

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 09 November 2009

Public Authority: Driver and Vehicle Licensing Agency
(An executive agency of the Department for Transport)

Address: Longview Road
Swansea
SA6 7JL

Summary

The complainant asked the DVLA for information relating to vehicle licensing penalties. The Commissioner found that the DVLA acted correctly in refusing part of the request by virtue of section 31(1)(d) of the Act, and in refusing of the remainder of the request under section 12 of the Act. The Commissioner also found that the DVLA had breached section 1(1)(a) and 17(5) of the Act.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the Act). This Notice sets out his decision.

Background

2. The Commissioner notes that under the Act the DVLA is not a public authority itself, but is actually an executive agency of the Department for Transport. Therefore, the public authority in this case is actually the Department for Transport not the DVLA. However, for the sake of clarity, this Decision Notice refers to the DVLA as if it were the public authority.
3. Motoring taxation is made up of two elements, Vehicle Excise Duty (VED), which can be considered a tax on ownership, and fuel duty, which is a tax on use. VED is collected by requiring a vehicle owner to purchase a tax disc.
4. It is an offence not to have a current tax disc in force under section 29 of the Vehicle Excise and Registration Act 1994. The responsibility for pursuing the owners of unlicensed vehicles rests with the DVLA. The police, traffic wardens or

- local authority parking attendants may inform the DVLA of suspected offenders, but the DVLA alone is responsible for any prosecution.
5. The Continuous Registration (CR) scheme is designed to combat evasion of VED by requiring the keeper of a vehicle to re-license the vehicle on expiry of the existing licence, or to make a formal declaration that the vehicle is kept off the public road. The DVLA has developed an enforcement strategy to ensure compliance with the scheme.
 6. As part of the CR enforcement strategy, a monthly scan of the vehicle record is carried out to identify vehicles without a valid licence or Statutory off Road Notification (SORN) declaration. Where the scan suggests that a vehicle owner does not appear to have complied with the legal requirements, the DVLA will issue a late licensing penalty (an LLP). If the vehicle owner fails to settle the LLP they may be prosecuted.
 7. The DVLA's aim is to proceed with all breaches of the CR legislation identified wherever viable. The Agency must, however, have some flexibility to allow for consideration of mitigating circumstances, and the pursuance of the LLP may be discontinued because the registered keeper has supplied sufficient mitigating evidence.
 8. On receipt of a response to a penalty letter issued in respect of a CR offence, each case is given individual consideration. The decision to proceed or not with enforcement action is dependent on the information provided. If more than one mitigating reason is provided in a reply, consideration is given to each individual circumstance. Each reason is to be considered on its own merits. Should one or more of the reasons provided be sufficient to mitigate an offence, the CR enforcement case will be discontinued. These mitigating reasons are referred to as 'exceptional circumstances'.

The Request

9. On 20 December 2006 the complainant requested the following information from the DVLA:
 - 1) What constitute 'exceptional circumstances' in respect of not imposing late SORN notifications?
 - 2) How many penalties for late SORN notification have been issued by the DVLA in the last 12 months?
 - 3) How many of these penalties have been challenged?
 - 4) How many penalties were waived as a result of 'exceptional circumstances'?
10. On 24 January 2007 the DVLA replied as follows:

Question 1

The DVLA confirmed that it held guidelines relating to assessing exceptional circumstances in Continuous Registration (CR) enforcement cases. However, it withheld these guidelines by virtue of section 31(1)(d) of the Act, as it considered that the disclosure of this information would or would be likely to prejudice the collection of VED.

In applying the public interest test, the DVLA concluded that the public interest in maintaining the exemption outweighed the arguments in favour of disclosure. In particular the DVLA stated that knowledge of what may constitute exceptional circumstances (and in theory where enforcement liability is unlikely to be pursued) would be likely to lead to an increase in late or possibly non-payment of VED.

Question 2

The DVLA stated that the number of LLPs issued during 2006 was 1,274,143. It explained however that this figure included both LLPs sent following vehicle licence expiry, and those following a previous SORN expiry. The DVLA advised that it did not record information relating to LLPs in such a way which would allow it to differentiate between these categories. The DVLA advised that in order to obtain the specific information requested, a manual search of the CR enforcement case files would be required. The DVLA concluded that such a search would be likely to exceed the cost limit as set out at section 12 of the Act, and therefore this part of the request was refused.

Question 3

In response to question 3 the DVLA stated that it did not “record statistics that could answer this request”.

Question 4

In respect of question 4 the DVLA referred the complainant to its response in respect of question 2.

11. On 1 March 2007 the complainant requested a review of the DVLA's decision.
12. The DVLA wrote to the complainant on 22 March 2007 upholding its original decision.

The Investigation

Scope of the case

13. On 8 May 2007 the complainant contacted the Information Commissioner's Office to complain that he had not received the information that he had requested.
14. The Commissioner confirmed to the complainant on 10 December 2008 that the scope of his investigation would include the following:

- Whether the DVLA correctly refused question 1 of the request on the basis of section 31(1)(d)
 - Whether the DVLA correctly refused questions 2 and 4 on the basis of section 12
 - Whether the DVLA held information in relation to question 3.
15. During the course of the Commissioner's investigation the DVLA withdrew its reliance on section 31(1)(d) of the Act for the exceptional circumstances which require evidence and disclosed these to the complainant. This Notice therefore is concerned with the exceptional circumstances which do not require evidence.

Chronology

16. On 3 December 2008 the Commissioner contacted the DVLA and asked it to provide further details in relation to its handling of the request, with particular regard to the issues set out at paragraph 14 above.
17. On 27 January 2009 the DVLA responded to the Commissioner's correspondence. In relation to questions 1, 2 and 4 of the request, the DVLA provided further representations in support of its application of the exemptions it had claimed. With regards to question 3 of the request the DVLA stated: "At the time [of the complainant's] request I can confirm that, whilst the DVLA may have held the information in individual enforcement case files, the Agency was under no legal obligation to record statistical information under the category of 'penalties challenged' for any time".
18. During the course of the Commissioner's investigation the DVLA clarified that it might hold information in relation to question three of this request but stated that it intended to rely on section 12 of the Act, as to comply with the request would exceed the appropriate cost limit. The Commissioner had cause to question the DVLA's position in this matter; he noted that the DVLA had previously provided him with information on a similar case (DVLA reference FOIR 623-07) that appeared to contradict its position in this case. He therefore asked the DVLA to provide further clarification on this point and on 8 September 2009 it provided further submissions
19. The DVLA provided further submissions to the Commissioner on 8 September 2009

Analysis

20. The full text of the relevant provisions of the Act is set out in the legal annex to this Notice.

Substantive Procedural Matters

Section 12 – Cost limit

21. The DVLA confirmed that it did hold information in relation to questions 2, 3 and 4 of the request. It however maintained that in order to ascertain the number of LLPs issued, challenged and waived as a result of exceptional circumstances a manual interrogation of the CR enforcement case files would be required.
22. The DVLA advised that the same searching process was required for questions 2 and 4 of the request. It advised that a different searching process was required in respect of question 3. The Commissioner has therefore considered questions 2 and 4 together, and then question 3.
23. Under section 12(1) of the Act, a public authority is not obliged to comply with a request for information if to do so would exceed the “appropriate limit” (the cost limit). The cost limit is set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (‘the Regulations’). The cost limit is currently set at £600 for central government (including the DVLA), which equates to 24 hours’ work at £25 per hour.
24. Regulation 4(3) of the Regulations provides that the following factors can be taken into account when formulating a cost estimate:
 - “(a) determine 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,
 - (e) extracting the information from a document containing it.”
25. The issue of what constitutes a reasonable estimate was also considered in the case of *Alasdair Roberts v The Information Commissioner* (EA/2008/0050). The Commissioner is assisted by the Tribunal’s comments at paragraphs 9-13 of the decision:
 - “*only an estimate is required*” (i.e. not a precise calculation)
 - The costs estimate must be reasonable and only based on those activities described in regulation 4(3)
 - Time spent considering exemptions or redactions can not be taken into account
 - Estimates cannot take into account the costs relating to data validation or communication
 - The determination of a reasonable estimate can only be considered on a case-by-case basis and
 - Any estimate should be “*sensible, realistic and supported by cogent evidence*”

Questions 2 and 4

26. The DVLA has stated that in order to obtain the information requested in relation to questions 2 and 4 (the number of penalties issued for late SORN notification and the number of these penalties challenged) it would be required to undertake

- a manual interrogation of the CR enforcement files. The DVLA maintains that it does not distinguish between an LLP issued for failure to re-license or declaration of SORN as the statistical information for these offences does not distinguish between SORN and late licensing, and is recorded under the umbrella of CR offence.
27. In order to assess this claim the Commissioner has considered how the DVLA records and holds information relating to CR enforcement. As explained at paragraph 6 above, the DVLA regularly identifies cases where a failure to re-licence is suspected. The DVLA has advised that it considers every LLP as a failure to re-licence unless an individual contacts it to complain that the vehicle has been declared as SORN or explain that an exceptional circumstance exists.
 28. The DVLA has explained that at the time of the request all enforcement case files were held on a computerised Local Office Casework System (LOCS). The DVLA advised that the requested information was held within LOCS.
 29. The DVLA explained that the LOCS system does have searching mechanisms and explained that it was able to search on "closure codes". The DVLA advised that the LOCS system contains closure codes which local offices use when closing enforcement cases. It provided that not all closure codes relate to CR offences and not all of the codes are considered to be mitigating or exceptional circumstances.
 30. The DVLA provided the Commissioner with the codes relevant to CR offences and advised that it was able to provide the complainant with details of the number of enforcement cases closed on 'compassionate grounds' as this was a closure code in LOCS. It explained that there were no closure codes which correlated to the requested information, therefore the DVLA could not use closure codes as a method of searching the raw data.
 31. On the basis of the representations made by the DVLA in this case, the Commissioner has concluded that it was reasonable for the public authority to base its estimate on looking through the records. There is no obvious alternative means of extracting all of the requested information in this case other than to manually interrogate the files identified on LOCS.
 32. In terms of the time estimated to conduct such a manual search, the DVLA confirmed that the total number of LLP's issued in 2006 was 1,274,143. It estimated that it would take one member of staff 5 minutes to check each case file to ascertain whether the information is held, locating the relevant information and retrieving it. It therefore concluded that 12 enforcement files could be interrogated per hour.
 33. The Commissioner has inspected a representative sample of the electronic case files, and is satisfied therefore that the information is held as described by the DVLA. The Commissioner is satisfied that the DVLA's estimate is reasonable. The Commissioner has therefore taken 5 minutes as the estimate for 1 file.

34. The DVLA's overall estimate therefore is $1,274,143 \times 5$ minutes = 6,370,715 minutes, which equates to 106,178.58 hours. The Commissioner is satisfied that this estimate significantly exceeds the 'appropriate limit'.

Question 3

35. In relation to question 3 the complainant requested the number of SORN penalties challenged in the last 12 months.
36. The DVLA stated that the definitive word 'challenged' translates into disputed, contested, objections to, questioned, argued with and opposed. It also stated that the DVLA defines a customer complaint as 'any expression of dissatisfaction'. It therefore advised the Commissioner that because of its wide definition of complaints it considered complaints about SORN to be a challenge falling under the scope of the request as well as the more formal routes. It therefore explained that information would therefore be held in both electronic enforcement case files and electronic complaint files.

Complaint files

37. The DVLA advised that traditionally information relating to customer complaints had been recorded within spreadsheets held by individual departments within the DVLA. The DVLA explained that whilst this system allowed the recording of complaints, it did not easily allow statistical data to be compiled.
38. The DVLA provided the Commissioner with a copy of a spreadsheet which had been manually compiled from information obtained from its local office network and its three continuous registration enforcement centres. The spreadsheet contained a minimum amount of information and provided broad categories of complaint areas, for example 'continuous registration' and 'reporting an unlicensed vehicle'. The Commissioner noted that the spreadsheet did not provide the detail required to answer the complainant's request.
39. The DVLA confirmed that from the information in the spreadsheet, 3411 CR complaints had been received for the period requested.
40. It estimated that it would take one member of staff 5 minutes to check each case file to ascertain whether the information is held, locating the relevant information and retrieving it. It therefore concluded that 12 enforcement files could be interrogated per hour.
41. The Commissioner has had regard to a representative sample of the electronic case files which would need to be considered. The Commissioner is satisfied that the DVLA's estimate is reasonable. The Commissioner has therefore taken 5 minutes as the estimate for 1 file.
42. The overall estimate therefore is $3,411 \times 5$ minutes = 17055 minutes, which equates to 284.25 hours. The Commissioner notes that the estimated time for complying with the request significantly exceeds the 'appropriate limit'.

Electronic enforcement Files

43. The DVLA explained that the electronic enforcement files were held in LOCS.
44. The DVLA explained that the LOCS system does have searching mechanisms and explained that it was able to search on closure codes (as previously outlined in paragraphs 30-31). It confirmed to the Commissioner that it did not have a closure code which related to complaints or challenges. It advised therefore that it would be required to undertake a manual interrogation of all the case files for the period requested to ascertain whether a penalty had been challenged.
45. On the basis of the representations made by the DVLA in this case, the Commissioner has concluded that it was reasonable for the public authority to base its estimate on looking through the manual records. There is no obvious alternative means of extracting all of the requested information in this case other than to manually interrogate the electronic case files.
46. The DVLA estimated that it would take one member of staff 5 minutes to check each case file to ascertain whether the information is held, locating the relevant information and retrieving it. It therefore concluded that 12 enforcement files could be interrogated per hour.
47. The Commissioner has had regard to a representative sample of the electronic case files which would need to be considered. The Commissioner is satisfied that the DVLA's estimate is reasonable. The Commissioner has therefore taken 5 minutes as the estimate for 1 file.
48. The DVLA explained that the number of LLP letters issued during 2006 was 1,274,143. The overall estimate therefore is $1,274,143 \times 5 \text{ minutes} = 6,370,715$ minutes, which equates to 106,178.58 hours. The Commissioner notes that the estimated time for complying with the request significantly exceeds the 'appropriate limit'.

Conclusion

49. Having considered the above information, the Commissioner is satisfied that the cost of locating, retrieving and extracting the relevant information in relation to questions 2, 3 and 4 of the request would exceed the appropriate limit. Therefore the Commissioner is satisfied that section 12(1) is engaged for these parts of the request. The Commissioner went on to examine the application of the exemption under section 31(1)(d) of the Act to question 1 (what constitutes exceptional circumstances in respect of not imposing late SORN notifications?) of the request.

Exemption

Section 31(1)(d): prejudice to the collection of tax or duty

50. Section 31(1)(d) provides an exemption where disclosure of the information requested would prejudice the assessment or collection of any tax or duty or of any imposition of a similar nature.
51. Section 31 is a prejudice based exemption. This means that for the exemption to be engaged the public authority has to explain how the prejudice which the exemption is designed to protect will occur and then provide sufficient evidence to demonstrate that the likelihood of this prejudice occurring is one that is either likely to occur or would occur.

Application of the prejudice test

52. The Commissioner has been guided by the Information Tribunal in Hogan v Information Commissioner and Oxford City Council (EA2006/0068 & 0080) at paragraphs 28 to 34. The Tribunal set out the following three part test:

“The application of the ‘prejudice’ test should be considered as involving a number of steps. First, there is a need to identify the applicable interest(s) within the relevant exemption.....Second, the nature of ‘prejudice’ being claimed must be considered.....A third step for the decision-maker concerns the likelihood of occurrence of prejudice.”

Identifying applicable interests

53. The Commissioner notes that the CR scheme is designed to combat evasion of VED (a tax on ownership) by requiring the keeper of a vehicle to re-license the vehicle on expiry of the existing licence, or to make a formal declaration that the vehicle is kept off the public road.
54. The Commissioner accepts that by claiming that disclosure would be likely to prejudice the collection of VED the DVLA has applied the exemption to an applicable interest.

Considering the nature of the prejudice

55. The Commissioner is mindful of the Tribunal’s comments in Hogan:

“Second, the nature of the ‘prejudice’ being claimed must be considered. An evidential burden rests with the decision maker to be able to show that some causal relationship exists between the potential disclosure and the prejudice is, as Lord Falconer of Thoronton has stated “real, actual or of substances” (Hansard HL (VOL. 162, April 20, 2000 col.827) If the public authority is unable to discharge this burden satisfactorily, reliance on ‘prejudice’ should be rejected”. (para 30)

56. The Commissioner’s view of the comments in Hogan is that the choice of the term ‘prejudice’ is important to consider in context. It implies not just that the disclosure

of the information must have some effect on the applicable interest but that this effect must be damaging or detrimental.

57. The DVLA explained that to forearm vehicle keepers with arguments which the DVLA would accept as mitigation in CR cases, without evidence, could enable a person to evade his or her statutory obligations, and this would lead to greater non-compliance with legislation and make DVLA's enforcement strategies ineffective. It would also lead to a reduction in revenue collection for Her Majesty's Treasury.
58. The Commissioner has also considered the fact that there are a number of websites and forums which are used by individuals to discuss continuous registration and suggest ways in which individuals can avoid paying penalties in relation to late SORNs.
59. The Commissioner is satisfied that the disclosure of the exceptional circumstances would have a detrimental effect on the collection of VED (which is the applicable interest in this case), as disclosure may create a perception amongst some vehicle owners that LLP can be avoided by claiming an exceptional circumstance, which does not require the provision of substantiating evidence.

Considering the likelihood of prejudice

60. The DVLA argued in its refusal notice that "[w]e consider that disclosing information relating to exceptional circumstance guidelines utilised in respect of such cases would, or would be likely to, prejudice the collection of Vehicle Excise Duty..."
61. The Commissioner normally expects a public authority to specify which degree of likelihood is applicable. In the absence of an explanation from the DVLA the Commissioner has decided to consider whether such a prejudicial outcome *would be likely* to arise rather than whether such a prejudicial outcome *would* arise. This is because the threshold for establishing the former is lower than the threshold for the establishing the latter.
62. This approach accords with the Commissioner's general approach based on the decision of the Information Tribunal in *McIntyre v The Information Commissioner and the Ministry of Defence* (EA/2007/0068) at paragraph 45.
63. The Commissioner has been guided on the interpretation of the phrase 'would be likely to' by a number of Information Tribunal decisions, and in particular, *John Connor Press Associates Limited v The Information Commissioner* (EA2005/0005). In this case the Tribunal commented that 'the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk' (paragraph 15). This interpretation followed the judgment of Mr Justice Mundy in *R (on the application of Lord) v Secretary of State for the Home Office* [2003]. In this case the Court concluded that 'likely connotes a degree of probability that there is a very significant and weighty chance of prejudice to the identified public interests. The degree of risk

must be such that there 'may very well' be prejudice to those interests, even if the risk falls short of being more probable than not'.

64. In this particular case, because of the nature of the information withheld by the DVLA, the Commissioner considers that it is not possible for him to comment in great detail on the DVLA's reliance on section 31(1)(d) because to do so may reveal details of the withheld information.
65. The Commissioner is mindful of the conclusions of the National Audit Office (NAO) Report 2005-2006¹, which was published at the time of the request. This Report stated that approximately 1.3 million LLPs were issued in 2005-2006, of which 465,095 were paid by 31 March 2006 generating £24.1 million. The NAO Report further acknowledges that measures designed to achieve a reduction in VED evasion include the imposition of LLP as it can be concluded that individuals are less likely to pay VED if there no consequences to not purchasing VED. This report appears to support the DVLA's representations that knowledge of the exceptional circumstances may lead to a reduction in VED recovered,
66. Clearly, the Commissioner is not suggesting that all individuals who received an LLP during 2005-2006 would consider citing exceptional circumstances to avoid paying VED and /or an LLP. However, given the significant number of individuals concerned, the Commissioner considers the likelihood of harm to be relatively high given the number of individuals who could potentially claim an exceptional circumstance or avoid paying VED altogether.
67. The Commissioner is also mindful of websites and forums which are used by individuals to obtain advice on circumventing their liabilities under the CR scheme. The Commissioner considers that this external evidence supports the DVLA's assertion that individuals discuss the CR scheme, and at times, suggest ways in which individuals can avoid paying VED or LLP's. The Commissioner further considers that this supports his view that the likelihood of prejudice is relatively high.
68. Upon consideration of the circumstances of this case the Commissioner believes that it is likely some members of the public may endeavour to utilise the exceptional circumstances to avoid paying VED and LLP's. Therefore the Commissioner accepts that disclosure of what constitutes exceptional circumstances would be likely to prejudice the collection of VED and that the exemption available at section 31(1)(d) is engaged.

Public interest test

69. Section 31(1)(d) is a qualified exemption and is therefore subject to the public interest, test under section 2(2)(b) of the Act. This provides that exempt information must be disclosed unless, '*in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information*'.

¹ http://www.nao.org.uk/publications/0506/vehicle_excise_duty_2005-06.aspx

70. The Commissioner has set out below the various relevant public interest arguments that have been advanced by the DVLA in addition to a number of arguments of his own.

Public interest arguments in favour of disclosure

71. The Commissioner acknowledges that there is strong public interest in the DVLA being accountable for its decisions and that it is as transparent as possible about the ways in which it makes those decisions.
72. The Commissioner accepts that disclosure of what constitutes 'exceptional circumstances' would provide the public with further details of how the DVLA manages the CR scheme and in particular how it deals with exceptions to the LLP. This would reassure the public and in particular drivers, that the processes and procedures it uses to deal with LLP's are fair and honest.
73. The Commissioner considers that increased transparency could increase public confidence in the DVLA's ability to collect tax in a fair and honest manner. This could lead to increased payments and compliance.

Public interest arguments in favour of maintaining the exemption

74. The DVLA argued that disclosure of the 'exceptional circumstances' could result in the information being published, enabling those who are particularly opposed to the CR scheme to attempt to evade their liability. The DVLA was of the view that this would be likely to lead to an increase in late or possibly non payment of VED.
75. The Commissioner accepts that there is a very strong public interest in the government being able to collect the correct amount of VED due in order to support public services. Clearly, if the disclosure of the 'exceptional circumstances' resulted in less VED being collected by the DVLA, over time there would be less money for the DVLA to spend on public services.
76. The Commissioner also recognises that there is a public interest in the government being able to collect VED effectively and efficiently. Clearly, the less money the government has to expend in order to collect the correct amount of VED due, the more public funds will be available to spend on the delivery of public services. Furthermore the Commissioner accepts that it will benefit the public if the DVLA can process VED with the minimum level of burden to honest tax payers. The Commissioner accepts that if the 'exceptional circumstances' were disclosed the DVLA may have to adjust its approach to the collection of VED and this could make the process lengthier, and also more costly.
77. The Commissioner further considers that there is a public interest in the behaviour of compliant, honest taxpayers not being undermined by the actions of the dishonest or fraudulent drivers. If the exceptional circumstances makes it easier for dishonest drivers to avoid payment of VED or any associated LLP, honest drivers' confidence in the DVLA collecting this duty in a fair and equitable way may be undermined. This could damage the general climate of business

honesty upon which the economy depends, i.e. individuals are prepared to pay the VED they are liable for because they believe that all other tax payers will pay voluntarily or be forced to pay, with penalties by the DVLA.

78. The Commissioner also considers that there is a public interest in upholding compliance with the law and not assisting individuals to evade liability which arises as the result of non-compliance.

Balance of public interest arguments

79. Having considered the arguments in favour of disclosing and withholding the information, the Commissioner has considered where the public interest lies in this particular case.
80. The Commissioner has been particularly persuaded by the strong public interest in the DVLA being able to collect VED which is due in the cheapest and easiest way in order to ensure that the Government has sufficient funds to fund the delivery of public services.
81. The Commissioner considers that the argument that the disclosure of the 'exceptional circumstances' would ensure that the DVLA was accountable for the decisions it takes is mitigated, to some degree, by external audit procedures that the DVLA is subject to. For example the National Audit Office (NAO) audits the DVLA's accounts in order to ascertain that adequate regulations and procedures have been framed to secure an effective check on the assessment, collection and proper allocation of revenue. This is evidenced in the NAO Report² on VED for 2006-2007 which states:
- "VED related regulations and procedures remain adequate and proportionate for the vast majority of compliant procedures".
82. Consequently the Commissioner has concluded that in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Procedural Requirements

Section 10(1) – time for response

83. Section 1(1) states:

'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.'*

² Comptroller and Auditor General's Report on VED 2006-2007 (HC 800 19 July 2007)

84. Section 10(1) of the Act provides that:

'Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.'

85. In failing to confirm that it held information in relation to question 3 of the request within 20 working days the DVLA breached section 10(1) of the Act.

Section 17(5) – refusal notice

86. Section 17(5) of the Act states that a public authority which is relying on a claim that section 12 or 14 of the Act applies must give the applicant a notice stating that fact.

87. In its refusal notice dated 24 January 2008, the DVLA advised the complainant that the information in relation to point 3 of his request was not held. In correspondence to the Commissioner dated 27 January 2009 the DVLA conceded that:

“Whilst the DVLA may hold information likely to be within this part of your [sic] request, it is the Agency’s policy not to process requests likely to exceed the costs limit of £600 for the provision of information under FOIA. DVLA has no obligation under section 12 of the FOIA to supply information, which would cost more than £600 to collate.”

88. The Commissioner finds that in failing to specify the DVLA’s reliance on section 12(1) in the refusal notice the DVLA was in breach of the requirements of section 17(5) of the Act.

The Decision

89. The Commissioner’s decision is that the public authority dealt with the request for information in accordance with the Act by refusing part of the request by virtue of section 31(1)(d) of the Act, and in refusing the remainder of the request under section 12(1) of the Act.

90. However the Commissioner finds that the DVLA breached section 10(1) in failing to confirm it held information relating to question 3 within 20 working days, and section 17(5) in issuing an inadequate refusal notice.

Steps Required

91. The Commissioner requires no steps to be taken.

Right of Appeal

92. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 9th day of November 2009

Signed

**Anne Jones
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal annex

Section 1

“(1) 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 the information of the description specified in the request, and

(b) *if that is the case, to have that information communicated to him.*”

Section 10(1)

‘Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.’

Section 12

“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.”

Section 17(5)

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

Section 31 (1)

Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

(a) the prevention or detection of crime,

(b) the apprehension or prosecution of offenders,

(c) the administration of justice,

(d) the assessment or collection of any tax or duty or of any imposition of a similar nature,

(e) the operation of the immigration controls,

(f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),

(h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection

(2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or

(i) any inquiry held under the [1976 c. 14.] Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (No. 3244)

Regulation 3 provides that –

“(1) This regulation has effect to prescribe the appropriate limit referred to in ... section 12(1) and (2) of the 2000 Act.

(2) In the case of a public authority which is listed in Part I of Schedule 1 to the 2000 Act, the appropriate limit is £600.”

Regulation 4 provides that –

“(1) This regulation has effect in any case in which a public authority proposes to estimate whether the cost of complying with a relevant request would exceed the appropriate limit.

(2) A relevant request is any request to the extent that it is a request– (a) for ...

(b) information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply.

(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request 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.

(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour.”