

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 18 November 2009

Public Authority: The Driver and Vehicle Licensing Agency (DVLA) (An Executive Agency for the Department for Transport (DfT)).

Address: Longview Road
Swansea
SA6 7JL

Summary

The complainant requested various pieces of information from the DVLA regarding its Continuous Registration (CR) scheme. The DVLA stated that sections 12 and 14 of the Act did not require it to comply with the request. Following the Commissioner's intervention, the DVLA provided some information but maintained its position that it had correctly applied sections 12 and 14 of the Act and that it was not required to comply with the request. The DVLA also stated that it did not hold some of the requested information. The Commissioner's view is that the DVLA applied sections 12 and 14 of the Act correctly and that, based on the balance of probabilities, it does not hold the remainder of the requested information. The Commissioner found that the DVLA breached section 1(1)(a) of the Act but requires no steps to be taken.

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.

Background

2. The Commissioner notes that under the Act the DVLA is not a public authority itself, but is actually an executive agency of the Department for Transport (DfT) which is responsible for the DVLA and therefore, the public authority in this case is actually the DfT not the DVLA. However, for the sake of clarity, this decision notice refers to the DVLA as if it were the public authority.

3. The Continuous Registration (CR) scheme was introduced in January 2004. It places the onus on the vehicle owner to either re-license the vehicle or complete a formal Statutory Off Road Notification (SORN) declaration.
4. As part of the scheme, a monthly scan of the vehicle record is carried out to identify vehicles without a valid license or SORN declaration. The scan automatically generates a letter from the DVLA inviting settlement out of court by payment of a Late Licensing Penalty (LLP).
5. Following the issue of an LLP the DVLA has explained that in some cases, it receives appeals from vehicle owners putting forward mitigating circumstances as to why it was not possible to re-license or declare SORN on time. Each of these cases is given individual consideration with some LLPs subsequently withdrawn by the DVLA on the basis of the information provided. The DVLA requires vehicle owners to submit evidence to support claims of some 'exceptional circumstances' but does not require such evidence for other 'exceptional circumstances'.
6. The DVLA also receives a number of complaints regarding the LLPs. The DVLA has a 4 stage internal complaints procedure which is outlined in leaflet INS101 ('Customer Service Guide and what to do if things go wrong'). The leaflet replaced leaflet INS121.

The Request

7. On 15 June 2007 the complainant contacted the DVLA with 21 questions or requests for information in respect of the LLPs imposed in relation to its CR scheme. Only those questions listed below fall within the scope of this Notice.

"Question 6

"Numbers of 'appeals' (corporate complaints) received in the last two years plus details of the appellant success rate and at what stage in the process."

"Questions 13(a) and (b)

"Can you advise on the following; - from the monies collected from the LLP scheme over the last two years, how much is spent on

a) road safety schemes and please specify which scheme these were and the amount actually contributed from the LLP monies

b) crime reducing initiatives and please specify which initiatives these were and the amount actually contributed from the LLP monies"

"Question 14

"Can you advise me what constitutes compassionate ground [sic]"

"Question 15

"Can you supply me a copy of your policy / guidance on this area as to

what falls into this category[sic]"

"Question 16

"Can you advise me under which section of the legislation allows for compassionate reasons to be exclude [sic] from payment[sic]"

"Question 19

"If the category compassionate reasons includes, amongst other things, all the cases of exceptional circumstance then can you advise me how many how many [sic] exceptional circumstances cases there have been in the last two years?"

"Question 20

"Can you break down the compassionate reasons into other broad areas and supply the figures for these other areas over the last two years?"

8. On 16 July 2007, the DVLA confirmed that it held:

"some of the information falling within the description specified..."
9. However, it refused to provide the information requested in questions 4-6, 9-10, 11-16, and 19-20 on the basis that section 12 (costs) of the Act was applicable because to comply would exceed the appropriate cost limit. It also cited section 14 (vexatious or repeated requests) of the Act and refused to provide the information requested in questions 14, 15 and 16.
10. The Complainant expressed dissatisfaction with this response on 20 July 2007 and following an exchange of correspondence between the two parties, the DVLA communicated the outcome of its internal review to the complainant on 12 October 2007. The DVLA's internal review upheld its original decision.

The Investigation

Scope of the case

11. On 29 October 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
12. The complainant's letter of 15 June 2007 contained 21 queries or requests for information. Questions 4, 5, 6, 9, 10, 11, 13(a)(b) and (c), 14, 15, 16, 19 and 20 were new requests for information under the Act. Question 12, plus an unnumbered query regarding 'exceptional circumstances' and a further unnumbered query regarding the DVLA's Enforcement Policy related to the complainant's previous two requests for information, which are subject to a separate investigation by the Commissioner. Questions 1, 2, 3, 7, 8, 21 and the remaining unnumbered queries concerned internal DVLA issues that are outside the remit of the Information Commissioner's Office. Questions 17 and 18 were answered at the time of the complainant's request.

13. During the course of the Commissioner's investigation the DVLA provided the information in respect of questions 4, 5, 9, 10, 11 and 13(c). As previously stated, this Notice is therefore only concerned with questions 6, 13(a) and (b), 14, 15, 16, 19 and 20 of the complainant's letter of 15 June 2007.

Chronology

14. On 7 August 2008 the Commissioner contacted the DVLA seeking clarification of the table of costs the DVLA had provided to the complainant.
15. The DVLA responded to the Commissioners enquiries on 28 August 2008.
16. Following various correspondence between the Commissioner and the DVLA, members of the Commissioner's staff met with the DVLA on 18 February 2009 to discuss the complaint. It was agreed that the DVLA would provide a new breakdown of costs with a deadline of 31 March 2009 confirmed.
17. On 8 April 2009 the DVLA provided an amended table of costs to the Commissioner. However, the Commissioner remained concerned that he had yet to receive a satisfactory estimate of costs to assist with his investigation.
18. Following further correspondence between the Commissioner and the DVLA, the Commissioner had a further meeting with the DVLA on 3 July 2009 to discuss the issue of costs. At this meeting, the Commissioner was satisfied that the DVLA had now provided a 'reasonable estimate of costs' to assist with his investigation of this complaint.

Analysis

Substantive Procedural Matters

19. During the course of his investigation, the DVLA informed the Commissioner that it did not hold information in respect of questions 13(a) and (b) of the request. Questions 13(a) and (b) asked:

*"Can you advise on the following; - from the monies collected from the LLP scheme over the last two years, how much is spent on
a) road safety schemes and please specify which scheme these were and the amount actually contributed from the LLP monies.
b) crime reducing initiatives and please specify which initiatives these were and the amount actually contributed from the LLP monies"*
20. The Information Tribunal concluded in EA/2006/0072 (Bromley), that there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records. When determining whether a public authority does hold any requested information the normal standard of proof to apply therefore is the civil standard of the balance of probabilities.

21. In his determination of where the balance lies, the Commissioner paid particular attention to the scope of the search conducted by the DVLA and its explanation as to why the information is not held.
22. The DVLA stated that it consulted with its Accounts Department in order to determine whether the information was held. The DVLA's Accounts Department is responsible for sending information regarding the costs and revenue of the CR scheme to the Treasury and it confirmed that the Treasury does not provide details to the DVLA regarding how it allocates the money received from the scheme in revenue.
23. Whilst the Commissioner notes that the scope of the search was restricted to the DVLA's Accounts Department and is therefore somewhat limited, he considers the search to be proportionate and appropriate on the basis that the Accounts Department would be the most likely department to hold this information.
24. The complainant has provided no evidence to suggest that the DVLA does hold any information relevant to the request.
25. The Commissioner considers that on the balance of probabilities, the DVLA does not hold this information.

Section 12 – cost limit

26. Section 12(1) of the Act states that a public authority is not required to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit. The DVLA refused to respond to questions 6, 19 and 20 of the request on the basis that to comply with each would exceed the appropriate limit.
27. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') provide that the cost limit for central government departments is £600. This must be calculated at the rate of £25 per hour, providing an effective time limit of 24 hours. Therefore, if a public authority estimates that complying with a request would exceed 24 hours, or £600, section 12(1) provides that it may be refused.
28. Regulation 4(3) of the Fees Regulations provides that the following factors can be taken into account when formulating a cost estimate:

“(a) determining whether it holds the information,
(b) locating the information, or a document which may contain the information,
(c) retrieving the information, or a document which may contain the information,
(d) extracting the information from a document containing it.”
29. The issue of what constitutes a reasonable estimate was also considered in the case of [Alasdair Roberts](#) v The Information Commissioner (EA/2008/0050). The Commissioner is guided by the following points made by the Tribunal at paragraphs 9-13 of the decision:

- “*only an estimate is required*” (i.e. not a precise calculation)
- The costs estimate must be reasonable and only based on those activities described in regulation 4(3)
- Time spent considering exemptions or redactions cannot be taken into account
- Estimates cannot take into account the costs relating to data validation or communication.
- The determination of a reasonable estimate can only be considered on a case-by-case basis and
- Any estimate should be “*sensible, realistic and supported by cogent evidence*”

Question 6 and question 19

30. Questions 6 and 19 of the request asked for the following information for the years 2005 and 2006:

Question 6

- (A) “*Numbers of ‘appeals’ (corporate complaints) received in the last two years plus*
(B) *details of the appellant success rate and at what stage in the process.*”

Question 19

“*If the category compassionate reasons includes, amongst other things, all cases of exceptional circumstance [sic] then can you advise me how many how many [sic] exceptional circumstances cases there have been in the last two years?*”

31. The DVLA has confirmed that although it does hold the information in respect of both questions 6 and 19 of the request, it does not routinely capture it. It has explained that the process of obtaining the information for both questions 6 and 19 of the request would require the following:
32. Based on figures taken from the DVLA’s main database, it has confirmed that it automatically generated 1,419,899 Late Licensing Penalty (LLP) letters in 2005 and 1,274,143 in 2006. However, this database does not record information regarding appeals (corporate complaints) or exceptional circumstances.
33. The DVLA has further explained that when a LLP letter is generated from the main database, it forms a new record on the DVLA’s LOCS (Local Office Casework System) database. Searching on the LOCS system is ordinarily done via car registration number although it can also be done by LLP case reference number or Closure Codes. However, it cannot search on whether the ‘alleged offender’ (AO) appeals against the fine or by exceptional circumstances.
34. The DVLA maintains therefore, that to provide the above information it would need to manually interrogate each of the 1,419,899 and 1,274,143 records held on its LOCS database for 2005 and 2006. The DVLA has estimated that it would take 0.5 minutes to check an individual record and calculated that to complete a manual search of each of its 2,694,042 electronic records would take 22450.30 hours (2,694,042 cases x 0.5 minutes = 1,347,021 minutes / 60 = 22,450.30 hours).

35. The Closure Codes themselves do not provide a suitable means of searching as there is no code for exceptional circumstances or appeals. On the basis of the representations made by the DVLA therefore, the Commissioner accepts that there is no obvious alternative means of extracting the requested information in this case. He has therefore concluded that it was reasonable for the public authority to base its estimate on a manual interrogation of the 2,694,042 LOCS database records for the relevant time period for both questions 6 and 19 of the request.

Question 20

36. Question 20 asked:

“Can you breakdown the compassionate reasons into other broad areas and supply the figures for these areas over the last two years [2005 & 2006]?”

The DVLA confirmed that it does hold this information but that it does not routinely capture the information on any of its systems. The information is held on its LOCS system and the DVLA was able to determine from a search of its Closure Codes that there were 24,742 and 19,512 cases in 2005 and 2006 respectively that provided evidence of compassionate reasons.

37. However, the DVLA is unable to break this down further into other broad areas since there are no other appropriate closure codes on the LOCS database. Therefore, to provide the information the complainant has requested, the DVLA would need to manually interrogate the 44,254 cases which were able to demonstrate compassionate reasons for the years 2005 and 2006. Since it has already been established that the estimated time to manually interrogate one case on the LOCS database would takes 0.5 minutes, the DVLA has calculated that it would take 369 hours to provide this information to the complainant (44,254 cases x 0.5 minutes = 22,127 minutes / 60 = 369 hours).
38. The Commissioner accepts that there is no obvious alternative means of extracting the information requested and has therefore concluded that the DVLA's application of section 12 of the Act was correct.

Section 14 – Repeated requests

39. The DVLA's refusal notice of 16 July 2007 concluded that:

“...under section 14 of the FOIA, an authority is not obliged to comply with information requests as in Questions 14 – 16 of your letter that are identical or substantially similar to previous requests, unless a reasonable time has elapsed.”

40. Although it did not specify that it was relying on section 14(2), of the Act which deals with repeated requests, it is clear that this was the DVLA's intention.

41. The Commissioner's approach has issued Awareness Guidance on vexatious and repeated requests. The guidance states that a request can be treated as a repeated request if:
- It is made by the same person as in the previous request:
 - It is identical or substantially similar to the previous request: and
 - No reasonable time has elapsed since the previous request.

Had the applicant made previous requests?

42. The Commissioner noted that the complainant had submitted two previous requests to the DVLA dated 30 March and 5 May 2007.

Were the requests identical or substantially similar?

43. This request and the two previous requests of 30 March and 5 May 2007 relate to the LLPs imposed under the DVLA's CR scheme.
44. The complainant has queried with the DVLA whether 'compassionate grounds' is one of the exceptional circumstances in which the DVLA considers it appropriate to withdraw an LLP. The Commissioner notes that the complainant's first request for information dated 30 March 2007 asked:

"What in general constitutes 'exceptional circumstances?'"

45. The Commissioner is therefore of the view that question 14 of this request appears to be substantially similar to the complainant's first request for information of 30 March 2007. This request had already been refused on the basis of section 31(1)(d) of the Act and has since been subject to a separate investigation by the Commissioner under reference number FS50178905. The Commissioner's investigation led him to conclude in that case that the DVLA's application of the section 31(1)(d) exemption was correct.

46. Question 15 of this request asked:

"Can you supply me a copy of your policy/ guidance on this area as to what falls into this category"[sic].

47. Question 16 asked:

"Can you advise me under which section of the legislation allows for compassionate reasons to be exclude [sic] from payment"

48. Questions 15 and 16 were under the heading:

"Breakdown of LLP Payments"

In his previous two requests the complainant had requested:

"...a copy of your enforcement concordat/policy."

These previous requests were in relation to the LLP fines under the DVLA's CR scheme. The DVLA had informed the complainant that:

"...there are no policy or guidance documents available."

49. In the Commissioner's view therefore, questions 15 and 16 allude to the DVLA's enforcement policy or guidance regarding the CR scheme.
50. In refusing this request on the basis of section 14(2), the DVLA therefore considered that it had already complied with these requests for information and the recent investigation by the Commissioner has endorsed this view.
51. The Commissioner's view is that questions 14, 15 and 16 of this request are substantially similar to the complainant's previous requests of 30 March and 5 May 2007.

Had a reasonable time elapsed between requests?

52. Whilst the term 'reasonable interval' is not defined under the Act, one of the conditions in the Commissioner's guidance regarding the aggregation of requests (when determining whether the appropriate costs limit would be exceeded) states that requests that are received within any period of sixty consecutive days can be appropriately aggregated.
53. The Commissioner has therefore concluded that if it is reasonable to aggregate requests for information received within 60 consecutive working days, that in the vast majority of cases this period would not represent a 'reasonable interval' between requests for the purposes of section 14(2).
54. The requests for information were dated 30 March 2007, 5 May 2007 and 15 June 2007 and the Commissioner notes that each of the requests was received within a period of 60 consecutive working days. The Commissioner is therefore of the view that a 'reasonable interval' had not elapsed between these requests from the complainant.
55. Based on the above, the Commissioner has therefore concluded that the DVLA's application of section 14(2) of the Act for these questions was correct.

Procedural Requirements

Section (1)(1)(a)

56. Section (1)(1)(a) of the Act is concerned with the general right of access to information. It states:

*"Any person making a request for information to a public authority is entitled-
(a) to be informed in writing by the public authority whether it holds information of the description specified in the request..."*

57. The DVLA's failure to clarify whether or not it held information in respect of questions 13(a) and 13(b) therefore represents a breach of section 1(1)(a) of the Act.

The Decision

58. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
59. The DVLA correctly applied section 12(1) of the Act to questions 6, 19 and 20 and section 14(2) to questions 14, 15 and 16 of the request.
60. However, the Commissioner finds that the DVLA failed to comply with the procedural requirements of section 1(1)(a) of the Act as covered in paragraphs 56 to 57 of this Notice.
61. The Commissioner requires no steps to be taken.

Other matters

62. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
63. The complainant expressed dissatisfaction with the DVLA's response to his original request for information of 20 July 2007. Whilst the DVLA responded to this letter on 13 August 2007 it did not communicate the outcome of its internal review until 12 October 2007. Although there is no requirement under the Act, the Section 45 Code of Practice recommends that the internal review should be considered promptly.
64. The Commissioner has also produced guidance in relation to this matter and considers 20 working days from the date of the request for the review to be a reasonable time in most cases. He does nevertheless recognise that there may be a small number of cases where it may be reasonable to take longer. However, the Commissioner expects the public authority as a matter of good practice to notify the applicant and explain why more time is needed. The Commissioner's view is that no case should exceed 40 working days.
65. The Commissioner notes that the internal review took in excess of 40 working days and that the DVLA offered no explanation for this.
66. The Commissioner is also concerned at the difficulty the DVLA appeared to experience in providing a 'reasonable estimate of costs' to assist with his investigation of this complaint. It is however hoped that the time the Commissioner invested in clarifying how to calculate a 'reasonable estimate' will assist with any similar requests the DVLA receives.

Right of Appeal

67. 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

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 18th day of November 2009

Signed

**Anne Jones
Assistant Commissioner**

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

Legal Annex

General Right of Access

Section 1(1) provides that –

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

Section 1(2) provides that –

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

Vexatious or Repeated Requests

Section 14(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”

Section 14(2) provides that –

“Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request.”

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (No. 3244)

Regulation 3 provides that –

“(1) This regulation has effect to prescribe the appropriate limit referred to in ... section 12(1) and (2) of the 2000 Act.

(2) In the case of a public authority which is listed in Part I of Schedule 1 to the 2000 Act, the appropriate limit is £600.”

Regulation 4 provides that –

“(1) This regulation has effect in any case in which a public authority proposes to estimate whether the cost of complying with a relevant request would exceed the appropriate limit.

(2) A relevant request is any request to the extent that it is a request– (a) for ...

(b) information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply.

(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in–

- (a) determining whether it holds the information,
- (b) locating the information, or a document which may contain the information,
- (c) retrieving the information, or a document which may contain the information,
- and
- (d) extracting the information from a document containing it.

(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour.”