

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 4 June 2007

Public Authority: Driver and Vehicle Licensing Agency
(an executive agency of the Department for Transport)

Address: Vehicle Policy Group
Swansea Vale 2
DVLA
Longview Road
Swansea
SA6 7JL

Summary

The complainant made a request for the date of birth information of a number of registered keepers, whose names and address details had previously been provided to him following a vehicle enquiry request to the DVLA. The DVLA initially considered the requested information to be exempt under section 40. However, during the course of the Commissioner's investigation the public authority indicated that to retrieve the information requested would exceed the costs limit under section 12 of the Act because the DVLA would need to instruct its IT contractors to carry out specific searches through its driver database. The Commissioner decided that although it may have been possible to retrieve some information within the costs limit this information would be exempt under section 40 of the Act on the basis that disclosure would breach the first data protection principle. He also decided that the DVLA has not breached section 16 of the Act. However the Commissioner has concluded that it did fail to comply with its duty under section 17(1) and section 17(7) of the Act as it failed to state in its refusal notice why the exemption applied or that it had a procedure for dealing with complaints about the handling of requests for information or the right to appeal to the Commissioner.

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 complainant submitted his requests to the Driver and Vehicle Licensing Agency ('DVLA') rather than the Department for Transport ('DfT') and in investigating this case, the Commissioner has also directed all of his correspondence to the DVLA. 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) and therefore, the public authority in this case is actually the DfT not the DVLA. However, for sake of clarity, this decision notice refers to the DVLA as if it were the public authority.
3. The complainant initially made a vehicle enquiry search for the names and addresses of individuals who did not pay excess parking charges issued pursuant to the Berwick-Upon-Tweed (Off-Street Parking Places) Order 1993 (as amended) made under the Road Traffic Regulations Act 1984, by providing the DVLA with the offending vehicles registration numbers and making a vehicle enquiry search. The DVLA then supplied the complainant with the names and addresses through its vehicle record. By way of background the Commissioner notes that the Road Vehicles (Registration and Licensing) Regulations 2002 (RVR) provide that disclosure of registration and licensing particulars contained in the vehicle register is available for use by a local authority, a chief officer of police, a member of the police service of Northern Ireland, by an officer of Customs and Excise in Northern Ireland or by any person who can show to the satisfaction of the Secretary of State that he has reasonable cause for wanting the particulars to be made available to him. The complainant's vehicle enquiry search was not therefore an FOI request at this stage but a request under the RVR. However the information supplied by the DVLA subsequently led to the complainant making his request for information on 3 August 2005 under the Act.
4. The complainant submitted a request to the DVLA by post and by email on 3 August 2005 headed Freedom of Information and requesting the following information:

"For the purposes of the criminal prosecution of offences contrary to section 35 of the Road Traffic Regulation Act 1984, can you please supply me with the date of birth and National Insurance number information belonging to the registered keepers identified on the enclosed vehicle enquiry response forms? Please let me know your charges, if any, for the supply of this information"
5. The complainant is a solicitor employed by the Berwick-Upon-Tweed Council (the Council) and deals with prosecution of parking offenders. The complainant explained to the DVLA in his letter of 3 August 2005 that non-disclosure of the information he had requested would prevent the Council from issuing proceedings in the Magistrates Court because the Court requires this information to be included in summonses in accordance with the Minimum Standard of Information Protocol introduced by the Department of Constitutional Affairs (DCA) in August 2004. The purpose of this Protocol, according to the DCA, is to minimise the risk of the issuing of criminal proceedings against the wrong defendants.

6. On 9 August 2005 the DVLA responded to the email request submitted by the complainant stating that before disclosing personal data under section 29(3) of the Data Protection Act 1998 (DPA) the DVLA needed to make a judgement as to whether or not prejudice is likely in relation to the circumstances of each individual case. It then explained that enquiries would have to state for each individual for what the specific information is required for, what will the information enable them to achieve and how the purpose of their enquiry would be damaged or prejudiced by non-disclosure. The DVLA explained that it would not release information en mass and that it did not hold driver's national insurance numbers.
7. On 12 August 2005 the complainant received a postal response from the DVLA stating that due to the insecurity of the internet it was unable to deal with the complainant's enquiry by email and requested that he provided a signed request by letter or fax on headed paper to its enquiry unit. This email was headed "access to information" but did not clarify the basis upon which it was responding to the complainant. The DVLA did not make clear whether it was responding to the complainant's request under the Act or on the basis of business as usual in view of the complainant's position as a representative of the Council dealing with the prosecution of individuals under the Road Traffic Regulation Act 1984.
8. On 18 August 2005 the complainant resubmitted his request to the DVLA by post again indicating that his request was being made under the Act.
9. On 23 August 2005 the DVLA replied to the complainant stating that his request would be dealt with as business-as-usual, rather than under the terms of the Freedom of Information Act.
10. In this letter the DVLA explained that the DVLA driver and vehicle records are not linked and therefore it is not possible to access a driver record by reference to a vehicle registration mark. Neither record contains the keeper or driver's national insurance number. It went on to explain however that the Road Vehicles (Registration and Licensing) Regulations 2002 provide for the release of information from the DVLA vehicle register to local authorities for the purpose of investigating offences and decriminalised parking contraventions.
11. On 25 August 2005 the complainant wrote back to the DVLA. He pointed out that the date of birth information is contained in the DVLA's driver records and therefore repeated his request for the date of birth information. He explained that his request of 3 August was a freedom of information request and requested that it was dealt with in accordance with the requirements of the Act.
12. On 1 September 2005 the DVLA replied to the complainant. It indicated that its letter was being sent ahead of a formal response under the Act, in view of the urgency expressed by the complainant in an email he sent to the DVLA the previous day. The DVLA confirmed that date of birth information would not be disclosed as it considered it was exempt under section 40 of the Act. It did not provide any explanation as to why it considered section 40 applied. It also repeated the difficulties in extracting the information required from the driver record because the driver and vehicle records are not linked and the address on the vehicle record may not be the same as that recorded on the driver register. It pointed out that the only way it could ensure that the correct driver record is

- accessed is through the name and date of birth (or driver number). The complainant could supply the name and address of the registered keeper of the vehicle to the DVLA but not the driver's number or date of birth.
13. On 1 September 2005 the complainant emailed the DVLA in response to this letter and referred to sections 29 and 35 of the DPA which he considered made it possible for the DVLA to release the information without breaching the DPA. Section 29(1) (b) of the DPA states that personal data processed for the apprehension or prosecution of offenders 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 in this subsection. Section 35 of the DPA exempts personal data from the non-disclosure provisions whereby disclosures are required by law or made in connection with legal proceedings.
 14. On 2 September 2005 the DVLA responded to the complainant explaining its position about sections 29 and 35 of the DPA and why it did not consider that it could provide the information requested by access to the driver record. It did not believe it was safe to do so because the information may not be accurate and it did not in any event consider it was necessary to provide this information for the issuing of a summons. It therefore asked the complainant to confirm that he still wished his request to be dealt with under the Act.
 15. On 2 September 2005 the complainant emailed the DVLA again and confirmed that he did still wish his request to be considered under the Act. He also maintained the view that the DVLA could release the information requested without breaching the DPA.
 16. On 13 September 2005 the DVLA provided what it considered to be its formal response under the Act and repeated its decision not to release the information on the basis that the information was exempt under section 40(2) and (3) of the Act. In this letter it confirmed the complainant's right to request an internal review of its decision and the right to appeal to the Information Commissioner.
 17. On 14 September 2005 the complainant emailed the DVLA requesting an internal review of its decision to withhold the requested information.
 18. On 26 October 2005 the DVLA provided its internal review response to the complainant. It maintained that the information was exempt under section 40. It also added that in addition it considered that it was the format of the information required that prevented it from disclosing the information. It took the view that it did not hold the information in the format that enabled it to comply with the request and that the Act did not oblige public authorities to create new information.

The Investigation

Scope of the case

19. On 27 October 2005 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:
- “I contend that the Agency has:
- (i) failed to provide the information requested
 - (ii) failed to give proper advice and assistance
 - (iii) failed to correctly apply exemptions under the Freedom of Information Act.”
20. Although not specifically raised by the complainant the Commissioner has also considered whether the DVLA has breached section 17 of the Act when issuing its refusal notice by failing to provide an explanation as to why it believed section 40 applies to the information requested, by failing to provide details of its internal review procedures and by failing to provide particulars of the complainant's right to appeal to the Information Commissioner.

Chronology

21. On 22 September 2006 the Commissioner wrote to the DVLA in order to discuss the way in which the DVLA handled the complainant's request. The Commissioner explained that on the basis of the information supplied by the DVLA he did not consider that answering the request would involve the creation of new information. However he invited the DVLA to provide further comments in support of its view if it wished to continue to rely on the argument discussed at paragraph 18. The Commissioner also provided his initial view on the DVLA's application of section 40.
22. In an attempt to ascertain whether an informal resolution of the complaint was possible, the Commissioner also sought the DVLA's further comments in relation to the complainant's view about the application of section 29 and section 35 of the DPA 1998. However in the circumstances the Commissioner was not able to informally resolve the complaint and he has not considered this issue any further in this Decision Notice since this Notice is to consider compliance only with the FOIA.
23. The DVLA responded on 19 October 2006. It explained the difficulties it faced in answering the complainant's request accurately because the information contained on the DVLA's driver record is not in any way linked to the vehicle record. It explained that the driver record is accessed via either the driver number or via both the driver's name and the date of birth. Whilst a name search can be carried out on the driver record this would require a search of all possible variations of a name and then require searches through the address information attached to each name to ascertain which of the details returned are applicable to the request. It also pointed out that there is no requirement in law for a vehicle keeper to hold a driving licence and therefore it cannot be assumed that it holds

the information that the complainant requires. It argued that the fact that a match to a name and address has been identified does not necessarily mean that this name and address is that of the vehicle keeper in question. It also highlighted other scenarios which could lead to the providing of inaccurate information such as a failure by drivers or registered keepers to update the DVLA of a change of name or address. However the Commissioner notes that it is a legal requirement to provide changes of names and addresses to the DVLA and therefore it is likely these databases should be up to date and accurate. As a result of conducting these search enquiries it also pointed out that the cost limit of £600 would be exceeded. In doing so it was indicating that it was refusing to disclose the information on the basis of section 12 of the Act. It did not however explain how it had calculated its estimate of the cost.

24. In view of the DVLA's response the Commissioner considered it necessary to write to the DVLA again on 24 November 2006. In particular he remained unconvinced that the DVLA did not hold all or some of the information requested. In order that the Commissioner could make an assessment as to whether section 12 had been applied correctly the Commissioner also asked DVLA to provide further clarification as to why it considered the cost of compliance with the Act would exceed the appropriate limit. He also asked for the DVLA's further comments and reasons for its application of section 40.
25. The DVLA replied to the Commissioner's letter on 21 December 2006. It repeated the difficulties it considered it would face in answering the complainant's request accurately. It also explained in more detail why it considered the information was exempt by virtue of section 40. It explained that it maintained the name and date of birth information from the driver database is personal data as it relates to an identifiable, living individual and that disclosure under the Act would be in contravention of the first, fourth and potentially the sixth and eighth data protection principles. It pointed out that section 40 of the Act requires the DVLA to consider disclosure not just to the applicant, but to "a member of the public otherwise than under the Act." Therefore it pointed out that even if the prosecution, prevention of crime and legal proceedings exemptions in the DPA might justify disclosure to the complainant these exemptions would not justify disclosure to a member of the public more generally. The letter then provided an explanation as to why it considered the data protection principles would be breached by disclosure. A detailed consideration of the principles is considered in the Commissioner's analysis below.
26. In this letter the DVLA also explained in more detail why it considered the costs limit would be exceeded. It maintained that in the absence of the driver number or both the driver name and date of birth, the only way to carry out a name search would be to engage the assistance of its IT contractors to carry out a one off scan, although it pointed out again that any scan or search facility used to extrapolate driver data would not enable the DVLA to confirm that the correct record was held.
27. In order to clarify the cost associated with extrapolating data via a scan, it used as an example the name of Mr Christopher John Smith. It explained that if action was to be brought against this individual under the Road Traffic Regulations Act

- 1984 the DVLA would need to search for matches to Christopher John Smith, Chris Smith, Chris John Smith and Christopher Smith and then search through the address information attached to ascertain which of the details are applicable to the request. This would require four separate scans and the catalogue price of a scan of the record is around £375 per scan. The DVLA explained that it contracts out its IT work and these specific scans would therefore have to be carried out by its IT supplier at a cost to the DVLA of approximately £375 per scan.
28. Further communications took place between the Commissioner and the DVLA until 15 May 2007 to enable the Commissioner to seek further clarification regarding the application of section 12 of the Act. The DVLA explained that its IT systems were designed specifically for the fast input of data, and standardised retrieval of individual records on very specific fields. As explained at point 23 for driver records, the access key to a individual record is the driver number or in its absence the driver's full name and date of birth. Where only a name is available the DVLA would need to instruct its IT supplier to conduct specific scans of its database. An IT scan would have to trawl through the entire DVLA database of approximately 39 million records. Such a scan could not be undertaken by DVLA staff. The DVLA explained that £375 is the cost charged by its IT supplier for a simple scan on basic search criteria, such as first and last name. If more search criteria were needed, such as middle names or initials, the cost would rise according to the complexity. Quotes from the IT provider would be provided for bespoke scans based on specifications put together by the DVLA. Four simple scans would therefore come to a total cost of £1500. It added that to raise the relevant paperwork with the contractor would also take approximately 90 minutes of staff time (at £25 per hour as laid out by the FOI fees regulations). Assuming only one match is identified the request will cost approx. £1537.50. The Commissioner understands that because these one off scans will need to filter through the entire DVLA database they are normally carried out overnight so that the operation of the database is not affected during the day and may require several days work to complete the scan.
29. The DVLA explained that in the absence of the driver number or full name and date of birth a search could be carried out by a DVLA clerk (on their desktop PC) using the postcode as the search field. This would quickly produce a list of all the driver records held in that postcode area. Searches based on postcode would therefore likely to be deliverable within the £600 limit (depending on the number of enquiries). However, as stated above, this would merely give a list of possible matches of all the driver records held in that postcode area and safe identification of an individual record would require some additional form of confirmation, for example confirming the date of birth or other personal details with those who are "possible matches". The Commissioner notes that a postcode query could provide multiple results and it would be therefore be difficult to ascertain the time it would take the DVLA to retrieve the information. The Commissioner is therefore satisfied that conducting scans rather than a postcode search is the most accurate and reliable method of retrieving the information requested.
30. The Commissioner has however concluded for the reasons explained further on in this decision notice that even if it was possible to undertake searches by

postcode under the appropriate limit this information would be exempt by virtue of section 40.

31. The Commissioner emailed the DVLA on 4 May 2007 explaining that section 4(4) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Regulations") makes it clear that any costs incurred by any person undertaking work on behalf of the authority should be estimated at the rate of £25 per person per hour. The Commissioner explained that the DVLA could not therefore simply apply the fee charged by its contractors to provide the information requested. The Commissioner therefore asked the DVLA to calculate the costs the IT contractors reasonably expects to incur at a rate of £25 per person per hour in accordance with the activities outlined in section 4 (3) of the Regulations. The full text of section 4 of the Regulations is included in the Legal Annex attached to this Notice.
32. The DVLA replied by email on 15 May 2007 and explained that the activities involved in undertaking a bespoke scan of the driver database include the following:
 - DVLA draft a customer engagement request outlining the proposed work
 - DVLA Customer engagement team review the request and pass on to its IT supplier
 - The IT supplier discuss the details with the relevant DVLA contact
 - DVLA write a Request for Change (RFC) document, specifying the exact requirements
 - The IT suppliers assess the RFC and provide a quote of the cost to the DVLA for the work
33. The DVLA advised that the above activities and the scan (design, development and execute) would take approx 6 days work in total for the DVLA and its IT contractors spread out over several weeks. The Commissioner notes that 6 days would mean 7.5 hours x 6 x £25 totalling £1125 and the limit would be £600 for the DVLA being an executive agency of the Department of Transport. The DVLA again pointed out that the output of the scan would merely be a list of all drivers whose name matched the search criteria.

Analysis

Procedural matters

Section 1(1) (a)

34. The Commissioner has considered whether the information requested by the complainant is held by the DVLA.
35. The DVLA took the view that it could not confirm with accuracy that it held the information requested by the complainant for the reasons explained at paragraph 25 above. It also argued that responding to the request would result in newly created information because the information is not held in the format requested.

36. The Commissioner notes the difficulties the DVLA may have in responding accurately to the complainant's request. However the DVLA has acknowledged that the driver record does contain date of birth information. In the Commissioner's view the fact that the information may not be readily identified as this would involve raising specific searches of its database does not mean that it does not hold the information requested. The Commissioner considers that that the DVLA does hold information falling within the scope of the complainant's request. The Commissioner does not therefore accept that responding to this request would create new information
37. The DVLA argued in its refusal notice and in subsequent correspondence with the Commissioner that it did not hold the information in a format that enabled it to comply with the request. Although the DVLA did not specifically refer to section 11 of the Act, the Commissioner considers that the reference to format in this case is effectively a misapplication of section 11 of the Act. Section 11 deals with the means by which communication of the information is made. The full text of section 11 is provided in the Legal Annex of this notice. The Commissioner does not accept that the complainant is asking for information in a specific format. Having investigated the complaint the Commissioner considers that in this case it is not a question of the format which has led the DVLA refusing the request, but rather that the cost of accessing the information sought by the complainant would exceed the costs limit and therefore the information is exempt under section 12 of the Act.
38. On the basis of the above the Commissioner is satisfied that in all probability the DVLA holds information which falls within the scope of the complainant's request.

Section 12

39. Section 12 of the Act removes the obligation on public authorities to comply with section 1 of the Act if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
40. The appropriate limit, as prescribed by the Freedom of information and Data Protection (Appropriate Limit and Fees) Regulations (the "Regulations"), is £600 for Central Government and £450 for other public authorities, with staff time calculated at a rate of £25 per hour. When calculating whether the appropriate limit is exceeded, authorities can take account of the costs of determining whether the information is held, locating and retrieving the information, and extracting the information from other documents. They cannot take account of the costs involved with considering whether information is exempt under the Act. Section 4 (4) of the Regulations provides that where costs are attributable to the time a person spends undertaking any of the activities mentioned above, those costs should be estimated at £25 per hour. For the DVLA to legitimately cite section 12, it therefore needs to demonstrate that the time needed to comply with the request exceeds 24 hours. As explained at paragraph 30 above the Commissioner is of the view that the DVLA can only take into account the reasonable costs incurred by itself and its IT contractors at the rate of £25 per person per hour in order to determine whether it holds, to locate, to retrieve and

to extract the information requested. The Commissioner accepts that in this case the activities referred to at paragraph 31 primarily deal with the process of retrieving the information and he considers it is therefore reasonable for the DVLA to take into account those activities above at the rate of £25 per person per hour when estimating the cost of retrieving the information. The Commissioner notes that the process detailed above may appear bureaucratic and lengthy but he accepts that in the circumstances of this case it would not be unreasonable for the DVLA and its IT contractors to have to go through this process in order to deal with the complainant's request.

41. Having considered the evidence put forward by the DVLA, the Commissioner accepts that the requested information cannot be easily and quickly retrieved because of the separate driver and vehicle databases which are not linked in any way. The Commissioner accepts that the information requested is not stored on a single database and therefore the requested information cannot be easily retrieved. The Commissioner accepts that in this case the IT supplier will have to conduct these scans to provide the information requested by the complainant and that this will require the DVLA and its IT providers to undertake the activities and process outlined in paragraph 31.
42. Accordingly the Commissioner accepts that to comply with the request would exceed the appropriate limit.
43. However as explained further on in this decision notice, the Commissioner has concluded that the date of birth information should not be disclosed on the basis of the exemption contained within section 40. Consequently, even if the cost of fulfilling the request was brought within the cost limit, the information would be exempt from disclosure under Act.

Section 16

44. The complainant specifically complained about the DVLA's failure to provide advice and assistance. Section 16 provides that –

“(1) 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.

(2) 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.”
45. In considering whether or not the public authority had fulfilled its obligations under section 16 of the Act by providing advice and assistance the Information Commissioner has considered the extent of this obligation.
46. He has considered the Code of Practice issued by the Secretary of State under section 45 of the Act, which states that “the aim of providing assistance is to clarify the nature of the information sought”. This code provides guidance to public authorities in respect of what is a desirable practice for dealing with

Freedom of Information Requests. Whilst the code itself is not statutory, section 16 of the Act provides that where a public authority has conformed to the code, it has met its section 16 obligations. He further referred to his Freedom of Information Awareness Guidance no 23 in which it is stated that “In simple terms the provision of advice and assistance can be seen as the means by which a public authority engages with an applicant in order to establish what it is that the applicant wants, and where possible assists him in obtaining this, maintaining a dialogue with the applicant throughout the process.”

47. In this case the Commissioner is satisfied that the DVLA did not require any further clarification to establish what information the complainant wanted, and did not need to assist the complainant in framing his request in a way that would assist him in obtaining the information, as the request was already clear. However the Commissioner accepts that the DVLA could have explained more clearly and fully at an early stage why it considered that it could not comply with the request.

Section 17

48. The Commissioner takes the view that the DVLA's letter of 1 September 2005 is its refusal notice. This is because this letter clearly states that it is refusing to provide the information on the basis of section 40 of the Act. He has therefore considered whether the refusal notice issued by the public authority on 1 September 2005 in which it cited the section 40 exemption complied with section 17 of the Act. The full text of section 17 can be found in the Legal Annex. However the relevant points are summarised below.
49. Section 17(1) of the Act requires that, where a public authority is relying on a claim that an exemption in Part II of the Act is applicable to the information requested, it must, within the time for complying with section 1(1), give the applicant a notice which states that fact, specifies the exemption in question and why the exemption applies.
50. Section 17(7) of the Act requires that a refusal notice should contain details of any procedure for dealing with complaints about the handling of requests for information or state that such a procedure is not provided.
51. The Commissioner believes that DVLA's response on 1 September 2005 of “the information you require is not releasable under the Freedom of Information Act – by virtue of the exemption in Section 40 of the Act” does not adequately explain why DVLA considered the requested information exempt under section 40. It did not specify why the exemption applied nor did it make any reference to the public authority's internal review procedure or the right to appeal to the Commissioner for a decision about how the DVLA had handled his request.
52. The DVLA did provide the details required under section 17(7) of the Act in its further letter to the complainant of 13 September 2005 which it claimed was its formal response under the Act. However even if the Commissioner treated this letter as its formal refusal notice it would not have provided its response within the timescale provided by the Act. In any event its letter of 13 September 2005 still

did not adequately explain the reasons why it considered section 40 applied to the information requested.

Exemption

Section 40 – Personal Data

53. In considering whether this exemption is valid, the Commissioner has taken into account the fact that the Act is designed to be applicant blind and that disclosure should be considered in the widest sense – that is, to the public at large. The Commissioner therefore has to consider whether disclosure of the information to a member of the public otherwise that under the Act would contravene any of the data protection principles. In view of this the Commissioner cannot take into account the circumstances of the applicant when deciding whether the DVLA has complied with the Act.
54. Section 40(2) provides an absolute exemption for information which is the personal data of any third party, where disclosure would breach any of the data protection principles contained in the Data Protection Act 1998 (the relevant sections of section 40 are included in the legal annex attached to this notice).
55. In order to rely on the exemption provided by section 40, the information being requested must therefore constitute personal data as defined by the DPA. The DPA defines personal information as:
- “...data which relate to a living individual who can be identified-*
a) from those data, or
b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller...”
56. The Commissioner considers that details of the date of birth of various named individuals constitutes the personal information of the data subjects and therefore the requested information falls with the scope of the exemption provided by section 40(2).

The first data protection principle

57. The first data protection principle requires that the processing of personal data should be fair and lawful and that personal data should not be processed unless at least one of the conditions in Schedule 2 of the DPA is met.
58. In considering whether the disclosure of the requested information would be fair the Commissioner has considered his published guidance on the interpretation of section 40 (Freedom of Information Awareness Guidance No 1). The Guidance deals with the issue of fairness in relation to a series of questions that may need to be considered:
- Would the disclosure cause unnecessary or unjustified distress or damage to the person to whom the information relates?

- Would that person expect that his or her information might be disclosed to others?
 - Had that person been led to believe that his or her information would be kept secret?
 - Had that person expressly refused consent to the disclosure of the information?
 - Does the information relate to the private or public life of an individual?
59. The Commissioner notes that Regulation 27 of the Road Vehicles (Registration and Licensing) Regulations 2002 requires the Agency to release information from its vehicle register to the police, to local authorities for the investigation of an offence or decriminalised parking contravention, and to anybody who demonstrates 'reasonable cause' to have the information made available to them. It is therefore arguable that the data subjects should have a reasonable expectation that some of the information they have supplied to the DVLA could be disclosed to those with reasonable cause. The Commissioner accepts however that data subjects would not expect their date of birth information to be disclosed to the public in general.
60. In any event as explained above the vehicle register only contains the name and address of the registered keeper of a vehicle. The date of birth information is held on the DVLA's driver register and there is no equivalent legislative provision for the release of date of birth information contained in the driver register.
61. The Commissioner therefore accepts that a reasonable person would not expect details of their date of birth to be available to any member of the public who requests it. The Commissioner accepts that the requested information relates to individuals' personal and private lives and he is of the view that this information deserves protection because disclosure to any member of the public would constitute an unfair infringement of their private lives.
62. This conclusion is consistent with the Commissioner's guidance on the application of section 40 of the Act. This guidance suggests 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." The Information Tribunal also acknowledged this approach in a recent decision on the application of section 40 (House of Commons v Information Commissioner and Norman Baker MP): "We accept the approach of the Commissioner's guidance which recognised that in determining fair processing regard can be made as to whether the personal data relates to the private or public life of the data subject to whom it relates" (paragraph 77).
63. In light of the above the Commissioner believes that to disclose the information requested would breach the fairness element of the first data protection principle and therefore the exemption provided by section 40(2) of the Act is engaged. As the Commissioner has decided that the exemption is engaged on the basis that

the first principle would be breached, he has not considered the DVLA's assertion that the fourth, sixth and eighth principles would also be breached.

The Decision

64. The Commissioner's decision is that the DVLA dealt with the following elements of the complainant's request in accordance with the requirements with the Act:
- the Commissioner has decided that the DVLA correctly applied section 12 on the basis that the cost of retrieving the information would exceed the appropriate limit
 - the Commissioner has decided that the DVLA was correct to refuse disclosure on the basis of the section 40 exemption because date of birth information of named individuals constitutes personal data for the purposes of the DPA and disclosure would breach the first data protection principle
 - the Commissioner also finds that the DVLA has not breached section 16(1) of the Act
65. The Commissioner has however decided that the DVLA has not dealt with the following elements of the request in accordance with the Act:
- section 17(1) as it failed to adequately explain in its refusal notice why the exemption it quoted applied to the information requested
 - section 17(7) as it failed to state in its refusal notice whether it had a procedure for dealing with complaints about the handling of requests for information or the right to complain to the Commissioner. However the Commissioner recognises these defects were rectified in its letter of 13 September 2005

Steps Required

66. The Commissioner requires no steps to be taken.

Other matters

67. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

68. The Commissioner is concerned to note that the DVLA failed to initially consider the request as an FOI request but instead stated that it was treating it as a business as usual enquiry. The Commissioner accepts that the complainant's role and purpose for asking for the information may have caused the DVLA some confusion as to which legislation it should be applying in responding to the request. However the Commissioner is satisfied that in this case because the complainant made it clear his request was a freedom of information request the DVLA should have treated it as such from the outset and dealt with it in accordance with the requirements of the Act. The Commissioner's Awareness Guidance No 12 makes it clear that all information created by a public authority is subject to the Act, provided that the public authority either retains possession of that information, or that the information has been provided by another public authority, or it is held on behalf of the originating public authority by a third party.
69. The Commissioner is also concerned to note that the DVLA informed the complainant that it could not accept enquiries via email because of the insecurity of the internet and was asked to send in a signed request by letter or fax on headed paper. Section 8 of the Act specifies a request for information must be in writing and this includes where a request is treated as made in writing where the text of the request is transmitted by electronic means, is received in legible form and is capable of being used for subsequent reference. The Commissioner considers the complainant's request satisfied this criteria and the DVLA incorrectly rejected the email request.

Right of Appeal

70. 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@dca.gsi.gov.uk

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 4th day of June 2007

Signed

**Steve Wood
Assistant Commissioner**

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

Legal Annex

Section 1 - 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 8 - Request for Information

Section 8(1) provides that –

“In this Act any reference to a “request for information” is a reference to such a request which –

(a) is in writing,

(b) states the name of the applicant and an address for correspondence, and

(c) describes the information requested.”

Section 8(2) provides that –

“For the purposes of subsection (1) (a), a request is to be treated as made in writing where the text of the request –

(a) is transmitted by electronic means,

(b) is received in legible form, and

(c) is capable of being used for subsequent reference.”

Section 11 - Means by which communication can be made

Section 11(1) provides that –

“Where, on making his request for information, the applicant expresses a preference for communication by one or more of the following means, namely –

(a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,

(b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and

(c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant.

The public shall so far as is reasonably practicable give effect to that preference.”

Section 11(2) provides that –

“In determining for the purposes of this section whether it is reasonably practicable to communicate information by a particular means, the public authority may have regard to all the circumstances, including the cost of doing so”

Section 11(3) provides that –

“Where a public authority determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making his request, the authority shall notify the applicant of the reasons for its determination

Section 11(4) provides that –

“Subject to subsection (1), a public authority may comply with a request by communicating information by any means which are reasonable in the circumstances.”

Section 12 - 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.

Section 17 – Refusal of request

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 -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 17(2) states –

“Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
 - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.”

Section 17(3) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
- (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

Section 17(5) provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

Section 40 – Personal Data

Section 40(1) provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

Section 40(2) provides that –

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

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

Section 40(3) provides that –

“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A (1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

Section 40(4) provides that –

“The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”

Section 4 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

Section 4 (3) states that:

“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

Section 4(4) states that:

“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.”