

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 02 June 2011

Public Authority: Driver and Vehicle Licensing Agency
Address: (An Executive Agency of the Department for Transport)
Longview Road
Swansea
SA6 7JL

Summary

The complainant requested a copy of the DVLA's vehicle database. The DVLA relied on section 12(1) of the Act in refusing the request. The Commissioner has investigated, and has found that the work that would be required to obtain the requested information would exceed the cost limit and that the public authority was correct in relying on section 12(1). He has also found that the public authority has complied with its obligations under section 16(1). The Commissioner 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 vehicle database maintained by the DVLA contains a record of every vehicle that has been and that is currently registered within Great Britain since a centralised system of registration was introduced in 1975. The database contains somewhere in the region of 43 million records. Each of the individual records contained within the database is made up of 168 fields.

The Request

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

4. On 17 June 2010 the complainant wrote to the DVLA and requested:

"Please disclose under the FOI Act:

- A copy of the DVLA vehicles database

I am aware that this database contains a certain amount of personal information. However I believe you can provide me with this information without contravening the Data Protection Act by redacting or removing the name and address fields. Please note I would like you to provide the postcode with the final letter of the postcode removed to avoid identifying anyone.

I am also aware that this is a 'live' database, but this should not hinder your attempts to provide me with the information as you can take a 'snapshot' of the database from a certain day (i.e. the day you receive this request).

Please contact me as to the best way to give me the information. Ideally I would like it electronically, in SQL format".

5. The DVLA responded to the request on 14 July 2010 and confirmed that, in its view, the costs of retrieving and extracting information relating to the request would exceed the cost limit of £600. In calculating the costs that would be incurred by responding to the request, the DVLA relied in particular on the fact that a specialist IT supplier would need to be engaged to carry out the work required in retrieving and extracting the requested information. The DVLA stated that it would be charged £600 per day for this work.

6. The DVLA response of 14 July 2010 also included the following:

"[...] In your request you mentioned that if DVLA was unable to provide the vehicles database then you require the names of each field in the database and a description of what each field contains".

7. The DVLA therefore provided the complainant with a list of the names of each field contained within the database and invited the complainant to contact it with any further queries about any particular field.
8. On 4 August 2010 the complainant requested an internal review of the DVLA's handling of her information request. The complainant challenged the DVLA's application of section 12 to her request in particular due to her belief that the costs of engaging a specialist IT supplier should not have been taken into account by the DVLA when calculating the costs that would be incurred in responding to the information request.
9. The DVLA responded to the complainant on 16 August 2010, confirming that it had upheld its decision to rely on section 12 of the Act in refusing to provide the requested information. The DVLA confirmed that, in its view, providing the information requested would cost in excess of £50k.

The Investigation

Scope of the case

10. On 23 August 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant requested that the Commissioner consider whether the DVLA was correct to rely on section 12 of the Act in refusing to provide the information requested.

Chronology

11. On 9 September 2010 the Commissioner wrote to the DVLA to confirm that he had received an eligible complaint.
12. On 20 September 2010 the DVLA wrote to the Commissioner to provide some background detail to the request and to the vehicle database itself. The DVLA provided some further details in support of its application of section 12 of the Act.
13. On 12 November 2010 the Commissioner wrote to the DVLA to request further details in support of its application of section 12 of the Act.
14. The DVLA responded on 5 January 2011 and provided further clarification of its reasons for relying on section 12 in this case.
15. On 16 February 2011 the Commissioner wrote to the DVLA to request further arguments. The Commissioner specifically queried the DVLA's assertion that each record would require manual interrogation, and also the DVLA's continued reliance on the point that the costs incurred in

engaging its specialist IT supplier would exceed the cost limit in themselves.

16. On 25 March 2011 the DVLA provided its final response, including an outline of the costs that would be incurred by responding to the information request.

Analysis

Substantive Procedural Matters

17. Section 12(1) of the Act 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”.

18. Accordingly, section 12 provides that a public authority is not obliged to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate cost limit.
19. The appropriate limit is currently set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”) which provide that the cost limit is currently set at £600 for central government departments. This must be calculated at the rate of £25 per hour, providing an effective time limit of 24 hours. 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.
20. 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
21. 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”.
22. The DVLA agreed with the Commissioner’s view that only the costs of retrieving and extracting the information could be taken into account, as the DVLA was already aware that the requested information was held, and was clearly aware of where it was held. Therefore no costs relating to determining whether the information was held, or to locating the information, were taken into account. The DVLA provided the Commissioner and the complainant with various arguments in support of its reliance on section 12 of the Act. The Commissioner considers that the only argument relevant to the DVLA’s application of section 12 relates to the retrieval and extraction of the requested information, which would be done in this case by developing a bespoke scan to interrogate the database.
23. The DVLA maintained that, in order to respond to the complainant’s request, a bespoke scan would need to be created by the specialist IT supplier, involving staff time from both the DVLA and the IT supplier.
24. The DVLA maintained that it was unable to provide a definitive estimate as the estimate itself would incur considerable costs to the DVLA. The DVLA therefore provided an estimate based on a previous scan that was run on the database for a different purpose. The DVLA initially stated that the design, development and testing of the scan would take “more than 3.5 days to do”. After the Commissioner requested further clarification, the DVLA responded on 25 March 2011 and explained that the following steps and associated timings would be involved in creating a scan to be run on the register:
- DVLA staff to write and log the requirements of the scan (1 hour)
 - DVLA’s Small Change Initiative Board (SCIB) to review the requirements (10 minutes x 12 members = 2 hours)
 - IT supplier to produce a ‘solution overview’ and this overview to be quality assured by IT supplier (estimated 12 hours)

- IT supplier to deliver the requirement – design, build, test, schedule and implement the scan. The scan would be run at each stage to test performance. The time taken to run the scan has not been included, but the time taken to analyse the results has been (estimated 36 hours)
25. In the present case the Commissioner considers that the process of designing, developing and testing the scan represents time spent on retrieving and extracting the requested information, and so can be considered when estimating the total time that would be spent for the purposes of the section 12 cost ceiling. Whilst the Commissioner notes that the DVLA was unable to provide an accurate estimate due to the costs that would be incurred in doing so, the Commissioner considers that the estimate provided, which was based on a previous scan of the vehicle database, is a reasonable one. The DVLA has explained that providing the information requested would involve assessing and writing a requirement of over 160 fields, which would be likely to make the actual timings more lengthy than the ones outlined above.
 26. In calculating the costs of retrieving and extracting the requested information, the DVLA initially relied on the fact that the contracted IT supplier would charge a sum of money for this activity, which would exceed the cost limit in itself. The Commissioner considers that if a public authority requires contract staff to retrieve and extract the requested information, the full cost charged by the contract staff cannot be taken into account when calculating costs under section 12. Instead, the cost of any staff time can only be included at the rate of £25 per hour.
 27. The Commissioner notes the Regulations in that the cost limit equates to 3 ½ days work for a public authority at £25 per hour. The DVLA has provided an estimate of the time it would take together with a breakdown of the different elements involved, based on a previous scan of the vehicle database. On the basis of this information the Commissioner accepts that it was reasonable for the DVLA to reach its conclusion that retrieving and extracting the information would take over 3 ½ days (24 hours) of staff time.
 28. Having considered the above information, the Commissioner is satisfied that the cost of retrieving and extracting the relevant information in relation to the request would exceed the appropriate limit. Therefore the Commissioner is satisfied that section 12(1) has been appropriately applied by the Council and that it is not obliged to comply with the request.

Procedural Requirements

Section 16(1)

29. Section 16(1) provides an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the Section 45 Code of Practice in relation to the provision of advice and assistance in that case.
30. Where a public authority refuses a request because the appropriate limit has been exceeded, paragraph 14 of the Code of Practice recommends that the public authority should consider providing an indication of what, if any, information could be provided within the appropriate limit. It also states that the public authority should consider advising the applicant that a narrowed or refocused version of the request could be handled within the limit.
31. The Commissioner has therefore considered whether it would be possible for the public authority to provide advice and assistance to enable the complainant to submit a new information request without attracting the cost limit in line with paragraph 14 of the Code.
32. The Commissioner asked the DVLA whether any advice or assistance had been provided to the complainant, with a view to narrowing or refocusing the request. The DVLA stated that it had explored the possibility of providing some information to the complainant (for example by discussing the possibility of removing the postcode from the scope of the request), but that any information that could be provided would fall considerably short of what she had requested. The Commissioner was not provided with any documentary evidence that the DVLA had made attempts to narrow or refocus the request. However, as highlighted in paragraph 7, the DVLA did provide the complainant with a list of the fields included in the database, and offered to provide further explanations of any of these fields, if the complainant had required it.
33. Due to the broad nature of the information request, the Commissioner considers that the only way of narrowing or refocusing the request would be for an agreement to be made for a field (or fields) contained in the database to be removed from the scope of the request. The DVLA has explained that any such refocusing would have no effect on the time taken to prepare the scan described in paragraphs 24-25 above.
34. Whilst the Commissioner has not been provided with documentary evidence to suggest that advice or assistance was provided to the complainant in line with its obligations under section 16(1) of the Act, he does not consider in this specific case that it would be reasonable to

expect the authority to do so, since narrowing the scope of the request would still not allow the DVLA to respond to the request within the cost limit.

35. The Commissioner, having considered the circumstances of this case, considers that it would not have been reasonable to expect the public authority to provide any further advice or assistance to the complainant. In the Commissioner's view, any narrowing of the information to be provided from the requested database would not serve the purpose for which the complainant wanted the information. Further, the Commissioner considers that the DVLA has explored the possibility of narrowing the scope of the request, and did provide the complainant with a list of names of the fields included in the database. In the DVLA's view, this was the only information falling within the scope of the request that could be legitimately disclosed within the cost limit. He has therefore found that the public authority has not breached section 16(1) of the Act in this case.

The Decision

36. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

37. The Commissioner requires no steps to be taken.

Other matters

38. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
39. The Commissioner first wrote to the DVLA in relation to this complaint on 9 September 2010. The Commissioner requested supporting arguments on three occasions. The arguments put forward by the DVLA in support of its application of section 12 differed on each occasion. The DVLA continually relied on the fact that it would be charged a fee to engage professional IT specialists to run the scan, and that this would cost a large amount of money. Despite the Commissioner explaining that only staff costs could be taken into account in respect of the cost limit, the DVLA continued to rely on this point in its submissions to the Commissioner. Satisfactory arguments were not supplied by the DVLA until 25 March 2011. Had the DVLA supplied these arguments to the

complainant in its initial response, and therefore provided a satisfactory refusal notice to the complainant, it may have removed the requirement for the Commissioner to become involved in this case.

Right of Appeal

40. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

41. 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.
42. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 2nd day of June 2011

Signed

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

Legal Annex

General Right of Access

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.”

Section 12(2) provides that –

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

Section 12(3) provides that –

“In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.”

Section 12(4) provides that –

“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

Section 12(5) – provides that

“The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.

Duty to provide Advice and Assistance

Section 16(1) provides that -

"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it".

Section 16(2) provides that –

"Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case".