

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 6 June 2011

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

Summary

The complainant requested details of the date a named individual residing at a specified address passed her driving test and gained a full license for driving on the public road. The DVLA refused to provide this information citing section 40(2) of the Act. The Commissioner has investigated and finds that the DVLA correctly applied section 40(2) of the Act in respect of this information. The Commissioner has also recorded a breach of section 17(1)(c) of the Act.

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. 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 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.

3. On 23 September 2010 the complainant requested the following information from the DVLA:

"The date in writing confirming when [named individual and address] passed her driving test and gained a full license for driving on the public road."
4. The DVLA responded on 5 October 2010. It refused to provide the requested information citing section 40(2) of the Act.
5. The complainant requested an internal review on 17 October 2010 and the DVLA provided its response on 25 October 2010. The DVLA upheld its original decision.

The Investigation

Scope of the case

6. On 6 November 2010 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 the following points:
 - The DVLA's application of the section 40(2) exemption.
7. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

8. On 11 December 2010 the Commissioner contacted the DVLA to request copies of the withheld information.
9. The DVLA responded to the Commissioner on 23 December 2010 providing details of the withheld information.
10. The Commissioner contacted the complainant on 4 January 2011 in an attempted to close this complaint informally. However, on 10 January 2011, the complainant requested that a formal decision notice should be served in respect of his complaint. The Commissioner notified the DVLA on 18 January 2011.

Analysis

Exemptions

Section 40(2) – Personal information

11. The full text of all sections of the Act referred to in this notice can be found in the Legal Annex at the end of this notice.
12. Section 40(2) of the Act states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the Act would breach any of the data protection principles.
13. In its letter to the complainant dated 5 October 2010, the DVLA informed the complainant that it considered the information to be the personal information of a third party. It added that it was exempt from disclosing information relating to a third party where disclosure would contravene any of the data protection principles.
14. The complainant considers that the information should be disclosed under the Act as it forms part of an investigation into alleged criminal activities of Councillors at a specified Council. He believes that Section 29(1) of the Data Protection Act 1998 ('the DPA') which provides an exemption for crime and taxation is engaged in relation to this information. Section 29(1) states:

"Personal data processed for any of the following purposes-

- (a) the prevention or detection of crime,*
- (b) the apprehension or prosecution of offenders*
- (c) the assessment or collection of any tax or duty or of any imposition of a similar nature,*

are exempt from the first data protection principle (except to the extent to which it requires compliance with the conditions in Schedules 2 and 3) and section 7 in any case to the extent to which the application of those provisions to the data would be likely to prejudice any of the matters mentioned in subsection (1),"

15. However, the Commissioner would point out that the scope of his investigation is restricted to a consideration of whether the requested information should be disclosed under the Act and he notes that the Act is both applicant and purpose blind. He would also point out that section 29(1)(a) and (b) of the DPA only provides an exemption for the relevant data controller whilst any disclosure under the Act is to the general public.

16. In order to reach a view regarding the application of this exemption, the Commissioner firstly considered whether or not the requested information was in fact personal data.

Is the requested information personal data?

17. Personal data is defined at section 1(1) of the DPA as:

“personal data means data which relate to a living individual who can be identified-

- (a) from those data,*
- (b) from those data and other information which is in the possession of, or 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.”*

18. When considering whether the information is personal data, the Commissioner had regard to his own published guidance: *“Determining what is personal data”*.¹

19. Taking into account his guidance on this matter, there are two questions that need to be considered when deciding whether disclosure of information into the public domain would constitute the disclosure of personal data:

- (i) “Can a living individual be identified from the data, or, from the data and other information in the possession of, or likely to come into the possession of, the members of the public?”*
- (ii) “Does the data ‘relate to’ the identifiable living individual, whether in personal or family life, business or profession?”*

20. Whilst the Commissioner acknowledges that the date by itself does not necessarily constitute personal information, when linked to the name and address of the individual concerned, the date becomes biographically significant as it reveals when the named individual passed her driving test. The Commissioner therefore considers that the requested information does fulfill the above criteria and constitutes personal data. The Commissioner has therefore considered whether

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http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/what_is_data_for_the_purposes_of_the_dpa.pdf

21. The DVLA did not provide details of the specific data protection principle that would be breached through disclosure but the Commissioner considered the first principle to be the most relevant in this case.

Would disclosure contravene the first data protection principle?

22. The first data protection principle requires that the processing of personal data be fair and lawful and,

- at least one of the conditions in schedule 2 is met, and
- in the case of sensitive personal data, at least one of the conditions in schedule 3 is met.

23. In the case of personal data, both requirements (fair and lawful processing, and a schedule 2 condition) must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing will not be in accordance with the first data principle.

Would disclosure be fair?

24. In considering whether disclosure of the withheld information would be fair, the Commissioner has taken the following factors into account:

- The reasonable expectations of the data subjects.
- Consequences of disclosure.
- The legitimate interests of the public.

The reasonable expectations of the data subjects

25. A data subject's expectations are likely in part to be shaped by generally accepted principles of everyday interaction and social norms, for example privacy. It is accepted that every individual has the right to some degree of privacy and this right is enshrined in Article 8 of the European Convention on Human Rights (ECHR).

26. The Commissioner's awareness guidance on section 40 suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private life.² Although

²http://www.ico.gov.uk/~media/documents/library/Freedom_of_Information/Detailed_speci alist_guides/PERSONAL_INFORMATION.ashx

the guidance acknowledges that there are no hard and fast rules it states that:

“Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned.”

27. The Commissioner's guidance therefore makes it clear that where the information relates to the individual's private life (i.e. their home, family, social life or finances) is will deserve more protection than information about them acting in an official or work capacity (i.e. their public life).
28. The Commissioner notes that the information regarding the date the named individual passed her driving test relates to her private life as opposed to her public life. The Commissioner therefore considers that it deserves more protection than if it related to her public or professional life.
29. The Commissioner has also considered the circumstances in which the personal data was obtained and notes that the data subject would have been required to provide this information to the DVLA in order for her to receive her full driving licence.
30. In his consideration of the expectations of the data subject, the Commissioner has also had regard for the existing policies or customs within the DVLA which would shape her expectations of what would be done with her personal data.
31. The DVLA has confirmed to the Commissioner that an individual providing details of their driving test in order to obtain a driving licence can expect that this information is not disclosed to a third party. It has also confirmed that explicit consent from the data subject is required before it would provide any information of this nature and cited the example of a hire car company requesting details of any endorsements of a prospective client. It reiterated that the express consent of the data subject would be required for it disclose this information.
32. Based on the above, the Commissioner has concluded that the data subject would have a reasonable expectation that the information would not be disclosed.

The consequences of disclosure

33. In his consideration of the consequences of disclosure, the Commissioner notes that the consequences of disclosure in this

particular case are less obvious or tangible than in many cases. However, he recognises that it may also be unfair to disclose information where the consequences of disclosure are not evidenced or where the distress or damage is less obvious.

The legitimate public interest in disclosure

34. Notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure. For example, in the case involving the MPs expenses [EA/2007/0060] the former Information Tribunal commented that:

'79. ...in relation to the general principle application of fairness under the first data protection principle, we find:

(..) the interests of data subjects, namely MPs in these appeals, are not necessarily the first and paramount consideration where the personal data being processed relate to their public lives'.

35. In considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach, i.e. it may still be possible to meet the legitimate interest by only disclosing some of the requested information rather than viewing the disclosure as an all or nothing matter.
36. In this particular case, the Commissioner accepts that in addition to the broad general principles of accountability and transparency there is a legitimate interest in the public knowing the date the data subject passed her driving test to facilitate an alleged criminal investigation into the conduct of Councillors at a specified Council. However, the Commissioner is not persuaded that this is necessary for the matter to be investigated and as pointed out in paragraph 15 of this notice, this is a matter for the police or an appropriate investigative body rather than the general public.
37. Therefore, in balancing the reasonable expectations of the data subject and the consequences of disclosure of the information against the legitimate public interest in disclosure, whilst the Commissioner accepts that there is a legitimate interest in disclosure he considers it to be outweighed by the reasonable expectations of the data subject and the potential consequences of disclosure. The Commissioner has therefore determined that it would not be fair to disclose the requested information. In his view, disclosure would breach the first data

protection principle. He therefore upholds the Council's application of the exemption at section 40(2).

Procedural Requirements

Section 17(1) – Refusal of request

38. Section 17(1) of the Act states:

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.”

The Commissioner notes that whilst the DVLA informed the complainant that it was relying on section 40(2) of the Act, it did not explain why the exemption applies. This represents a breach of section 17(1)(c) of the Act.

The Decision

39. 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:

- The DVLA correctly withheld the information under section 40(2) of the Act.

40. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- The DVLA's failure to state why the exemption applies represents a breach of section 17(1)(c) of the Act.

Steps Required

41. The Commissioner requires no steps to be taken.

Right of Appeal

42. 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

43. 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.
44. 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 6th 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

Section 17(1) provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

(d) states that fact,

(e) specifies the exemption in question, and

(f) states (if that would not otherwise be apparent) why the exemption applies."

Personal information.

Section 40(2) provides that –

"Any information to which a request for information relates is also exempt information if-

(g) it constitutes personal data which do not fall within subsection (1),
and

(h) either the first or the second condition below is satisfied."