Case Reference: EA/2021/0383
NCN: [2022] UKFTT 00257 (GRC)

First-tier Tribunal
General Regulatory Chamber
Information Rights

Heard: on the papers
Heard on: 13 July 2022
Decision given on: 18 July 2022

Before

TRIBUNAL JUDGE SOPHIE BUCKLEY

TRIBUNAL MEMBER DAVE SIVERS

TRIBUNAL MEMBER RAZ EDWARDS

Between

STEPHEN JOHN DUFF

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Decision: The appeal is Dismissed.

REASONS

Introduction

1. This is an appeal against the Commissioner's decision notice IC-107039-F3C2 of 26 November 2021 which held that the Driver and Vehicle Licensing Authority ('the DVLA') were entitled to rely on s 14(1) of the Freedom of Information Act 2000 (FOIA).

2. The Commissioner did not require the public authority to take any steps.

Background to the appeal

3. Although the decision notice and this decision refer to the DVLA as if it were the public authority, the DVLA is an executive agency of the Department for Transport. The Department for Transport is the relevant public authority and legal entity for the purposes of FOIA and references to the DVLA and the Department for Transport in this decision should be read subject to that understanding.

4. Mr. Duff brought a judicial review in 2015.[1] Whilst we note that Mr. Duff submits that the issues in this appeal are different to those in the judicial review (and our conclusions on this submission are set out below), much of the factual background is relevant to our decision. The judgment of the High Court in that judicial review has not been appealed. It was made with the benefit of full argument and evidence from a number of relevant parties. In the circumstances it is a helpful place to find the factual nexus for this appeal, and much of the following comes from that decision.

5. The Secretary of State for Transport has a power conferred on him by Regulation 27 of the Road Vehicles (Registration and Licensing) Regulations 2002/2742. Regulation 27(1)(e) created a power to disclose information which may lead to the identification of the registered keeper of a registered motor vehicle on the register maintained by the Driver and Vehicle Licensing Agency (DVLA) under the provisions of the Vehicle Excise and Registration Act 1994.

6. The Regulation lists a number of persons to whom such disclosures may be made and Regulation 27(1)(e) allows disclosures to other persons, not identified above, to whom the data may be disclosed.

> **27.— Disclosure of registration and licensing particulars**
> (1) The Secretary of State may make any particulars contained in the register available for use—
> (a)
> (i) by a local authority for any purpose connected with the investigation of an offence,
> (ii) by a local authority in Scotland, for any purpose connected with the investigation of a decriminalised parking contravention, or
> (iii) by a local authority in England and Wales, for any purpose connected with its activities as an enforcement authority within the meaning of Part

[1] [2015] EWHC 1605 (Admin)

6 of the Traffic Management Act 2004 ;
(aa) by the Department for Regional Development for any purpose connected with—
(i) the investigation of a contravention to which Schedule 1 to the Traffic Management (Northern Ireland) Order 2005 (contraventions subject to penalty charges) applies; or
(ii) the exercise of the Department's powers under Article 18(1)(b) or 21(1)(b) of that Order (immobilisation or removal of vehicles);
(b) by a chief officer of police;
(c) by a member of the Police Service of Northern Ireland;
(d) by an officer of Customs and Excise;
(da) on or after 30th April 2010 or the date of coming into force of section 144A of the 1988 Act (whichever is later), by the Motor Insurers' Bureau (being the company of that name incorporated on 14th June 1946 under the Companies Act 1929) for any purpose connected with the exercise of any of the functions of the Secretary of State relating to the enforcement of an offence under section 144A of the 1988 Act; or
(e) 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.

(2) Particulars may be provided to such a person as is mentioned in paragraph (1)(e) on payment of such fee, if any, of such amount as appears to the Secretary of State reasonable in the circumstances of the case.

7. Mr. Duff is a Certificated Bailiff and runs a business called "ProServe" which made a large number of requests for the disclosure of particulars from the register prior to 4th June 2014, which were granted. By letter of that date (the decision letter) the Secretary of State (through the DVLA) indicated that from 2nd July 2014 requests from ProServe and its clients would be refused unless ProServe complied with a condition that it should become a member of an Accredited Trade Association (ATA).

8. This condition arose because the Secretary of State decided to apply Mr. Duff a policy to require car park management companies to join an ATA. The decision letter is relevant to some extent to the specific issues arising in this appeal to some extent. It includes the following.

> Your letter makes submissions about the nature of ProServe's business and of its clients. As before, I would not want to comment on anything that may still be discussed in a court. However, we would have to disagree that ProServe's activities are markedly different to those carried out by operators whom we require to obtain membership of an Accredited Trade Association (ATA) in order to request data.
>
> Although you have made the point that your primary purpose is to take action to ensure that your clients are protected against unlawful interference with their land, the nature of this interference is parking-related trespass, which is regarded as a relevant obligation in Schedule 4 of the Protection of Freedoms Act. The measure adopted by ProServe to enforce this where the use of the DVLA data is involved is the same as those of traditional parking operators, i.e. the imposition and pursuit of charges.
>
> The introduction of the ATA model and its subsequent extension to all parking companies came about in order to put in place parameters for operators without formal regulation or governance. You have set out your position with regard to matters such as signage, ticketing, charge levels and appeals, but these are matters which successive ministers have regarded as being for an ATA to monitor and ensure compliance with, so as to provide the

necessary assurances to the DVLA that our data is being used appropriately. I should also point out that the minister's requirement is that motorists are offered an independent appeals service if the appeal is rejected by the company that issued the charge.

I understand the points you have made about the services thatbyou provide to your clients. However, the Agency is required to ensure that its disclosure of vehicle keeper data under the reasonable cause provisions is fair and lawful, and membership of an appropriate A for this type of operation is a key factor in informing the disclosure of data under these provisions.
I have noted your conclusion that you believe membership of an ATA to be inappropriate I note also your intention to consider legal action, and to advise your clients to seek the data direct. From DVLA's perspective, the position is not affected, and the requirement on you will also apply to your clients.

Therefore unless you confirm that ProServe will make arrangements to obtain membership of an appropriate ATA by 2 July 2014, we will not provide further data for these purposes until ATA membership is obtained and confirmed.

9. Sections 54-56 of the Protection of Freedoms Act 2012 (POFA) and Schedule 4 to that Act prohibit wheel clamping and allow the recovery of parking charges from registered keepers in certain circumstances. The High Court concluded in the judicial review in 2015 that the writer of the decision letter was correct to say that payment of damages for trespass where a vehicle has been left on land and there is no contract was a "relevant obligation" to pay what are described as "parking charges" in Schedule 4.

10. The Schedule defines a parking charge as follows:

> "*parking charge*" —
> (a) in the case of a relevant obligation arising under the terms of a relevant contract, means a sum in the nature of a fee or charge, and
> (b) in the case of a relevant obligation arising as a result of a trespass or other tort, means a sum in the nature of damages, however the sum in question is described;

Relevant obligation is defined as follows:

> "*relevant obligation*" means—
> (a) an obligation arising under the terms of a relevant contract; or
> (b) an obligation arising, in any circumstances where there is no relevant contract, as a result of a trespass or other tort committed by parking the vehicle on the relevant land;

11. The High Court stated that the purposes of the reference to the 2021 act in the decision letter appears to be to make the point that, 'however the activity of ProServe is defined in law, it engages the provisions of the relevant legislation in the same way as other parking management methods and thus to support the decision to deal with ProServe in the same way as them'.

12. In the judicial review, Mr. Duff submitted that the Codes of Practice currently in use by the ATAs are not suitable in every respect to the regulation of an operator which seeks to prevent all parking on the relevant land, rather than to

operate a car park on the land. The High Court concluded that, to the extent that this was right, it did not follow that the requirement to join the ATA was irrational.

13. The High Court stated, at para 34:

> In so far as the claimant's business model may require slightly different rules in the Code of Practice, the ATA will therefore be required to adopt them. This does not mean that the claimant is entitled to re-write the Code as he wishes: its purpose remains the regulation of his business so that it does not misuse its access to the register in any way. The BPA and IPC have both confirmed that membership applications from companies which seek to prevent trespass and it follows that if this requires any changes to the Codes of Practice then they must make them.

14. Subsequently the ATAs have refused Mr. Duff's requests to make changes to its Codes of Practice.

15. Mr. Duff's position since the judicial review is as follows. In order to obtain vehicle keeper details he needs to join an ATA. He says that he is happy to do this provided that it does not conflict legally with his business model, which deals with trespassing enforcement by tort, not contractual parking issues.

16. During the judicial review the DVLA stated that the ATAs dealt with trespassing and tort enforcement matters. However, Mr. Duff maintains that all of the ATAs that he is aware of and has considered joining have Codes of Practice which fix charges in connection with each offending vehicle. Mr. Duff asserts that this is not compatible with trespass because it is prohibited to have a prearranged charge for trespass. Also as a third party, in tort, Mr. Duff is not entitled to issue demands or issue claims through the courts himself. The landowner has to bring the claim.

17. The DVLA maintains, broadly, that incidents of vehicular trespass can be dealt with lawfully under the usual arrangements for management of parking on private land, whether or not the land had been offered for parking. They assert that parliament has legislated for keeper liability for both invited parking and parking related trespass in POFA. They note that schedule 4 ss2(1) of POFA defines 'parking charges' as, inter alia, a sum in the nature of damages, where the relevant obligation arises as a result of trespass. They note that 'parking charges', as defined in the Codes of Practice, are merely notices of liability arising as a result of trespass, some other tort or under the terms of a contract.

18. Mr. Duff strongly disagrees with the DVLA's interpretation of the law. Mr. Duff asserts that Mr. Clarke of BPA (an ATA) has 'confirmed that his understanding of the POFA is correct' and that POFA only supplies a right to recover parking charges from vehicle keepers and does not create a framework in law for their members to recover those charges as trespass damages.

Requests, Decision Notice, and appeal

The Requests

19. The appeal relates to the following two requests, both made on 20 January 2021:

> **Request A:**
>
> Under the provisions of the Freedom of Information ACT 2000. Please can you forward me responses for the following requests:-
> a. Does DVLA release personal information to the British Parking Associations member Secure a Space?
> b. Has DVLA been forwarded written evidence Secure A Space are willing to erect warning signs on their sites to deceive the public contractual parking charges are in force, when they are fully aware trespasses are being committed on demises they offer services for.
> c. Has DVLA received evidence the British Parking Association has seen the written confirmation Secure A Space are willing to erect warning signs on sites to deceive the public contractual parking charges are in force on their sites where trespasses are being committed.
> d. Has DVLA carried out an investigation with the British Parking Association regarding Secure a Spaces actions?
> e. Has any sanctions been made against Secure a Spaces access to the DVLA. register.
>
> **Request B:**
> (a) Does the DVLA release personal information to members of the members Accredited Parking Associations, for the purpose of issuing Parking Charges for Trespass.
> (b) How many Members of the Accredited Parking Associations request personal information from DVLA to pursue Parking Charges for Trespass?
> (c) Is DVLA assured members of the Accredited Parking Associations can lawfully issue and recover Parking Charges for Trespass through the Courts?
> (d) Is DVLA aware only a person or entity with possession of land can issue proceedings in court for the recovery of trespass damages to land?
> (e) Has the DVLA received any advice which determines Parking Association Members can issue charges for Trespass?
> (f) Has DVLA received any information which determines Parking Charges cannot be issued for trespass?
> (g) Has DVLA received any transcribed Court judgement decisions which highlight Parking Association Members cannot issue charges for trespass?
> (h) Has DVLA at any point been asked to request the Parking Associations to confirm how parking charges can be lawfully issued for trespass by their members?
> (i) Has DVLA investigated the claims laid down in the Parking Associations Codes of Practice, that their members are lawfully entitled to issue and recover parking charges for Trespass?

The DVLA's reply

20. The DVLA responded on 3 February 2021. They refused to comply with the requests on the basis of s 14(1) and 14(2). Mr. Duff requested an internal review but the DVLA did not carry one out.

21. Mr. Duff referred the matter to the Commissioner on 20 May 2021.

22. During the Commissioner's investigation the DVLA withdrew its reliance on s 14(2).

The decision notice

23. In a decision notice dated 26 November 2021 the Commissioner decided that the DVLA was entitled to rely on s 14 FOIA.

24. The Commissioner was of the view that the requests, when set in the context of the long running dispute, were vexatious. Mr Duff started out with legitimate concerns about both the principle of the DVLA's policy and its practical implications. However, the latest requests do not appear to be seeking information in recorded form so much as "proving" that Mr Duff has been correct all along. The public interest in this matter has dwindled and it is now largely a private grievance of little interest to anyone else.

25. The Commissioner noted that the requests were submitted after a relatively quiet period of four years. However, the Commissioner stated that she could not ignore the fact that both the current requests and the correspondence from 2013 to 2015 have a common thread. Namely that Mr Duff considers the requirements of ATAs to be incompatible with his business model and it is therefore unreasonable (in his view) for the DVLA to require him to join one – unless the existing ATAs make substantial alterations to allow him to join.

26. It is Mr Duff's right to challenge the DVLA if he believes that it has acted unlawfully – and he did so in 2015. Mr Duff also has the right to challenge the individual ATAs if he believes that membership has unreasonably been denied to him. However, on either account, the route of challenge does not flow through the FOIA.

27. Furthermore, the Commissioner noted that the High Court agreed that the DVLA's position was both lawful and rational. The High Court judgement also noted that there might need to be some adaptation of the ATA's rules in order to allow Mr Duff to join – but noted that that did not amount to an entitlement for Mr Duff to rewrite their rules to suit himself.

28. The Commissioner observed that there appeared to be a standoff with Mr Duff refusing to joining an ATA until they have made sufficient changes to their Codes of Practice and appeals procedures to accommodate his business model. The ATAs are equally adamant that they will not admit him as a member until

he has made sufficient changes to his model to meet their Codes of Practice and appeals procedures. That is essentially a private dispute about membership.

29. The DVLA is not a part of those proceedings – except inasmuch as they will not supply registered keeper data to Mr Duff until he joins an ATA. However, Mr Duff appears to be targeting the DVLA in a bid to drag it into his dispute with the ATAs and using FOIA as a tool to do so. The Commissioner concluded that this was an abuse of the FOIA process.

30. The Commissioner concluded that the evidence provided by the DVLA demonstrates that responding to these requests is unlikely to resolve matters and will likely lead to yet more correspondence. The amount of correspondence Mr Duff has submitted since the requests were made would indicate that he will not be satisfied until either the DVLA or the ATAs have accepted his point of view.

31. The Commissioner was not persuaded that some elements of the requests were genuinely seeking recorded information – rather, they appeared to be asking the DVLA to offer its opinion.

32. The Commissioner was therefore satisfied that the requests were vexatious and that the DVLA was entitled to rely on section 14(1) FOIA to refuse them.

Notice of appeal

33. The grounds of appeal are wide-ranging and detailed. The tribunal's understanding of the grounds, taking into account Mr. Duff's reply, is that Mr. Duff argues, in essence:
    1. That the Commissioner has misunderstood the factual and legal background to the request.
    2. That there is a legitimate purpose behind the requests and in the light of that the Commissioner was wrong to conclude that the request was vexatious.

The Commissioner's response

34. It is not the Commissioner's or the tribunal's role to review the DVLA's policies. The issue of whether or not the DVLA's policy is adequate or accurate in law is not a matter over which the tribunal has jurisdiction. Further the matter has been subject to judicial review which found the policy to be lawful and rational.

35. The Commissioner submits that Mr Duff's grounds do not identify any error of law in the decision notice, nor do they identify any incorrect exercise of the Commissioner's discretion. Indeed, the Commissioner is unable to identify any specific point advanced by Mr Duff which goes to substantively challenge the conclusion reached in that decision notice.

36. Mr. Duff's arguments were before the Commissioner at the time he made his original decision. None of these arguments are sufficient to alter his findings. The decision notice correctly addresses the issues which were present at the time of the original request. In the Commissioner's submission, Mr Duff has advanced no argument of substance which challenges his finding: accordingly, the appeal should be dismissed.

Mr. Duff's reply

37. Mr. Duff has submitted a detailed reply. He highlights the paragraphs in the grounds of appeal in which he sets out the way in which the Commissioner should have exercised his discretion differently. He also reiterates or illustrates many of his points in support of his appeal. The tribunal has taken account of all the matters set out in the reply where relevant.

Issues

38. The issue for the tribunal to determine is whether or not the requests are vexatious within s 14 FOIA.

Legal framework

S 14(1) Vexatious Request

39. Guidance on applying s 14 is given in the decisions of the Upper Tribunal and the Court of Appeal in **Dransfield** ([2012] UKUT 440 (AAC) and [2015] EWCA Civ 454). The tribunal has adapted the following summary of the principles in **Dransfield** from the judgment of the Upper Tribunal in **CP v Information Commissioner** [2016] UKUT 427 (AAC):

40. The Upper Tribunal held that the purpose of section 14 must be to protect the resources of the public authority from being squandered on disproportionate use of FOIA (para 10). That formulation was approved by the Court of Appeal subject to the qualification that this was an aim which could only be realised if 'the high standard set by vexatiousness is satisfied' (para 72 of the CA judgment).

41. The test under section 14 is whether the request is vexatious not whether the requester is vexatious (para 19). The term 'vexatious' in section 14 should carry its ordinary, natural meaning within the particular statutory context of FOIA (para 24). As a starting point, a request which is annoying or irritating to the recipient may be vexatious but that is not a rule.

42. Annoying or irritating requests are not necessarily vexatious given that one of the main purposes of FOIA is to provide citizens with a qualified right of access to official documentation and thereby a means of holding public authorities to account (para 25). The Commissioner's guidance that the key question is whether the request is likely to cause distress, disruption, or irritation without

any proper or justified cause was a useful starting point as long as the emphasis was on the issue of justification (or not). An important part of the balancing exercise may involve consideration of whether or not there is an adequate or proper justification for the request (para 26).

43. Four broad issues or themes were identified by the Upper Tribunal as of relevance when deciding whether a request is vexatious. These were: (a) the burden (on the public authority and its staff); (b) the motive (of the requester); (c) the value or serious purpose (of the request); and (d) any harassment or distress (of and to staff). These considerations are not exhaustive and are not intended to create a formulaic check-list.

44. Guidance about the motive of the requester, the value or purpose of the request and harassment of or distress to staff is set out in paragraphs 34-39 of the Upper Tribunal's decision.

45. As to burden, the context and history of the particular request, in terms of the previous course of dealings between the individual requester and the public authority in question, must be considered in assessing whether the request is properly to be described as vexatious. In particular, the number, breadth, pattern, and duration of previous requests may be a telling factor [para 29]. Thus, the greater the number of previous FOIA requests that the individual has made to the public authority concerned, the more likely it may be that a further request may properly be found to be vexatious. A requester who consistently submits multiple FOIA requests or associated correspondence within days of each other or who relentlessly bombards the public authority with email traffic is more likely to be found to have made a vexatious request [para 32].

46. Ultimately the question was whether a request was a manifestly unjustified, inappropriate, or improper use of FOIA. Answering that question required a broad, holistic approach which emphasised the attributes of manifest unreasonableness, irresponsibility and, especially where there was a previous course of dealings, the lack of proportionality that typically characterises vexatious requests [paras 43 and 45].

47. In the Court of Appeal in **Dransfield** Arden LJ gave some additional guidance in paragraph 68:

> In my judgment the Upper Tribunal was right not to attempt to provide any comprehensive or exhaustive definition. It would be better to allow the meaning of the phrase to be winnowed out in cases that arise. However, for my own part, in the context of FOIA, I consider that the emphasis should be on an objective standard and that the starting point is that vexatiousness primarily involves making a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester or to the public or any section of the public. Parliament has chosen a strong word which therefore means that the hurdle of satisfying it is a high one, and that is consistent with the constitutional nature of the right. The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious. If it happens that a relevant motive

> can be discerned with a sufficient degree of assurance, it may be evidence from which vexatiousness can be inferred. If a requester pursues his rights against an authority out of vengeance for some other decision of its, it may be said that his actions were improperly motivated but it may also be that his request was without any reasonable foundation. But this could not be said, however vengeful the requester, if the request was aimed at the disclosure of important information which ought to be made publicly available...

48. Nothing in the above paragraph is inconsistent with the Upper Tribunal's decision which similarly emphasised (a) the need to ensure a holistic approach was taken and (b) that the value of the request was an important but not the only factor.

49. The lack of a reasonable foundation to a request was only the starting point to an analysis which must consider all the relevant circumstances. Public interest cannot act as a 'trump card'. Rather, the public interest in the subject matter of a request is a consideration that itself needs to be balanced against the resource implications of the request, and any other relevant factors, in a holistic determination of whether a request is vexatious.

The role of the tribunal

50. The tribunal's remit is governed by s.58 FOIA. This requires the tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner's decision involved exercising discretion, whether he should have exercised it differently. The Tribunal may receive evidence that was not before the Commissioner, and may make different findings of fact from the Commissioner.

Evidence

51. We read and took account of an open bundle.

Discussion and conclusions

Section 14

52. Although the four broad issues or themes identified by the Upper Tribunal in **Dransfield** are not exhaustive and are not intended to create a formulaic check-list, they are a helpful tool to structure our discussion. In doing so, we have taken a holistic approach and we bear in mind that we are considering whether or not the request was vexatious in the sense of being a manifestly unjustified, inappropriate or improper use of FOIA.

Burden

53. Although the appeal relates only to these requests, when assessing the burden on the DVLA we must consider the context and history of the particular request, in terms of the previous course of dealings between the individual requester and

the public authority in question, in assessing whether the request is properly to be described as vexatious.

54. In the tribunal's view it is legitimate to take into account the whole prior course of dealings between Mr. Duff and the DVLA, including the judicial review and related correspondence because it all arises fundamentally out of the same underlying issue which has not been resolved to Mr. Duff's satisfaction.

55. In a letter to the ICO dated 29 October 2021 (p 181 of the bundle), Mr. Duff describes the background to and the purpose of his requests, which in our view illustrates clearly how the requests form part of the same course of dealings:

> I am trying to understand their criteria and processes to obtaining release of vehicle keeper details under Regulation 27 of the Road Vehicles (Registration and Licencing) Regulations 2002, so that I can amend my business model and comply lawfully with their requirements.
>
> To go back to the start my business involves assisting clients in avoiding trespass by third party vehicles on their land. I am not involved with car park management or enforcement of unauthorised parking. However in order to fully undertake my role I require access to vehicle keeper details kept by the DVLA so that the offending vehicle owners can be identified and claims brought my clients. All such claims are brought under tort, not contract law, by my clients, not ourselves.
>
> I have been instructed by the courts (after Case No CO/41402014) that in order to obtain vehicle keeper details I need to join an Accredited Parking association - despite my business not involving car parking. I'm happy to do this provided this does not conflict legally with my business model, which I repeat deals with trespassing enforcement by Tort not contractual parking issues. During this court action the DVLA advised the Parking Associations had been accredited and they dealt with Trespass and Tort enforcement matters.
>
> Despite this assurance all of the Accredited Parking Associations I'm aware of and have considered joining in corporate codes of practise which fix charges in connection with each offending vehicle. This works perfectly well for companies dealing with contractual car parking issues. It is not compatible in connection with trespass investigations being advanced under Tort law where it is prohibited to have a pre-arranged charge for dealing with such matters. Also I am entirely aware as a third party, in tort I am not entitled to issue demands or issue claim through the Courts. Therefore were I to join any of the Accredited Parking Associations I have contacted I will be forced to act illegally. Unless there are other organisations that I am aware of it appears that the DVLA do not consider this to be the position.
>
> The purpose of my requests is therefore to obtain from the DVLA confirmation that:-
>
> 1 they do indeed provide the Vehicle Keeper details they hold to Company's dealing with trespass enforcement (provided they are members of an Accredited Parking Association), and
>
> 2 how the DVLA consider membership of an Accredited Parking Association is compatible with trespass enforcement when their terms and conditions require their members to issue Parking pre agreed fixed parking charges (something which is prohibited in Tort) and

3 the steps that the DVLA took to satisfy itself that it was legal for Accredited Parking Association members to obtain vehicle keeper details for dealing with trespass not contractual parking issues

56. The burden on the DVLA of dealing with this course of correspondence is extremely significant. In Annex F to its letter of 16 November 2021 to the Commissioner (p 189), the DVLA summarises the correspondence in 2015 with Mr. Duff following the judicial review judgment.

57. As early as July 2015, the DVLA explained their interpretation of POFA (as summarised in the para 17 above) and Mr. Duff set out his position in response (as summarised in paras 16 and 18 above). There is a significant volume of correspondence between Mr. Duff and the DVLA in 2015 in which the DVLA either set out their position or refer to earlier correspondence setting out their position and to which Mr. Duff responds attempting to persuade the DVLA to accept his arguments. During that year Mr. Duff also made five FOIA requests, all related to the same underlying issue.

58. Between 2016-2020 there was a significant reduction in the volume of correspondence. In this period Mr. Duff made four complaints to the DVLA, via his MP and in direct approaches to the Data Protection Policy Team. The DVLA's position remained that 'incidents of vehicular trespass can lawfully be dealt with under the usual arrangement for the management of parking on private land, whether or not the land has been offered for parking' (p 231).

59. Mr. Duff recommenced his correspondence with the DVLA on this issue in 2021 but the majority of that correspondence is after the date of the requests in issue.

60. In assessing burden, we do take account of the fact that there was a significant reduction in the level of correspondence between 2016 and 2020. In our view, it is legitimate to take account of the correspondence in 2015 despite the intervening quieter period. The matters being raised in 2015 are fundamentally the same as those being raised in these requests.

61. We find that the correspondence follows a repeating pattern. Mr. Duff sets out his position, the DVLA sets out its position and in response Mr. Duff explains why they are wrong. Mr. Duff is not satisfied with the responses provided and this usually leads to further requests or correspondence.

62. The correspondence illustrates Mr. Duff's absolute conviction that his interpretation of the law is correct. He will not accept the DVLA's position. He is convinced that they are wrong. Similarly the DVLA are convinced that their interpretation of the legal position is correct. In our judgment, based on the previous pattern of correspondence, Mr. Duff is highly unlikely to be satisfied with anything other than a concession by the DVLA that he has been right all along. The DVLA are highly unlikely to provide this. Without this, the requests and correspondence are highly likely, in our view, to continue.

63. No doubt the issues raised by Mr. Duff are legitimate, and his arguments as to the interpretation of the law may be persuasive. The DVLA has to shoulder some burden in responding to arguments of this nature, even if the DVLA ultimately takes the view that it does not agree with the Mr. Duff's interpretation of the law. They took this view in 2015 and have communicated it clearly to Mr. Duff on multiple occasions.

64. In our view, the pattern and nature of the requests and correspondence, including in particular the pattern of follow up correspondence/requests and the persistent refusal to accept what seem to be reasonable explanations from the DVLA of its interpretation of the law, are taking up a significant and disproportionate amount of the DVLA's time and therefore resources.

65. We find that the burden was likely to continue. Mr. Duff's conduct before the request has shown that responses lead to follow up questions and more requests.

66. Taking all the above into account, we find that the requests, looked at in the context of the whole course of dealings, even taking into account the quieter period between 2016 and 2020, place an extremely significant burden on the DVLA. We have concluded that this burden is disproportionate, taking a holistic approach and in the light of our conclusions below.

Motive

67. We accept that the requests are not made simply to cause annoyance or disruption at the DVLA, or as part of any campaign of harassment.

Harassment and distress

68. There is no evidence of harassment or distress, although some of the correspondence is expressed in direct terms. We do not place any weight on this element.

Purpose or value

69. We find that the fundamental purpose behind making the requests, and the course of dealings as a whole is that Mr. Duff wants the DVLA to accept that his interpretation or understanding of the law is correct, and that the DVLA's interpretation or understanding of the law is wrong.

70. The primary basis for Mr. Duff wishing the DVLA to accept that he is correct, is in our view, that Mr. Duff takes the view, on the basis of his interpretation of the law, that he cannot join the accredited associations because he cannot comply with their codes of practice unless he amends his business model. If he cannot join the accredited association his business does not have access to the disclosure of vehicle keeper details from the DVLA.

71. In our view, the ICO identified the issue with clarity and precision in his letter at p 179 in which he anticipated that the DVLA would submit that: 'underlying the requests is a question of legal interpretation which needs to be resolved by the courts and that using the FOIA is not an appropriate alternative to that process'.

72. Although Mr. Duff raises other wider concerns about the effect on motorists of other companies acting illegally, we find that this is not the underlying reason for his correspondence and requests.

73. We do accept that, if Mr. Duff's interpretation of the law is right, the issue in general has a wider underlying public interest. If certain types of company simply cannot operate at all under the current regulatory regime, and if this leads to 'parking charges' for trespass being dressed up as contractual obligations that is not in the public interest. Further if the DVLA is releasing personal information to private companies who are acting illegally and there is accordingly no 'reasonable cause' under the Road Vehicles (Registration and Licensing) Regulations 2002/2742, that is also not in the public interest.

74. We do not accept that either Mr. Duff's private purposes or the more general public interests identified about necessitate or justify the approach that he has taken, both in terms of the pattern of correspondence and the nature of that correspondence.

75. Further, having considered the wording of the requests in issue in this appeal, the tribunal finds that, as a whole, they are focussed specifically on trying to prove that Mr. Duff is right in his legal interpretation, rather than being a genuine request for recorded information.

76. Some parts, looked at alone, seem to be a request for recorded information. For example 'Does DVLA release personal information to the British Parking Associations member Secure a Space?' appears, in isolation, to be a simple request for information which might be held in recorded form.

77. Other parts of the request are more obviously attempts to persuade or to get across Mr. Duff's point. For example:

> (b) Has DVLA been forwarded written evidence Secure A Space are willing to erect warning signs on their sites to deceive the public contractual parking charges are in force, when they are fully aware trespasses are being committed on demises they offer services for?
>
> (c) Has DVLA received evidence the British Parking Association has seen the written confirmation Secure A Space are willing to erect warning signs on sites to deceive the public contractual parking charges are in force on their sites where trespasses are being committed?

> (f) Has DVLA received any information which determines Parking Charges cannot be issued for trespass?
>
> (g) Has DVLA received any transcribed Court judgement decisions which highlight Parking Association Members cannot issue charges for trespass?
>
> (h) Has DVLA at any point been asked to request the Parking Associations to confirm how parking charges can be lawfully issued for trespass by their members?

78. The tribunal infers that the 'evidence', the 'information' and the 'transcribed court judgments' are those which have been sent to the DVLA from Mr. Duff. Mr. Duff knows the answer to these questions and is using them to make his point. This is not a proper use of FOIA.

79. Some parts of the request are also straightforward attempts to argue Mr. Duff's point:

> Is DVLA assured members of the Accredited Parking Associations can lawfully issue and recover Parking Charges for Trespass through the Courts?
>
> (d) Is DVLA aware only a person or entity with possession of land can issue proceedings in court for the recovery of trespass damages to land?

80. Again, this is not a proper use of FOIA. Mr. Duff accepts this, to some extent, in correspondence with the Commissioner on 29 October 2021 (p 181):

> Unfortunately I have had to resort to FOI request to obtain this clarification as to date the DVLA have refused to address my questions. I agree FOI requests were not necessarily designed to obtain the information I am seeking but what else can I do when they will not answer my questions?

81. Taken as a whole we find that the request is not a genuine attempt to obtain the release of recorded information held by the DVLA. It is an inappropriate use of FOIA.

82. We do not accept that any underlying purpose or public interest necessitates or justifies the approach that Mr. Duff has taken, both in terms of the pattern of correspondence and the nature of that correspondence. Further we find that the requests are a manifestly inappropriate use of FOIA.

83. Looked at as a whole, our conclusion is that the burden on the DVLA is disproportionate to the purpose or value of the requests.

Conclusions on whether the request is vexatious

84. We have taken a holistic and broad approach and have looked at the requests in the light of the past course of dealings between Mr. Duff and the DVLA. We have considered the nature of the requests under consideration and the extent to which they are a proper use of FOIA. We have considered the

burden on the DVLA and the value and purpose of this request and the value and purpose of the ongoing correspondence with the DVLA. We have looked at Mr. Duff's motive and any harassment or distress that was likely to be caused by the request. Looking at all these factors we find that the request was vexatious in the sense of being a manifestly unjustified, inappropriate, or improper use of FOIA.

85. We conclude accordingly that the exemption in s 14 does apply and the appeal is dismissed.

Observations

86. The DVLA should note that this decision applies to the request not the requestor. Each request must be considered on its own merits and this should, in our view, include the carrying out of an internal review in accordance with the DVLA's usual practice.

Signed Sophie Buckley Date: 15 July 2022

Judge of the First-tier Tribunal