Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 May 2012

Public Authority: Driver and Vehicle Licensing Agency
Address: Longview Road
Swansea
SA6 7JL

Decision (including any steps ordered)

1. The complainant requested a breakdown of payments made by the Driver and Vehicle Licensing Agency ('the DVLA') in respect of poor customer service. The DVLA provided some information and stated that no additional information was held. The Commissioner's decision is that the DVLA holds additional information relevant to the request and he requires the DVLA to either provide the information or issue a valid refusal notice compliant with section 17 of the FOIA. The specific information which the DVLA should consider for disclosure is:

    - A table showing the amount of each ex-gratia payment, the summary of reasons for each payment and the Primary cause for each payment for the financial years 2009/2010 and 2010/2011. This information is held within a spreadsheet within the DVLA's Accounting and Revenue Unit.

2. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

3. On 13 August 2011, the complainant wrote to the DVLA and requested information in the following terms:

"…the schedule of all payments DVLA has made over the past 5 years in cases relating to poor service and service failures to enable me to assess to what extent I may have been disadvantaged".

4. The DVLA responded on 17 November 2011 and provided a table showing the total number of ex-gratia payments and the total value of ex-gratia payments for each of the last five financial years.

5. The complainant wrote to the DVLA again on 25 November 2011 and clarified that his request was for:

"an itemized breakdown of the individual awards of ex-gratia payments made to members of the public for the range of service failures and standards they have experienced whilst dealing with DVLA as shown in the attached specimen schedule. To assist you further I am content to reduce the scope to Year 2009/2010 to date".

6. The DVLA responded on 20 December 2011 stating that it did not hold an itemised breakdown of the individual awards made to members of the public along the lines of the specimen schedule the complainant provided. It did, however, provide a further breakdown of the ex-gratia payments it had made over the last five financial years, broken down into four categories, showing the number and amount of payments made in respect of each category.

7. On 23 December 2011 the complainant wrote to the DVLA to express his dissatisfaction with the handling of his request.

8. The DVLA provided the outcome of its internal review on 31 January 2012. It reiterated that it did not hold an itemised breakdown of ex-gratia payments made, in the same way as the example which Mr Davies had provided. The DVLA advised that, in accordance with its obligations under the Act to provide advice and assistance, it had provided a breakdown of the categories of payments made, and again confirmed that it did not hold the specific information requested.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled.

10. Following correspondence with the complainant, it was agreed that the scope of the complaint to the Commissioner would focus on the following matters:

- Whether the DVLA held a more detailed breakdown of ex-gratia payments for the financial years 2009/2010 and2010/2011, and if so, whether the information should be disclosed.
- The delays associated with the DVLA's handling of the request.
- Whether the DVLA had met its obligations to provide appropriate advice and assistance in accordance with the provisions of the FOIA.

Reasons for decision

11. Section 1(1)(a) of the FOIA states 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,"

12. The Commissioner has considered whether the DVLA has complied with this section of the FOIA in stating that it did not hold the specific information requested by the complainant.

13. In determining whether a public authority holds the requested information the Commissioner considers the standard of proof to apply is the civil standard of the balance of probabilities. In deciding where the balance lies in cases such as this one the Commissioner may look at:

- Explanations offered as to why the information is not held; and
- The scope, quality, thoroughness and results of any searches undertaken by the public authority.

14. The Commissioner asked the DVLA to explain how information about ex-gratia payments was held, how it collated the information already provided to the complainant and background information about the process of submitting, authorising and making ex-gratia payments. The Commissioner also asked the DVLA to provide a sample of the information held in relation to ex-gratia payments.

15. The DVLA advised that details of ex-gratia payments are held within a number of locations. An Excel spreadsheet is held within its Accounting and Revenue Unit ('the ARU spreadsheet') which records details of all payments made. Its primary purpose is to control and reconcile payments made as well as providing data for the reporting of losses and

special payments for its Annual Report and Accounts. The DVLA stated that ex-gratia payments are generated using a Systems Application Programming system and the information held within the system is used to reconcile the information contained within the Excel spreadsheet.

16. The DVLA provided the Commissioner with copies of relevant spreadsheets it used to record ex-gratia payments for a particular month. The Commissioner notes that the ARU spreadsheet has a column showing a summary of reasons for an ex-gratia payment being made. This column has a drop down menu reflecting the following high level categories: "Royal Mail undelivered item", "incorrect vehicle registration", "mislaid documents", "DVLA incorrect address used" and "other". The DVLA advised that the information which it provided to the complainant on 20 December 2011, was based on a summary of these high level categories.

17. The ARU spreadsheet also has a column entitled "primary cause". The DVLA advised that this field is filled in from information contained on a particular form (CFL835). The CFL835 form is completed by DVLA staff prior to an ex-gratia payment being made. The relevant section of the form is completed "free hand" by staff based on the circumstances of each particular case. DVLA advised that regardless of what is recorded as the "primary cause" for a payment being made, it will then be categorised as one of the high level categories referred to in paragraph 16 above.

18. The DVLA confirmed that more precise information about ex-gratia payments will be held on individual case files which could be stored in any of its offices. These case files can be held manually in paper form or electronically within its casework system. Around 1,000 case files are created each year.

19. The DVLA advised that correspondence from a complainant requesting an ex-gratia payment/claiming for an loss may refer to a delay in the DVLA handling their case file, but this may not be the sole reason for the payment being made and therefore may not be recorded as the "primary cause" on the CFL835 form. The DVLA's position is therefore, that the specific information requested by the complainant is not held as ex-gratia payments are not recorded by the categories referred to by the complainant.

20. From the responses from the DVLA it appears to the Commissioner that the DVLA has interpreted the complainants request narrowly as being a breakdown of ex-gratia payments into the specific categories shown on the example schedule which he provided to the DVLA on 25 November 2011. The example schedule which the complainant provided to the DVLA was information which he had obtained from another public

authority about ex-gratia/compensation payments. The schedule is a table along the lines below, showing the reason for, and amount of each individual compensation payment made. The Commissioner notes that the specimen schedule shows that the majority of payments made had been the result of delays.

REASON	AMOUNT
3 month delay in dealing with case	25
Mistake in amount of compensation notified to complainant	45
Reimbursement of costs	94
Delay of over 2 months in sending correspondence	25

21. The initial request was for "a schedule of all payments DVLA has made over the past 5 years in cases relating to poor service and service failures". When the complainant provided the example schedule on 20 November 2011, he clarified his request was for "an itemized breakdown of the individual awards of ex-gratia payments made to members of the public for the range of service failures……as shown in the attached specimen schedule".

22. Having considered the wording of the request, the Commissioner considers that the request is not just limited to ex-gratia payments which have been made in respect of delays. The Commissioner also considers the request is not limited to the types of payments shown on the specimen schedule which the complainant referred to. The Commissioner is of the view that the specimen schedule was provided to the DVLA by the complainant as an example to reflect the type of breakdown he was seeking.

23. The Commissioner notes that the DVLA categorises all ex-gratia payments into five broad categories and that it has provided a breakdown of ex-gratia payments based on these high level categories. The Commissioner accepts that there is a certain element of subjectivity in the "primary cause" listed in respect of why each ex-gratia payment is made and it may not reflect the full circumstances as to why a payment has been made. However, the Commissioner considers that the "primary cause" field recorded against each ex-gratia payment falls within the scope of the complainant's request and should have been considered for disclosure in relation to the request. If the DVLA does not consider any exemptions applicable to the primary cause field for each ex-gratia

payment, it should provide a table showing the primary cause for each payment, the summary of reasons (the high level category) and the payment amount, ie columns H, S and T of the ARU spreadsheet.

Section 16

24. Section 16(1) imposes 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.

25. The DVLA provided the complainant with two sorts of assistance in this case. It:

- Provided a high level summary of ex-gratia payments made in the last five years; and
- explained that information about ex-gratia payments could also be found within its Annual Report and published on its website.

26. The complainant requested information about individual ex-gratia payments made and the reasons why the payments were made. During the Commissioner's investigation it is clear that the DVLA does hold information about the reasons why each individual ex-gratia payment was made. Whilst the Commissioner accepts that the information held about the reasons why each payment is made is somewhat subjective as it is reliant on the relevant case officer to input a summary "free-hand", the Commissioner considers the information relevant to the request and should have been considered for disclosure. The Commissioner is of the opinion that the DVLA should have stated that it held this information and explained that whilst it was not in the exact format of the specimen schedule the complainant provided it did provide a more detailed breakdown of the reason for each ex-gratia payment made.

27. In view of this, the Commissioner considers that the DVLA did not offer reasonable advice and assistance because it failed to provide an adequate outline the information held which might meet the terms of the request. The failure to provide reasonable advice and assistance was a breach of section 16(1).

Section 10

28. The FOIA requires a public authority to respond to an information request within 20 working days of receipt of a request, and either disclose the requested information within this period or issue a refusal notice which explains the basis on which any information has been withheld. The request was made on 13 August 2011 and the DVLA did

not respond until 17 November 2011. As such the DVLA breached this requirement. The DVLA should ensure that such delays in responding to requests are not repeated in the future.

Right of appeal

29. 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,
    LEICESTER,
    LE1 8DJ

    Tel: 0300 1234504
    Fax: 0116 249 4253
    Email: informationtribunal@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

30. 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.

31. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed ……

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