

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 26 July 2007

Public Authority: Driver and Vehicle Licensing Authority
(an executive agency of the Department for Transport)
Address: Longview Road
Morrision
Swansea
SA6 7JL

Summary

The complainant supplied the Driver and Vehicle Licensing Authority (the "DVLA") with a list of vehicle registration numbers, together with details of the vehicles models and colours, and asked it to confirm whether Welwyn Hatfield District Council had made "non-fee paying" enquiries in order to obtain the details of the registered vehicle keepers of those vehicles. The DVLA refused to supply this information, citing section 40(2) of the Freedom of Information Act 2000. The DVLA claimed that this information was personal data, and that its disclosure would be a breach of the Data Protection Act 1998. The Commissioner decided that the DVLA was correct in its application of section 40(2) and that the information should be withheld. Therefore the Commissioner does not require the DVLA to take any further action in this case.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. In a letter dated 26 June 2006 the complainant requested the following information:

“For the past eighteen months I have been providing Welwyn Hatfield District Council...with the details of vehicles which break local bylaws by parking on the grass verges in Peartree Lane, Welwyn Garden City.

From the details below, would you please confirm which vehicles and dates have been subject to a Non-Fee paying Inquiry by [Welwyn Hatfield District Council].”

The complainant then provided a list of 16 vehicles, listing the make, model, and registration mark of each vehicle, together with a date on which the vehicles were allegedly parked illegally.

3. In a letter dated 12 July 2006 the DVLA refused to provide this information, and cited section 40(2). It informed the complainant that,

“The Agency cannot be satisfied, beyond any reasonable doubt, that you or any person you may disclose this information to, do not know or cannot ascertain the identity of the keepers of some, or all, of these vehicles. Information relating to the disposal of any proceedings against these keepers constitutes sensitive personal data as defined in the DPA. In the Agency’s view, disclosing whether [Welwyn Hatfield District Council] have made non fee paying enquiries against each vehicle would, indirectly, advise which have been or may be the subject to such proceedings, and would breach the first principle of the Data Protection Act.”

The DVLA confirmed, however, that Welwyn Hatfield District Council had made a non fee paying enquiry about fifteen of the vehicles listed. The DVLA informed the complainant of his right to appeal, and provided him with the contact details of the Commissioner.

4. In an email dated 13 July 2006 the complainant requested a review of this decision, and stated,

“My reasons are as follows:

1. It is absurd, as all the information submitted to the DVLA and [Welwyn Hatfield District Council] has been collected and provided by me, from vehicles parked on the verge[...].
2. All the information e.g. vehicle registration, make, model, colour and date vehicle was parked in Peartree Lane, is all in the public domain.
3. I am not seeking the personal details e.g. name and address of any individual. In any case such information can be redacted by you under the FOIA.

4. From my own reading of the Data Protection Act 1998 and the Freedom of Information Act 2000, it does not indicate that the information, which I am only asking for confirmation of, is either personal or sensitive within the meaning of the acts, particularly as the information is already in the public domain.”
5. The DVLA responded to this in a letter dated 25 July 2006. It upheld the decision to withhold the information in question, and again cited section 40(2), stating that,

“...the Agency cannot be satisfied, beyond any reasonable doubt, that the identity of individuals wouldn't be known from the release of this information and in doing so disclosing that proceedings had been taken against those individuals.”

The Investigation

Scope of the case

6. On 26 July 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the refusal to disclose the information in question was appropriate.

Chronology

7. On 20 March 2007 the Commissioner wrote to the DVLA and asked for an explanation as to the DVLA's refusal to provide the information in question.
8. The DVLA responded in a letter dated 12 April 2007, providing the information requested, and confirming that it believed that the disclosure would be in breach of the first principle of the Data Protection Act 1998 (DPA).
9. On 1 May 2007 the Commissioner wrote to the DVLA again and asked for further information.
10. The DVLA responded to the Commissioner in a letter dated 18 May 2007 and provided the information requested.

Analysis

Exemptions

Section 40(2)

11. The public authority has cited section 40(2) in order to withhold the information in question, stating that it believes that it is sensitive personal data, and that disclosure would be in breach of the first principle of the DPA.
12. Section 40(2) gives an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in section 40(3) or section 40(4) is satisfied.
13. In this case the condition in question is contained in section 40(3)(a)(i), which applies where the disclosure of the information to any member of the public would contravene any of the data protection principles. As stated above, in this case the DVLA has stated that it believes that the disclosure of the information would be in breach of the first principle of the DPA.
14. The first principle of the DPA requires that personal data is processed fairly and lawfully and must not be processed unless at least one of the conditions for processing in Schedule 2 of the DPA is satisfied. In the case of sensitive personal data, the first principle also requires that one of the conditions listed in Schedule 3 of the DPA is satisfied.
15. In order to establish whether this exemption has been applied correctly the Commissioner has first looked at whether the withheld information constitutes the personal data of a third party.
16. Section 1 of the DPA defines personal data as data which relate to a living individual, who can be identified:
 - from that data, or
 - from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
17. The Commissioner has had to consider whether the fact that a non-fee paying enquiry has been made to the DVLA by a Local Authority in relation to a particular vehicle is in itself, or has the potential to be, personal data relating to the registered keeper of the vehicle in question.
18. The Commissioner notes that the complainant has argued that he has not actually asked for any personal details of the registered keepers of the vehicles, and he acknowledges that the request, in itself, does not ask for the disclosure of the registered keepers details.

19. However, the Commissioner has also given consideration to the DVLA's argument against disclosure, that it "cannot be satisfied, beyond any reasonable doubt, that you or any person you may disclose this information to, do not know or cannot ascertain the identity of the keepers of some, or all, of these vehicles."
20. Taking into account the fact that this information relates to specific vehicles, parked at a specific geographical location, on a specific date, the Commissioner is persuaded by the DVLA's argument, in so far as he believes that the requested information constitutes the personal details of individuals that could lead to their identification. The Commissioner is not convinced that the information requested can be said to be sufficiently anonymous so as to avoid the identification of the registered keepers, or drivers, of those vehicles.
21. Therefore, after considering the above points the Commissioner has formed the view that in the circumstances of this case the information in question does constitute the personal data of third parties, i.e. the registered keepers of the vehicles in question.
22. The Commissioner has gone on to consider whether the release of this information would be in breach of the data protection principles.

The first principle

23. The DVLA has informed the Commissioner that it believes that the disclosure of this information would be in breach of the first principle of the DPA, and therefore the Commissioner has primarily considered whether the disclosure of this information would breach this principle.
24. The first principle requires that the processing of personal data should be fair and lawful and that personal data should not be processed unless at least one of the conditions in Schedule 2 of the DPA is met.
25. In considering whether the disclosure of the requested information would be fair the Commissioner has considered his published guidance on the interpretation of section 40.¹ This guidance deals with the issue of fairness in relation to a series of questions that may need to be considered:
 - Would that person expect that his or her information might be disclosed to others, i.e. would disclosure be within their reasonable expectation?
 - Would the disclosure cause unnecessary or unjustified distress or damage to the person to whom the information relates?
 - Had that person been led to believe that his or her information would be kept secret?

¹ Freedom of Information Awareness Guidance No 1 – Personal Data.

- Had that person expressly refused consent to the disclosure of the information?
 - Does the information relate to the private or public life of an individual?
26. The Commissioner has first considered whether the disclosure of this information would be within the 'reasonable expectations' of the registered keepers of the vehicles in question. The Commissioner notes that Regulation 27 of the Road Vehicles (Registration and Licensing) Regulations 2002 requires the DVLA to release information from its vehicle register to the police, to local authorities for the investigation of an offence or decriminalised parking contravention, and to anybody who demonstrates 'reasonable cause' to have the information made available to them. It is therefore arguable that the registered keepers of vehicles should have a reasonable expectation that some of the information they have supplied to the DVLA could be disclosed to those with reasonable cause.
27. However, the Commissioner does not believe that it would be in the reasonable expectation of the registered keepers that confirmation that their details had been released in relation to a non-fee paying enquiry would be put into the public domain through a disclosure under the Act. In fact, the Commissioner believes that it would be reasonable for the registered keepers to expect that this information would not be disclosed, if it were subject to a request under the Act.
28. The Commissioner therefore has formed the view that a reasonable person would not expect confirmation that their vehicle had been subject to a non-fee paying enquiry by a Local Authority to be available to a member of the public who requests it. The Commissioner believes that information that a Local Authority may be taking action against a particular individual in relation to an alleged parking offence, which was committed at a specific geographical location on a specific date, relates to that individuals' personal and private life. He is of the view that this information deserves protection because disclosure to any member of the public would constitute an unfair infringement of their private lives.
29. In addition to this the Commissioner also believes that this information could be used to the detriment of the individuals concerned, in so far as unfair conclusions could be drawn from the fact that a non-fee paying enquiry had been made in relation to them, which could be taken as an indication that enforcement action by the local authority in relation to parking offences was pending, when in fact it was not possible to say with certainty that it was.
30. Therefore, in light of the above the Commissioner believes that to disclose the information requested would breach the fairness element of the first data protection principle and therefore the exemption provided by section 40(2) of the Act is engaged.

31. The exemption listed at Section 40(2), by way of section 40(3)(a)(i), is an absolute exemption, and therefore is not subject to a public interest test.
32. The full text of section 40 of the Act can be found in the Legal Annex at the end of this Notice.
33. As the Commissioner has already formed the view that the information is personal data and that the disclosure of this data would be unfair, he has not gone on to consider whether the information is also sensitive personal data.

The Decision

34. The Commissioner's decision is that the DVLA dealt with the request for information in accordance with the Act.

Steps Required

35. The Commissioner requires no steps to be taken.

Right of Appeal

36. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 26th day of July 2007

Signed

**Graham Smith
Deputy Commissioner**

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

Legal Annex

Section 40

- (1)** 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.
- (2)** Any information to which a request for information relates is also exempt information if-

 - (a) it constitutes personal data which do not fall within subsection (1), and
 - (b) either the first or the second condition below is satisfied.
- (3)** The first condition is-

 - (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
 - (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.
- (4)** The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).
- (5)** The duty to confirm or deny-

 - (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
 - (b) does not arise in relation to other information if or to the extent that either-

 - (i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data

- Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
- (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).
- (6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.
- (7) In this section-
- "the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;
- "data subject" has the same meaning as in section 1(1) of that Act;
- "personal data" has the same meaning as in section 1(1) of that Act.