

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 April 2019

Public Authority: Driver & Vehicle Licensing Agency
(Department for Transport)

Address: Longview Road
Morrison
Swansea
SA6 7JL

Decision (including any steps ordered)

1. The complainant requested information relating to requests for Registered Keeper's details submitted by the London Borough of Havering over a defined period.
2. The Commissioner's decision is that the Driver & Vehicle Licensing Agency ("the DVLA") is entitled to rely on section 12 to refuse this request. However, it failed to provide adequate advice and assistance to help the complainant refine his request and thus breached section 16 of the FOIA.
3. The Commissioner requires the DVLA to take the following steps to ensure compliance with the legislation.
 - Provide adequate advice & assistance to help the complainant refine his request within the cost limit.
4. The DVLA 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.

Background

5. The DVLA is an Executive Agency of the Department for Transport and is not listed as a separate public authority in Schedule 1 of the FOIA. As it has its own FOI unit and as both the complainant and the Commissioner

have corresponded with "the DVLA" during the course of the request and complaint, the Commissioner will refer to the DVLA for the purposes of this notice.

Request and response

6. On 4 February 2019, the complainant contacted the DVLA via the whatdotheyknow.com website and requested information in the following terms:

"Please could you provide me with details of ALL requests made by London Borough of Havering (London Borough of Havering, Traffic & Parking control, Town Hall, Main Road, Romford, RM1 3BB) for registered keeper information since 2016 to present day (day that this request is processed)

"The details of the requests made should include the following:

- *Grouping identity (see below for clarification)*
- *Enquiry reference number (as provided by London Borough of Havering)*
- *Date of event*
- *Date of enquiry*
- *Date of response (by DVLA)*
- *Enquiry reason*
- *Channel through which the request was received (post, electronically, etc)*
- *Channel through which the response was sent by DVLA (post, electronically, etc)*

**grouping identity - used to group and identify requests that were made against the same VRM, an arbitrary grouping identity should be included for the purposes of the report. The actual VRM is NOT being requested and should not be provided in the report.*

"Ideally the report should be provided as a comma separated text file, with the first line containing headers of the columns and details of each request made on a new line. Where duplicate requests have been made for the same enquiry reference number, they should all be included with the appropriate dates.

*"file example,
grouping identity, enquiry reference number, date of event, date of*

enquiry, date of response, enquiry reason, request channel, response channel

g1,ABC123,10/4/2017,15/4/2017,16/4/2017,Moving Traffic Offence,POST,POST

g1,GHI789,14/4/2017,19/4/2017,20/4/2017,Moving Traffic Offence,POST,POST

g1,ABC123,10/5/2017,15/5/2017,16/5/2017,Moving Traffic Offence,POST,POST

g2,DEF546,12/4/2017,17/4/2017,16/4/2017,Moving Traffic Offence,POST,POST

..

"3 separate requests for same vehicle (VRM KL79XYZ) on 15/4, 19/4 and 15/5 - grouping identity g1

"1 request for another vehicle (VRM MA76QSD) on 12/4 - grouping identity g2

"requests made on 15/4 and 15/5 under the same enquiry reference number ABC123."

7. The complainant followed that up with a further message on 5 February 2018:

"If there are any issues with the above request I would like to be given the opportunity to alter the request if possible and request that you assist me in the matter. Please contact me if this is the case, rather than just issue a refusal."

8. He then refined his request slightly on 11 February 2019:

"Additional thought, I would expect that perhaps requests would be made as a "batch or collection". Where requests for many details are made as part of a single transaction. Concept being many V888 forms received in a single envelope and details returned in a single envelope as a "batch".

"Is there any concept of a "batch id" whereby the authority would've made requests for many details under the same "batch id"?

"If so can the batch id please be included as an additional column to the report."

9. The DVLA responded on 5 March 2018. It refused the request citing section 12 of the FOIA (Cost of Compliance Exceeds Appropriate Limit).

10. The complainant requested an internal review on 5 May 2018 but the DVLA had failed to provide one by the date of this notice.

Scope of the case

11. The complainant contacted the Commissioner on 19 August 2018 to complain about the way his request for information had been handled.
12. As the DVLA had failed to inform the complainant of the outcome of its internal review by January 2019, the Commissioner decided that it would be unfair on the complainant to expect him to wait any longer before his complaint could be investigated. The Commissioner therefore exercised her discretion and carried out her investigation without waiting for the outcome of that internal review. She will address the issue of the delayed internal review under the "Other Matters" section of this Notice.
13. The scope of the Commissioner's investigation has therefore been to determine whether the DVLA is entitled to rely on section 12 to refuse the request and, if it is, whether it provided adequate advice & assistance to help him make a narrower request.

Reasons for decision

Section 12 – Cost of Compliance Exceeds Appropriate Limit

14. Section 1(1) 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, and*
- (b) if that is the case, to have that information communicated to him.*

15. Section 12 of the FOIA states that:

- (1) 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.*
- (2) 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.

16. The "Appropriate Limit" is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations") and is set at £600 for a public authority such as the DVLA (which is part of a central government department). The Regulations also state that staff time should be notionally charged at a flat rate of £25 per hour, giving an effective time limit of 24 hours.
17. When estimating the cost of complying with a request, a public authority is entitled to take account of time or cost spent 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.
18. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence"¹. The task for the Commissioner in a section 12 matter is to decide whether the public authority made a reasonable estimate of the cost of the request.
19. In response to the Commissioner's questions, the DVLA explained that the information which it did hold was not held in the format that the complainant had suggested. It explained that requests for registered keeper data could be submitted by a local authority in three ways: via its online Web Enabled Enquiry ("WEE") service, its more general Keeper at Date of Event ("KADOE") system or via a manual/paper request.
20. Whilst the DVLA accepted it could provide some information regarding requests which had been submitted via WEE and KADOE (although it

¹ <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

noted that it did not hold all the information that the complainant had asked for in respect of WEE requests), it argued that providing the data from the manually-submitted requests could not be achieved within the cost limit and therefore it could not comply with the entirety of the request within the cost limit.

21. The DVLA explained that the Reason for Enquiry and Date of Response for such requests would only be contained on the electronically scanned version of the original paper request.

22. When it came to extracting this information, the DVLA went on:

"To retrieve and extract this information would require DVLA to enter each vehicle record (using the VRM) before then locating a copy of the manual request within the record. Once located, the DVLA clerk would have to manually note the date of response from the form and read and note the reason for the request. The retrieval and extraction of these two pieces of information would require judgement on the part of the clerk and cannot be retrieved and extracted by automated processes.

"DVLA knows of 278 manual requests being made within scope of the request and reasonably estimates that it would take on average over 5 minutes to enter each record to get the information, thereby exceeding the cost limit (278 x 5.5 minutes = 1,529 minutes or 25.4 hours x £25ppph = £637). Depending on the size of the vehicle record and the fact that more than one enquiry could have been made against the same VRM, some searches would take longer than others. This would be more so if it were necessary to request a hard copy of the manual request if an on screen copy were not available. Furthermore, the older a vehicle record is, the higher the likelihood that more information would need to be scrolled through to get to the information requested; a vehicle could have been licensed and/or changed hands many times thereby leaving a longer document trail to be searched than with a brand new vehicle that had only been registered and licensed once."

23. The Commissioner considers that five minutes per record is a reasonable central estimate for the time taken to locate and extract all the information within the scope of the request from the manual records which the DVLA holds. In respect of relatively new vehicles, the records could be searched and the data extracted in under five minutes, but for older vehicles, more information would have to be searched in order to identify and extract the precise data within the scope of the request. In the Commissioner's view, the time taken to search such records would exceed five minutes and therefore she considers that five minutes is a

reasonable central estimate of the average time taken per record. The Commissioner is also not aware of any evidence of there being a less time consuming method of complying with the request.

24. Furthermore, the Commissioner also notes that this estimate does not include any allowance for the time spent extracting data for the records which are held electronically (the DVLA has estimated that there are in excess of 100,000 records within scope).
25. The Commissioner therefore concludes that the DVLA estimated reasonably that the request could not be answered within the cost limit and the DVLA is thus entitled to rely on section 12 to refuse it.

Section 16 - Advice & Assistance

26. Section 16 of the FOIA states 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.

27. The FOI Code of Practice (issued under section 45 of the FOIA) states that:

"Where it is estimated the cost of answering a request would exceed the "cost limit" beyond which the public authority is not required to answer a request (and the authority is not prepared to answer it), public authorities should provide applicants with advice and assistance to help them reframe or refocus their request with a view to bringing it within the costs limit."

28. The DVLA's response to the request did not include any information which, in the Commissioner's view, would have assisted the complainant in making a fresh request which fell within the cost limit.
29. The DVLA's submission to the Commissioner contained a much more detailed description of the data that it did hold and the format in which that data was held. She considers that that information alone would be likely to help the complainant reformulate a narrower request.

30. The Commissioner therefore finds that the DVLA did not provide adequate advice & assistance and it therefore breached section 16 of the FOIA.

Other matters

31. Whilst there is no statutory time limit within the FOIA for completing an internal review, the Commissioner considers that 20 working days is a reasonable deadline for all but the most complex cases. The DVLA explained that it had drafted its internal review response but, for reasons it was unable to explain, that response was never sent. The Commissioner considers this to be poor practice.

Right of appeal

32. 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

33. 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.
34. 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

Ben Tomes
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