sincerely

HR Employee Relations
Dear «First_Name»

**Public and Privilege Leave Accrual during Ordinary Maternity Leave**

Our records indicate that you have taken «No_of_periods» of maternity leave within the period from 6 April 2003 to 5 October 2008.

We have been made aware that you were entitled to accrue public and privilege leave in addition to contractual annual leave for the Ordinary Maternity Leave period (OML). This entitlement is «Hoursdays_FT», which is an average of public and privilege days over a 6 month period.

«If_2_periods_full_time» «If_2_periods1_FT1_part_time»
«If_1_period_part_time» «Convert_to_hours»

Whilst the MCA does not encourage the carry over of leave we appreciate that it may not be possible for you to take this leave within your remaining leave year. We would therefore, advise that this is permitted to be carried over to the next leave year if required to suit personal and business needs and to enable you to reduce the balance over a longer period of time. Please be aware that no payments will be made for this additional leave awarded.

Any period of Additional Maternity Leave (AML) is unaffected and there is no entitlement to accrue public and privilege days for this period.

Your line manager is has been informed of this situation.
If you have any queries please do not hesitate to contact me.

Yours sincerely

«Bus_Cons_Name»
HR Business Consultant