

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2022

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

Address: Longview Road
Morrison
Swansea
SA6 7JL

Decision (including any steps ordered)

1. The complainant has submitted an information request to the Driver and Vehicle Licensing Agency ("the DVLA") for datasets relating to the number of driving licences held at each postcode.
2. The Commissioner's decision is that section 40(2) (personal information) of FOIA is engaged in regards to some of the information requested in question two of the request. However where the numbers are five and above, the DVLA has failed to demonstrate that the exemption is engaged.
3. The Commissioner requires the DVLA to take the following steps to ensure compliance with the legislation:
 - Disclose the requested information to the complainant, where the number of license holders are five and above.
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 contempt of court.

Nomenclature

5. The DVLA is not listed as a separate public authority in Schedule 1 of the FOIA because it is an Executive Agency of the Department for Transport. However, 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 – although the public authority is, ultimately, the Department for Transport.

Request and response

6. On 7 July 2021, the complainant wrote to the DVLA and requested information in the following terms:

"I am sending this request under the Freedom of Information Act.

I am aware that you release numbers of driving licences broken down by postcode district and (separately) by age

(available at <https://data.gov.uk/dataset/d0be1ed2-9907-4ec4-b552-c048f6aec16a/gb-driving-licence-data>).

Please can you send me the following datasets covering Great Britain which would be more detailed in terms of postcode levels:

1) A dataset which breaks down the number of (a) full and (b) provisional driving licenses by postcode sector, limited to licence holders who are aged at least 18.

2) A dataset which breaks down the number of (a) full and (b) provisional driving licenses by full postcode, limited to licence holders who are aged at least 18.

Please supply these datasets as they stood at the most recent possible point in time."

7. DVLA responded on 26 July 2021 and provided the complainant with a spreadsheet, showing the number of licence holders broken down by age range, driving entitlement and postcode area. The DVLA also stated that where the number of licence holders is less than five, this information is being withheld under section 40(2) of the FOIA.

8. On the same day, the complainant requested an internal review. After intervention by the Commissioner, the DVLA provided the complainant with its response to the internal review request on 24 June 2022 in which it upheld its response.

Scope of the case

9. The complainant contacted the Commissioner on 22 November 2021 to complain about the way their request for information had been handled.
10. In line with his usual practice, the Commissioner contacted the DVLA for an explanation for its application of section 40(2) on 9 June 2022.
11. On 23 June 2022, the DVLA stated that it was hoping to disclose more information as part of its internal review response.
12. On 9 August 2022, the complainant informed the Commissioner that they were happy with the response received regarding question one but that they wished the Commissioner to continue his investigation regarding question two.
13. On 8 September 2022, the DVLA provided the complainant with a revised response stating that section 40(2) 'may be engaged' but that section 12(1) is engaged.
14. In a response to a request for its submissions regarding section 12, the DVLA informed the Commissioner that it may be possible to provide the information, within the cost limit, but that section 40(2) is still engaged.
15. In light of the above, the Commissioner has considered the Council's handling of the complainant's request, in particular its application of section 40(2) of FOIA, with regards to question two.

Reasons for decision

Section 40-personal information

16. Section 40(2) of FOIA provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
17. Section 3(2) of the DPA defines personal data as:

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

18. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
19. The information being withheld in this case are the full postcodes and the number of licence holders at each one. The Commissioner has seen the withheld information and is satisfied that a portion of the dataset does contains postcodes with very low figures.
20. On the face of it, this may not appear to constitute personal data. However, where there are small numbers, for some postcodes, the Commissioner is satisfied that a data subject could be indirectly identified, given that a single postcode can sometimes relate to a single property.
21. The Commissioner is therefore satisfied that the where the information requested contains small numbers, then the information would fall within the definition of 'personal data' in section 3(2) of the DPA for an individual could be identified indirectly through the location data.
22. However, having considered the withheld information where the number of license holders is five or above, the Commissioner does not see how those individuals could be identified from the information requested and notes that the DVLA did not provide detailed reasoning to corroborate its argument on this point.
23. As regards the withheld information where the license holders is less than five, the next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focused here on principle (a) which states:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
24. In the case of a 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.
25. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider if there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.
26. The Commissioner considers that the complainant is pursuing a legitimate interest and that disclosure of the requested information is necessary to meet the legitimate interest.

27. The Commissioner notes the complainant's arguments that, in responding to part two of the request, the only information that would be confirmed is that an individual holds a driving license and that they could only be identified by someone who already knows that they are drivers. However, the Commissioner is mindful that an individual may know the general location of a third party that may not wish to be located, for example a vulnerable person, and that the release of this information, plus any future requests, could add to the mosaic of information already available.
28. Furthermore, in decision notice IC-168211-N3K0¹, the Commissioner found that the public authority was correct to rely on section 40(2) to withhold the information in relation to small numbers.
29. It is also necessary to balance the legitimate interests in disclosure against the data subjects interests or fundamental rights and freedoms. As the requested information relates to location data, disclosure of this information may allow the data subjects to be identified.
30. Furthermore, the Commissioner has not seen any evidence to suggest that the individuals involved would have a reasonable expectation that their personal data would be disclosed in response to an information request.

The Commissioner's Conclusion

31. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subject's fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information, where the number of license holders are less than five, would not be lawful.
32. The Commissioner finds that section 40(2) of FOIA is engaged in respect of the withheld information where the numbers are less than five.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022810/ic-168211-n3k0.pdf>

Other matters

33. There is no obligation under FOIA for a public authority to provide an internal review process. However, it is good practice to do so and, where an authority chooses to offer one, the section 45 code of practice sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
34. In this case the complainant requested an internal review on 26 July 2021 and the DVLA provided the outcome of its review, only after intervention by the Commissioner, on 24 June 2022. The Commissioner considers this to be poor practice.
35. Furthermore, as the DVLA failed to respond to the Commissioner's enquiries in a timely manner, it was necessary for him to issue an Information Notice in this case. The Information Notice will be published on the Commissioner's website.
36. Finally, whilst a public authority is entitled to change the exemptions it is relying on, the Commissioner would encourage the DVLA to be clear at the beginning of the process, which exemptions it is relying on and the reasons why.

Right of appeal

37. 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@justice.gov.uk

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

38. 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.
39. 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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