

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 February 2019

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

Decision (including any steps ordered)

1. The complainant has requested the total number of individuals under the age of 17 that have been disqualified from driving in the past five years in West Yorkshire; broken down by year, age, length of disqualification, gender and area of residence. The DVLA disclosed disqualifications by year, age and length of disqualification and withheld information relating to gender and area of residence under section 40(2) of the FOIA (personal data).
2. The Commissioner's decision is that the DVLA is entitled to rely on section 40(2) of the FOIA for the non-disclosure of the remaining withheld information.
3. The Commissioner does not require any steps to be taken as a result of this decision notice.

Request and response

4. On 13 April 2018, the complainant wrote to the DVLA and requested information in the following terms:
"I would like to know how many people aged 17 and under have been disqualified from driving in the last five years in West Yorkshire. Please provide a breakdown of the year, where the person was from, their age, gender and length of disqualification"
5. The DVLA responded on 24 April 2018. It provided the total number broken down by year, age and length of disqualification. It withheld information about gender and area of residence citing section 40(2) (personal data) of the FOIA as its basis for doing so. It said that this information is considered personal data that could lead to the identification of the individuals.
6. Following an internal review the DVLA wrote to the complainant on 11 June 2018 maintaining its position.

Scope of the case

7. The complainant contacted the Commissioner on 21 June 2018 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether the DVLA was correct to apply section 40(2) of the FOIA to withhold the information about gender and area of residence.

Reasons for decision

Section 40(2) of the FOIA – personal information

9. Information is exempt from disclosure under section 40(2) of the FOIA if it constitutes third party personal data (i.e. the personal data of anyone other than the individual making the request) and either the first or second condition in section 40(3) is satisfied.

Is the information personal data?

10. The Commissioner has considered the definition of personal data under the Data Protection Act 1998 (DPA) which was the relevant legislation at

the time when the request was received and considered by the DVLA. Personal data is defined in section 1 of the DPA as follows:

"... data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into possession of, the data controller; and includes any expression of opinion about the individual and indication of the intentions of the data controller or any person in respect of the individual."

11. In this case, the withheld information is the gender and area of residence of individuals aged 17 and under that have been disqualified from driving in the past five years in West Yorkshire.
12. The DVLA has said that the withheld information together with the information already disclosed and additional information in the public domain, for example a Journalist looking at details of court cases relating to driving offences, could lead to the identification of the data subjects. Although the DVLA later acknowledged that court records relating to cases involving minors are sealed and not in the public domain, it then said that these records could still help the requester identify individuals but failed to explain how. The DVLA also provided the example that if it had been reported in the media that a 14 year old in a small town was disqualified for a period of 6 months in 2014 then having now attained the age of 18, they are likely to be included on the electoral register. A Journalist comparing previous and subsequent electoral registers could then identify new entries and together with their gender and area of residence, the Journalist could then further narrow down entries to identify the individual. It also provided a brief argument that a search of the individual's name on social media could uncover information relating to their disqualification. The DVLA has also made a short reference to the Upper Tribunal case *Information Commissioner v Miller (2018)*; in order to demonstrate its consideration of the motivated intruder, the appropriateness of disclosing small data (numbers below five) and the fact that an individual does not need to have advanced technical means to investigate.
13. The Commissioner has considered the DVLA's arguments. It is her view that any court records relating to minors that are sealed are not in the public domain and therefore could not be obtained to be used (together with the withheld information) to identify individuals. Although she considers it unlikely, where any court records are available, it is the Commissioner's view that similarly to a search of social media, information about an individual and offence would already be in the public domain. In regard to individuals now 18 years old being identifiable by specifically comparing previous and current electoral

registers, the Commissioner notes that the DVLA has already disclosed information about the age of the individuals at the time of the offence. Therefore, any individual (including a Journalist) would only need to count each proceeding year (since the offence) up to 2019 in order to work out each individual's current age without any need to compare electoral information.

14. In regard to small data, the Commissioner has viewed the withheld information and where the number of data subjects is five or lower, split by gender in towns/villages and coupled with local knowledge and/or information in the media it is likely that they could be identified from the data. Where the number of data subjects is between 5 and 15 in cities, split by gender and coupled with local knowledge and/or information in the media and general knowledge of how the DVLA provides data by location (including if a further request was made for offences only by location), it is likely that they could be identified from the data. The Commissioner is also cautious about disclosure of information that relates to individuals under seventeen years of age, who are minors. It is therefore her view that the withheld information relates to individuals who can be identified from it and is their personal data.
15. Section 2 of the DPA 1998 defines sensitive personal data as personal data that consists of information about the following:
 - an individual's mental or physical health,
 - their political opinions,
 - their sex life,
 - their racial or ethnic origin, their religious beliefs,
 - whether they are a member of a trade union,
 - the commission or alleged commission of an offence by them, or any proceedings for any offence they have committed or are alleged to have committed.
16. The Commissioner considers that the requested information falls into the last category and therefore represents the sensitive personal data of multiple individuals.

Would disclosure contravene a data protection principle?

17. Having accepted that the requested information constitutes the sensitive personal data of living individuals other than the applicant, the Commissioner must go on to consider whether disclosure would breach one of the data protection principles.
18. The DVLA explained that it considers that disclosure would breach the first data protection principle. This principle deals with the privacy rights

of individuals and the balance between those rights and other legitimate interests in processing personal data. It states that:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."

19. In the case of an FOI request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be fair, lawful and meet one of the DPA Schedule 2 conditions and in this case, Schedule 3 conditions. If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.

Would it be fair to disclose the requested information?

20. When considering the fairness element of the first data protection principle, the Commissioner takes into account a number of factors depending on the circumstances of each case. In this case, she considered:

- the reasonable expectations of the data subjects and the nature of the information;
- the consequences of disclosure; and
- any legitimate interests in the public having access to the information.

Reasonable expectations of the data subjects

21. The Commissioner notes that there is no evidence of any of the individuals providing consent for disclosure. The DVLA argued that the information in question is private information and that it would be reasonable for the individuals to expect the information not to be disclosed.
22. The Commissioner acknowledges that there will be circumstances where for example, due to the nature of the information and/or the consequences of it being disclosed, an individual will have a strong expectation that the information will not be disclosed.

23. In this case, the information in question is sensitive personal data, therefore the Commissioner considers that there will be an even greater expectation that the information would not be disclosed.

Consequence of disclosure

24. When considering the consequences of disclosure in this case, the Commissioner has taken into account the nature of the withheld information. She has also considered the fact that disclosure under FOIA is to the world at large and not just to the complainant.
25. The information relates to the individuals' private life. The Commissioner considers that disclosure of the information could, for example, prejudice employment and/or educational prospects.
26. Given the nature of the information (e.g., that it is sensitive personal data), and the reasonable expectations of the individuals concerned, the Commissioner is satisfied that disclosure of the withheld information could cause unnecessary and unjustified distress to the individuals.

Balancing the rights and freedoms of the data subjects with legitimate interests

27. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to disclose the information if there is an overriding legitimate interest in disclosure to the public.
28. The Commissioner accepts that there is a public interest in transparency when it comes to the total number of driving offences in West Yorkshire. However, in this case, she notes that the DVLA has already disclosed some of the requested information with a view to satisfying the public interest, e.g., the total number of offences by age, year and length of disqualification. She also notes that the individuals in question are minors and that their offences have already been dealt with by the courts.
29. In the circumstances of this case, the Commissioner does not consider that the legitimate interest in the public accessing the withheld sensitive personal information would outweigh the potential damage and distress which could be caused to the data subjects by disclosure of the information.
30. Therefore, the Commissioner does not consider that disclosure of the withheld information is necessary to meet a legitimate public interest.

31. In view of the above, the Commissioner is satisfied that the withheld information is sensitive personal data and that disclosure of any of it would breach the first data protection principle, as it would be unfair to the individuals concerned.
32. As the Commissioner has determined that it would be unfair to disclose the requested sensitive personal information, it is not necessary to go on to consider whether disclosure is lawful or whether one of the conditions in Schedule 3 of the DPA is met.

Rght of appeal

33. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

34. 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.
35. 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

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