

Freedom of Information Act 2000 (FOIA) Decision notice

Date: **16 May 2022**
Public Authority: **Driver & Vehicle Licensing Agency (An executive agency of the Department for Transport)**
Address: **Longview Road
Morriston
Swansea
SA6 7JL**

Decision (including any steps ordered)

1. The complainant has requested owner information on five vehicles.
2. The Driver & Vehicle Licensing Agency (DVLA) refused to provide the requested information originally stating that the request did not meet its 'reasonable cause' criteria.
3. It later confirmed that the information was withheld citing the exemption under section 40(2) (third party personal data) and 41(1) (information provided to public authority in confidence) of the FOIA, as its basis for doing so.
4. The Commissioner's decision is that DVLA has correctly applied section 40(2) of FOIA to the withheld information.
5. The Commissioner does not require any steps to be taken as a result of this decision notice.

Request and response

6. On 11 November 2020, the complainant wrote to DVLA and requested information in the following terms:

*"I am requesting owner information on the following vehicles:
(Complainant listed five vehicle registration numbers).*

These vehicles are persistently parked at my boundary wall. The wall is legally my home wall that is shared with the council. The council's parking permitted layout does not allow parking at the boundary,

however the council has marked bays at the boundary. As a result, I have a dozen vehicles parked next to my home and this is an incredible nuisance. I have made a complaint that is being investigated by the Ombudsman and I would like to find out if these vans or one car are connected with the council- staff, contractors, sub-contractor employees. Any information you have would be appreciated. I apologise that I don't know the models of these vehicles-I'm not good at identifying them."

7. On 31 December 2020, DVLA asked the complainant to provide clarification of the request which they did on 12 January 2021. DVLA subsequently dealt with the request as 'normal course of business'.
8. DVLA originally responded on 15 April 2021 from its Vehicle Enquiry Service. It explained that when requests for keeper details are received, the reason for the request and how the information will be used must be considered. DVLA stated that the request could not be processed because it did not meet its strict criteria for reasonable cause, and advised the complainant to contact the council about the problems they were having with vehicles parked closely to their boundary wall.
9. The complainant wrote to DVLA on 27 May 2021 asking: "does that constitute an internal review?". DVLA responded on 11 June 2021 and stated that it had followed all the correct steps and procedures and its position remained unchanged.
10. Following the Commissioner's intervention DVLA provided a formal FOI response to the complainant on 13 April 2022. It confirmed that the information requested was held by the DVLA. However it considered the information to be exempt from disclosure under section 40(2) and section 41(1) of FOIA.

Scope of the case

11. The complainant contacted the Commissioner on 10 September 2021 to complain about the way their request for information had been handled.
12. On 23 February 2022, the Commissioner wrote to the complainant advising that, although DVLA did not appear to have dealt with their request formally under FOIA, it was likely the information would be exempt from disclosure under s40(2) FOIA. He therefore and invited the complainant to withdraw their case.
13. The Commissioner explained that he could write to DVLA to clarify if the request had been dealt with under FOIA and if not, it should do so.

14. The complainant declined to withdraw their case but agreed to have the request formally considered under FOIA.
15. On 13 April 2022 DVLA provided its decision following a formal consideration of the request under FOIA. It confirmed the information was held but refused to provide it citing section 40(2) and section 41(1) as its basis for doing so.
16. The Commissioner considers the scope of his investigation to be to establish whether the public authority is entitled to withhold the requested information under section 40(2) or section 41(1) of the FOIA.

Reasons for decision

Section 40 personal information

17. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
18. In this case the relevant condition is contained in section 40(3A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
19. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of the FOIA cannot apply.
20. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

21. Section 3(2) of the DPA defines personal data as:
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¹ As amended by Schedule 19 Paragraph 58(3) DPA

"any information relating to an identified or identifiable living individual".

22. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
23. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
24. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
25. In this case, the complainant has requested the details of the registered keepers of specific vehicle registration numbers.
26. The Commissioner is satisfied that the information relates to the registered keepers of the vehicle registration. He is also satisfied that the registered keeper information is information that both relates to and identifies the owners of the vehicles. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
27. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
28. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

29. Article 5(1)(a) of the GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

30. In the case of an FOIA 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 lawful, fair and transparent.
31. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

32. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that "processing shall be lawful only if and to the extent

that at least one of the " lawful bases for processing listed in the Article applies.

33. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

*"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"*².

34. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:-

- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
- iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

35. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

36. In considering any legitimate interest(s) in the disclosure of the requested information under the FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.

² Article 6(1) goes on to state that:-

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

37. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
38. The complainant has a personal interest in the requested information. They have referred to experiencing health problems as a result of the vehicles parked close to the boundary wall.

Is disclosure necessary?

39. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
40. The Commissioner is satisfied in this case that there are no less intrusive means of achieving the legitimate aims identified. The complainant was advised by the DVLA to raise the problems they were experiencing with their local authority.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

41. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
42. In considering this balancing test, the Commissioner has taken into account the following factors:
 - the potential harm or distress that disclosure may cause;
 - whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
43. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not

be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.

44. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
45. The requested information concerns a personal interest of the complainant and it has no wider public interest. On the complaint form to the ICO the complainant stated:

"...I wanted to know the registered drivers of these vehicles as they are vehicles that have routinely parked against my boundary wall at my home. The DVLA were incredibly slow to respond and have refused to provide the information stating that as the cars are parked on council property, I must contact the council. However, I have dealt with the council many times and the situation and parking became more aggressive hence my request for information. Plus, the boundary they are parked against is mine and this should entitle me to the information. I would like to know who the registered owners were in November 2020..."

46. Regarding the registered keepers' interest, the Commissioner is satisfied that they would not expect that personal details given to DVLA, by way of a lawful requirement, would be released to the world at large as a result of a request under FOIA. While disclosure can be expected in controlled situations such as to law enforcement bodies and the courts, it is not reasonable to expect such information to be disclosed to the public.
47. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the registered keepers' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.
48. Given the above conclusion that disclosure would be unlawful, the Commissioner does not need to go on to separately consider whether disclosure would be fair or transparent.
49. Additionally, given the conclusion that section 40(2) of the FOIA applies to the withheld information, the Commissioner does not need to go on to consider section 41(1) of the FOIA.
50. The Commissioner has therefore decided that the DVLA was entitled to withhold the information under section 40(2) by way of section 40(3A)(a).

Other matters

51. Generally the Commissioner would not encourage a public authority to send a request down the 'normal course of business'. However, in this case he acknowledges that DVLA has a specific well established process for dealing with requests for owner details due to the high number of such requests relating to PCNs and law enforcement matters.
52. Nevertheless, it was clear that the complainant had expected the request to be dealt with formally under FOIA when they wrote to DVLA on 27 May 2021 requesting confirmation that an internal review had been carried out. At that stage DVLA should have taken steps to respond to the request under FOIA. Failing to recognise this has led to an extended delay in bringing this matter to a conclusion.

Right of appeal

53. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

54. 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.
55. 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

Phillip Angell
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