



Neutral citation number: [2024] UKFTT 00017 (GRC)

Case Reference: EA/2022/0403

**First-tier Tribunal
General Regulatory Chamber
Information Rights**

Heard on GRC - CVP

Heard on: 6 December 2023.

Decision given on: 9th January 2024

Before:

**Tribunal Judge: Brian Kennedy KC
Tribunal Member: Paul Taylor and
Tribunal Member: Dave Sivers**

Between:

FAISAL A QURESHI

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Representation:

For the Appellant: Faisal A Qureshi, a researcher and journalist, acting as a Litigant in Person.

For the Respondent: Remi Reichhold, of Counsel in writing in the Response dated 9 February 2023.

Decision: The appeal is dismissed.

REASONS

Introduction:

1. This decision relates to an appeal brought under section 57 of the Freedom of Information Act 2000 (“the FOIA”) as, against the Commissioner’s decision notice of 9 November 2022 with reference number IC 171038-F6J5 (the “DN”), which is a matter of public record.
2. Full details of the background to this appeal, the Appellant’s request for information, and the Commissioner’s decision are set out in the DN. The Appellant requested information on 8 May 2021 seeking disclosure of the driving licence application for Elaine Antoinette Parent from the Driver & Vehicle Licensing Agency (“the DVLA”). The DVLA is an Executive Agency of the Department for Transport being the Public Authority herein.
3. The DVLA refused to comply with the request, citing section 14(1) (vexatious requests) of FOIA. The DVLA then changed its position to neither confirm nor deny that it held the requested information, citing section 41(2) (information provided in confidence). Following an internal review, the DVLA wrote to the Appellant on 1 July 2021. It upheld its previous position. The Appellant lodged a complaint with the Commissioner on 1 July 2021 about the way that their request for information had been handled.
4. The Commissioner offered the DVLA the opportunity to reconsider its handling of the request (the Commissioner has given lengthy reasoning for this change in the DN dated 25 February 2022 which is not at issue herein). - . Having done so, the DVLA issued a revised refusal notice to the complainant on 31 January 2022. It explained that it was no longer relying upon section 14(1) but relied upon section 41(2) but it would neither confirm nor deny that it held the requested information in line with section 41(2).
5. The Commissioner therefore considered the scope of his investigation to be to determine if the DVLA was entitled to rely upon section 41(1) in order to withhold information in response to the request and decided that section 41(1) is engaged. The Commissioner required the DVLA to issue a fresh response, and either disclose the requested information or issue a valid refusal notice compliant with section 17 of FOIA which the DVLA has done.
6. The Commissioner concluded that the information sought by the Appellant was exempt from disclosure pursuant to s.41(1) of the FOIA and has set out his reasoning in the DN

and further in his Response dated 9 February 2023 to the Grounds of Appeal dated 4 December 2022 (see Open Bundle ppA9 – A51.) Essentially the Tribunal unanimously accept and adopt the Commissioners' reasoning in the DN and can find no error of Law or in the exercise of his discretion therein.

7. On the question: **Is s.41(1) Engaged, i.e. whether there could be an actionable breach of confidence through disclosure?** the Tribunal particularly endorse the assertion at Paragraph 5 in the DN where the Commissioner states;

"Section 41(1) of the FOIA states that information is exempt from disclosure if it was obtained from any other person and its disclosure by the public authority holding it would constitute a breach of confidence actionable by that or any other person."

In the DVLA guidance "INFiD" ("How to fill in your application for a driving licence (DI)") the DVLA set out "Please note that for confidentiality reasons, it is not possible to release driver numbers or personal details from your driving record via email replies."

8. The Tribunal take Judicial Notice of [dvla INF1D.pdf \(myukpost.com\)](https://www.myukpost.com/dvla-INF1D.pdf) which formally indicates the applicants expectation that information submitted is treated confidentially by the DVLA. The Tribunal find this confirms s.41 is engaged.

9. On the question: **Does the information have the necessary quality of confidentiality?**

In the Commissioner's earlier Decision Notice on this case, IC-115824-X0W0, dated 25/02/22, dealing with the application of s.41(2), he argued that the information submitted to the DVLA did have the necessary quality of confidence. See the following paragraphs as reasoned by the Commissioner therein, which this Tribunal agree and adopt;

"23. Information will have the necessary quality of confidence if it is more than trivial and is not otherwise accessible.

24. As a criminal, there is no guarantee that Elaine Parent obtained a driving license from the DVLA or did so with honest intentions. The Commissioner acknowledges the complainant is in possession of a driving license from Interpol Washington. There have been documentaries, tv, movies and articles written about Elaine Parent. Even so, the Commissioner has been unable to verify whether there is information in the public domain that confirms Elaine Parent applied for a driving license from the DVLA.

25. The DVLA has explained that 'The DVLA considers that the information provided to it as part of a driving licence application and any supporting evidence has the necessary quality of confidence because it is more than trivial as it relates to a personal matter and is not otherwise accessible (i.e. only the DVLA holds this information). Additionally, the

DVLA considers that, given the nature of the information, the confider of that information attached some importance to it.'

26. The Commissioner has considered the type of information provided in a driving license application, which is likely to contain health data, and the purpose for which this information is provided. The Commissioner is satisfied that the information, if held, is more than trivial and is not otherwise accessible. "

10. Similarly, on the question:

Was information communicated in circumstances importing an obligation of confidence?:

Again as in the previous Decision Notice (referred to above) we accept and adopt the Commissioners' reasoning at the following paragraphs therein

"27. The Commissioner considers that an obligation of confidence can be expressed explicitly or implicitly. Whether there is an implied obligation of confidence will depend upon the nature of the information itself and/or the relationship between the parties.

28. The DVLA has explained that when an individual provides information to it as part of the driving license application process, they do so under an implied duty of confidence; namely that the DVLA will not make that information public.

29. The DVLA has explained that there is also an explicit obligation of confidence between the confider and the DVLA. Specifically, on the back of the D1 form (the application pack for a car, moped or motorcycle driving licence) the DVLA outlines when it may share personal data. Further information can be found in the DVLA's detailed guidance 'Release of information from DVLA's registers.'⁴ Both pieces of guidance say that such information is not made publicly available and would only be provided, in controlled circumstances, to law enforcement bodies and the courts; to the individual, or their personal representative; or to relevant medical professionals to help establish the applicant's medical fitness to hold a driving licence.

30. Again the Commissioner has considered the type of information provided in a driving license application and the purpose for which this information is provided. The Commissioner is satisfied that the information, if held, would have been communicated in circumstances importing an obligation of confidence.

Public Interest Defence:

11. In the DN under appeal in this case, at para.10 the Commissioner states the following, which this Tribunal agree is a relevant consideration;

"...the Commissioner is more minded to accept that as the issue at hand is disclosure of the information, the DVLA's arguments about erosion of public trust carry more weight as there is an implicit duty of confidence surrounding information provided as part of the driving licence application process." However, this Tribunal do not support this assertion as the circumstances in this case are exceptional. This is reflected in the First-Tier Tribunal's decision in a different case, "*Faisal Qureshi v Information Commissioner, EA/2021/0177P*" involving similar considerations.

"32. ...Essentially, this is a case with exceptional circumstances which are very unlikely to be replicated. In the vast majority of cases, disclosure of this sort of information 'post-death' would not be in the public interest. However, in our view... applicants will recognise the exceptional circumstances in this case (as explained in this decision), and would not expect those circumstances to apply to the potential disclosure of their information if they died. It is the case that personal data is not protected in the same way 'post-death' and any applicants who enquired would no doubt be told that... We do not think it realistic to argue that applicants would change the way they filled in... form because of the unlikely possibility that the information might need to be disclosed under FOIA in the event of their death, especially when they consider the very unusual nature of this case. As a result, we also do not think it at all likely that disclosure would have any effect on the ability of... to carry out its functions."

12. That said, we do agree with what the Commissioner sets out at the beginning of paragraph 12 – *"12. The Commissioner places significance on the common law duty of confidence and the assumption that the confidence should be maintained unless the public interest in disclosure is exceptional..."*
13. Where the assumption that confidence should be maintained outweighs the public interest in disclosure, in this case rests in the fact that some of the requested information is already in the public domain; i.e. the Appellant holds a copy of the details held on the driving licence because it was made available by the US authorities. Consequently, in our view it is not necessary to divulge information which would undoubtedly be a duplication of this. Should the DVLA hold additional information, such as any medical issues, then this (if indeed it exists) should rightly be kept confidential.

Conclusion:

14. The Tribunal do not accept the premise that breach of confidentiality will deter people from applying for driving licences, as the alternatives are not to drive or to drive illegally. Most people would in any case probably be unconcerned that the information was released in this particular case, without feeling it sets a precedent that applies to them. That doesn't undermine the principal of confidentiality - the fact that the information in applications is provided to DVLA in confidence and that it is clearly a breach of confidence to release that information to the world in a FOIA response.
15. The Appellant's rhetorical question about who might bring an action for Elaine Parent/Sylvia Hodgkinson is irrelevant because it is neither this Tribunal's function, nor the DVLA's to try to guess the answer to that question. We cannot know that there is nobody who might come forward.
16. Therefore, the Tribunal need to consider actionable breach of confidence and any public interest defence in the same way we would if Elaine/Sylvia were alive. The public interest test is more commonly about disclosing evidence of wrongdoing by, or within, a public authority. Seeking evidence of criminal activity by members of the public is the function of law enforcement.
17. In theory, DVLA could compare records it holds for Elaine Parent and Sylvia Hodgkinson, or the Tribunal could request them, and take a view on whether they provided evidence of fraudulent activity. In fact, everything except the one application is out of scope, and in any case, conducting such a comparison would amount to amateur detection. The appeal essentially invites people who are not detectives to play detective.
18. The DVLA has a restricted but straightforward role: to process applications and issue licences. It would be unworkable for them to be expected to investigate an application and ensure it isn't fraudulent. There is no obligation on them to do so in response to a FOIA request either.
19. All that remains is an application that contains confidential information, release of which to the world would be a breach of confidence. The exemption is engaged, and the appeal should be dismissed.
20. Accordingly, we must dismiss the appeal.

