



IN THE FIRST-TIER TRIBUNAL

Case No. **Appeal No. EA/2014/0056**

GENERAL REGULATORY CHAMBER INFORMATION RIGHTS

ON APPEAL FROM Information Commissioner's Decision Notice No: FS50520970

Dated 26th February 2014

BETWEEN

Mrs Joanne Chong

Appellant

And

The Information Commissioner

Respondent

Determined on 15th August 2014 at Fox Court

Date of Decision 15th September 2014

BEFORE

Fiona Henderson (Judge)

Alison Lowton

And

Andrew Whetnall

Subject matter: FOIA– s40(1) (Personal Data)

*Edem v The Information Commissioner and Another [2014] EWCA Civ 92*

**Decision: The Appeal is refused**

## REASONS FOR DECISION

### Introduction

1. This appeal is against the Information Commissioner's Decision FS50520970 dated 26th February 2014 which concluded that the Driving and Vehicle Licensing Agency (DVLA)<sup>1</sup> had correctly applied s40(1) FOIA to the disputed information.

### The Information Request

2. The Appellant wrote to the DVLA on 24th July 2013 in the following terms:

*“As your records will show I am the Registered Keeper of vehicle registration number {xxx}.*

*I require you to send me the dates and times of all queries against my VRN [ ...] issued by Liverpool City Council since 22 June 2013. I also require the dates and times of the matching responses that you provided to Liverpool City Council.*

*This letter is not requesting personal information and so is not a Subject Access Request under the Data Protection legislation, therefore I believe no fee is payable.”*

3. The DVLA took the view that this was a subject access request under s7 DPA and additional correspondence ensued. However, a refusal notice under FOIA was issued on 20th August 2013 relying upon s21 FOIA and the refusal was upheld following internal review on 6th September 2013 relying upon s 21 and s 40 FOIA<sup>2</sup>.
4. The Appellant complained to the Commissioner on 18th November 2013 who issued a Decision Notice holding that the information requested was the Appellant's personal data and that s 40(1) was therefore properly applied.

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<sup>1</sup> An executive agency of the Department for Transport

<sup>2</sup> The DVLA referred to s40(2) but later clarified that they had meant s 40(1). Although they quoted the wrong subsection, the explanation was clear that the DVLA considered the information to be the Appellant's personal data.

## The Appeal

5. The Appellant appealed on 17th March 2014 and indicated that she was content for the case to be determined upon the papers. She appeals on the grounds that:
  - a) The disputed information is not personal data,
  - b) The request could be anonymised to enable it to be disclosed.
  - c) She criticizes the DVLA's handling of the request.

## Scope of the Appeal

6. The Commissioner argues that this appeal should be struck out under r8 GRC rules as having no reasonable prospect of success. The Tribunal is satisfied that this appeal raises issues of fact and law and that it is appropriate to determine the appeal pursuant to a paper hearing rather than under r8.
7. The Appellant argues that the Tribunal should make a finding as to whether a VRM is the personal data of the vehicle's registered keeper. We must confine ourselves to the facts that are material to the case before us and our decision is not binding in other cases. There is no scope therefore for us to make general findings of fact. The issue before us is limited to whether on the facts of this case the information requested is the Appellant's personal data.
8. The Appellant further criticizes the DVLA's handling of the request. The Tribunal acknowledges that it was unfortunate that the DVLA relied upon different sections of FOIA in its correspondence with the Appellant, (in the refusal s 21(2)(a) FOIA and then 21(2)(b) FOIA and s40(2) FOIA in the review). However, this was amended to s40(1) FOIA when the matter was before the Commissioner and the basis for the DVLA's refusal (that it was the Appellant's personal data) was clear from the outset. An appeal under s57 FOIA is an appeal against the substance of the Commissioner's Decision Notice we are therefore satisfied that the chronology of the earlier correspondence is outside of the scope of this appeal and the sole issue before us is the applicability or otherwise of s40(1) FOIA.

## Personal Data

9. S40(1) FOIA provides :

*Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.*

Personal data has the same meaning as in section 1(1) of the Data Protection Act and means:

*... data which relate to a living individual who can be identified –*

*a) from those data, or*

*b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,*

*and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;*

10. The Appellant argues that the information sought is not personal information relating to her vehicle; it is information relating to a third party request and DVLA's response to that third party request. She argues that Liverpool City Council are the focus of the request and not her, as they are the people asking for keeper details from the DVLA.
11. The DVLA argued before the Commissioner that were the information to be provided, the DVLA would be making public whether and if so when, Liverpool City Council had enquired against the Appellant's vehicle. It is linked to her by reason of her being the registered keeper. The DVLA holds a register containing details of all vehicles licensed for use on the road which contains the name and address of the registered keeper of each vehicle. The register is used to ensure vehicles are properly taxed, to prevent and detect crime, prosecute offenders, and collect fines. The DVLA are required to release keeper information (i.e. the name and address of the registered keeper) to the Police or Local authority<sup>3</sup> to investigate criminal offences or non criminal parking offences.

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<sup>3</sup> The Road Vehicles (Registration and Licencing) Regulations 2002

12. We are satisfied therefore that the “relation” element of the definition of “personal data” is made out; if held it would reveal biographical information about the registered keeper – the Appellant, in that it would reveal whether the LCC had made any enquiries about a vehicle for which the Appellant is the registered keeper, and if so how often and when.
13. We are also satisfied that the “identified” element of the definition is also made out because the name and address of the Appellant can be identified from the information held by the DVLA on the Register by reference to the VRM.
14. The Appellant argues that the information can be divorced from the individual because it would constitute a date and time which in isolation would not enable anyone to be identified. However, we agree that *Edem v The Information Commissioner and Another [2014] EWCA Civ 92* requires us to consider context. The dates and times would be the dates and times when the Appellant’s name and address was requested or provided to LCC thus we are satisfied that the information would constitute the Appellant’s personal data.
15. The Appellant argues that the disclosure of the information could be redacted so that its link to an individual is not apparent when disclosed to the world at large. However disclosure in redacted form only applies if the information is disclosable under FOIA. Redaction would not prevent the information from being the Appellant’s personal data and thus caught within s40(1) FOIA and thus not disclosable under the Act.

### Conclusion

16. S40(1) FOIA is not subject to the public interest test and consequently the Tribunal having found that the information requested is the Appellant’s personal data, this appeal must fail.

Dated this 15th day of September 2014

Fiona Henderson  
Tribunal Judge