

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 20 October 2011

Public Authority: The Driver and Vehicle Licensing Agency (An Executive Agency for the Department for Transport (DfT))
Address: Longview Road
Swansea
SA6 7JL

Summary

The complainant requested information concerning the DVLA, the DfT and the Information Commissioner's Office in respect of the application of 'Regulation 27' of the Road Vehicles (Registration and Licensing) Regulations 2002. The DVLA provided some information in a redacted format but refused a significant part of the request stating that it did not hold the information and citing sections 42(1) and 40(2) of the Act. The Commissioner has investigated and finds that the DVLA were correct to conclude that it did not hold some information and to withhold the information under sections 42(1) and 40(2) of the Act. The Commissioner has also recorded a number of procedural breaches in relation to the DVLA's handling of the above request for information.

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 Vehicle Excise and Registration Act 1994 requires most vehicles used or kept on a public road to be licensed and registered by the Secretary of State. This function is performed by the Driver and Vehicle Licensing Agency ('the DVLA') which maintains a vehicle register

containing information about the vehicle itself and its current and previous registered keepers.

3. Regulation 27 of the Road Vehicles (Registration and Licensing) Regulations 2002 ('Regulation 27') authorises the DVLA to release vehicle keeper information to the police or to a local authority to investigate a criminal offence or non-criminal parking offence. The Regulations also provide for the DVLA to release information to other persons who can prove that they have 'reasonable cause' to have it.
4. On 16 February 2006 the Department for Transport published a consultation paper on the release of data from the Vehicle Registers. This consultation focused on the release of data under Regulation 27. The consultation ran until 31 March 2006 and sought views on which groups should have information from the vehicle register and the reasons for their having it; how access to the registers was managed; and the audit regime for those granted access.
5. Following completion of the review, the Minister of State for the DfT, Dr Stephen Ladyman issued a statement on 24 July 2006 announcing 14 major new measures to be implemented in respect of the release of data from the UK Vehicle Registers.
6. The complainant had concerns regarding both the 'compatibility' of Regulation 27 with the European Data Protection Directive 94/46/EC ('the Directive') and its 'application' which had prompted a previous request for information to the DVLA on 20 November 2007.
7. However, although this request culminated in a ruling from the First-tier Tribunal (Information Rights) on 9 November 2009, neither the Commissioner or the Tribunal ruled on the issue of the 'application' of Regulation 27.
8. This case therefore relates to the complainant's subsequent request for information regarding the 'application' of regulation 27.

The Request

9. 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 ('DfT') which is responsible for the DVLA and therefore, the public authority in this case is actually the DfT not the DVLA. However, for the sake of clarity, this decision notice refers to the DVLA as if it were the public authority.

10. On 16 June 2010 the complainant requested the following information numbered 1,3,4 and 5 (no number 2) from the DVLA:

1. *"All data in your possession concerning the discussions that you and your colleagues in your department have had with the Office of the Information Commissioner and any material which has sprung from those discussions concerning the application of 'Regulation 27'..."*

3. *"Any material which shows that DVLA/DfT has made a conscious decision not to consider the compatibility of Regulation 27 with the European Directive 95/46/EC dated 24 October 1995 or in the alternative, your written reply that such material does not exist..."*

4. *"The number of Freedom of Information requests you receive and the number with which you comply to the satisfaction of the requester, the number with which you comply partially and the number you refuse."*

5. *The cost to DVLA/DfT of justifying your refusal to comply with my Freedom of Information request including (but not limited to) the cost of preparing material for the Tribunal, the cost of Counsel, the cost of meetings to discuss the matter (at £24 per person per hour or greater depending on your salaries) and any and all other costs."*

11. The Council responded on 15 July 2010 refusing the request under section 14(1) (vexatious request) and section 14(2) (repeated request) of the Act.

12. The complainant contacted the DVLA on 23 July 2010 to dispute the DVLA's claim that the request was vexatious and to clarify that he was not asking for information in respect of the compatibility of 'Regulation 27' but the applicability of 'Regulation 27'. He stated:

"I am no longer interested in obtaining information concerning correspondence between the Information Commissioner, DVLA and the DfT regarding the compatibility of 'Regulation 27' with the Directive." [Emphasis added by complainant].

13. The DVLA responded on 25 August 2010 having viewed the complainant's letter as a new request for information as opposed to a request for an internal review.

14. In respect of the complainant's request number 1, the DVLA provided four redacted documents and cited section 42 (Legal Professional Privilege) and section 40(2) (third party personal information) of the Act for most of the redactions, but also redacted some information on the basis that it fell outside of the scope of the complainant's request.

15. The DVLA made no reference to the complainant's requests for information numbered 3, 4 and 5.
16. Having complained to the Commissioner on 23 July 2010 about the DVLA's handling of his request for information, the DVLA contacted the complainant on 17 September 2010 to reiterate that it had viewed his letter as a new request for information since he had confirmed to the DVLA that it was his:

*"... 'sole intention...to obtain copies of correspondence between the Information Commissioner, DVLA and DfT concerning the **application** [complainant's emphasis] of 'Regulation 27'".*
17. The DVLA further confirmed that the complainant's original request of 16 June 2010 was:

"...no longer considered to be repeated or vexatious..."
18. The complainant responded on 2 October 2010 that whilst his letter to the DVLA of 23 July 2010 did clearly state that he was 'solely interested' in the correspondence relating to the applicability of 'Regulation 27', this referred only to that part of his request and did not replace his earlier, original request. He also confirmed that he was unable to accept the DVLA's claims in relation to legal professional privilege and other exemptions.
19. The complainant also expressed concern that the DVLA had identified all information falling within the scope of his request and alleged that the Commissioner's view regarding what information may or may not be redacted, differed considerably from the DVLA's.
20. On 17 November 2010 the DVLA communicated the outcome of its internal review to the complainant. The DVLA upheld its decision of 25 August 2010.

The Investigation

Scope of the case

21. On 26 November 2010 (having now received the outcome of the DVLA's internal review), the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - The DVLA's application of the section 42(1) and 40(2) exemptions.

22. During the course of the Commissioner's investigation the following matters were resolved informally and therefore these are not addressed in this Notice:
 - Requests numbered 4 and 5 of the complainant's original request for information.
23. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

24. The Commissioner contacted the DVLA on 6 January 2011 with a number of queries in respect of this complaint and requesting copies of all information the DVLA had identified as falling within the scope of the complainant's request including unredacted copies of the 4 redacted documents provided to the complainant on 25 August 2010.
25. On 3 February 2011 the DVLA provided a substantive response enclosing both redacted and unredacted copies of the four (redacted) documents disclosed to the complainant on 25 August 2010. The DVLA also confirmed that the information withheld in respect of section 42 of the Act attracts legal advice privilege.
26. The Commissioner further contacted the DVLA on 19 April 2011 and the DVLA provided a substantive response on 20 May 2011.
27. On 6 June 2011 the Commissioner contacted the DVLA in respect of the complainant's question three and the DVLA confirmed on the same date that it did not hold information relevant to this question.
28. The Commissioner further contacted the DVLA regarding this matter on 10 June 2011 to establish the searches that had led to this conclusion and the DVLA responded on 17 June 2011.

Analysis

29. The full text of all sections of the Act referred to in this notice can be found in the Legal Annex at the end of this notice.

Substantive procedural issues

Section 1(1)(a) - Information not held

30. Under section 1(1) of the Act, in response to a request for information a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to

respond to a request. The DVLA has stated that it does not hold information relevant to number 3 of the complainant's request which asked for:

"Any material which shows that DVLA/DfT has made a conscious decision not to consider the compatibility of Regulation 27 with the European Directive 95/46/EC dated 24 October 1995 or in the alternative, your written reply that such material does not exist."

31. The Commissioner has considered the DVLA's arguments and is mindful of the former Information Tribunal's ruling in EA/2006/0072 (Bromley) that there can seldom be absolute certainty that information relevant to the request does not remain undiscovered somewhere within the public authority's records. When considering whether a public authority does hold any requested information the normal standard of proof to apply is the civil standard of the balance of probabilities.
32. In his determination of where the balance lies, the Commissioner has taken into consideration the nature of the request itself. The complainant asked for any information which shows that a conscious decision was made not to consider the compatibility of Regulation 27 with the European Directive 95/46/EC dated 24 October 1995.
33. The Commissioner accepts that it is very unlikely that any public authority would hold information of this nature. Additionally, the DVLA has stated that searches for this information relating to the compatibility of Regulation 27 were completed at the time of the complainant's request which prompted case reference FS50205855 and the First-Tier Tribunal ruling in May 2010 [EA/2009/0097]. It was not therefore necessary for it to carry out additional searches for the information as the Agency was already satisfied that the information was not held.
34. The DVLA further explained that the Tribunal's substituted decision notice stated:

"[DVLA] satisfactorily answered the request for information by its confirmation that it holds no information on ...its compatibility with the European Directive on Data Protection (Directive 95/46/EC)."
35. Having considered the above information, the Commissioner has concluded that on the balance of probabilities, the information in respect of question 3 of the complainant's request is not held.

Exemptions

Section 42 – Legal professional privilege

36. Section 42(1) of the Act provides that information is exempt from disclosure if the information is protected by legal professional privilege.
37. Legal professional privilege (LPP) is not defined in the Act or in any other legislation. It is a common law concept shaped by the courts over time.
38. LPP is intended to protect the confidentiality of communications between a lawyer and a client. In the case of *Bellamy v the Information Commissioner and the DTI (EA/2005/0023)* the former Information Tribunal described LPP as:

“...a set of rules or principles which are designed to protect the confidentiality of legal or legally related communications and exchanges between the client and his, her or its lawyers related communications and exchanges which contain or refer to legal advice which might be imparted to the client, and even exchanges between the clients and [third] parties if such communication or exchanges come into being for the purpose of preparing for litigation...”
39. A professional legal advisor for the purposes of LPP could be a solicitor, barrister, licensed conveyancer or a legal executive holding professional qualifications recognised by the Institute of Legal Executives (ILEX). The legal advisor can be either an external lawyer or an in-house lawyer employed by the public authority itself. This was confirmed in the former Information Tribunal's ruling in *Calland v Information Commissioner and FSA (EA/2007/0136; 8 August 2008)*.
40. There are two types of privilege – litigation privilege and legal advice privilege. Litigation privilege is available in connection with confidential communications made for the purpose of providing or obtaining legal advice in relation to proposed or contemplated litigation. Advice privilege will apply where no litigation is in progress or being contemplated.
41. The DVLA has confirmed that the information relates to legal advice privilege.
42. The information which the DVLA has withheld under the section 42 exemption in this case consists of the seven documents in the complainant's previous complaint reference number FS50205855 and part of documents 2 and 3 of the four documents provided to the complainant on 25 August 2010.
43. In respect of the seven documents which contain information regarding the application of 'Regulation 27', the Commissioner is satisfied that

they contain advice sought by the DVLA and received from its legal advisors which constitutes communications between a lawyer and a client.

44. The Commissioner has therefore gone on to consider the redactions in the documents numbered 2 and 3 disclosed to the complainant at the time of this request and is satisfied that they do contain details of legal advice given to the DVLA.
45. Having satisfied himself that the dominant purpose of all the communications being withheld relate to the provision of legal advice, the Commissioner has gone on to consider whether there were any circumstances in which the confidentiality of the documents had been lost.
46. If the information has been disclosed to the public, confidentiality will have been lost. In the case of a partial public disclosure those parts of the information disclosed will have automatically lost their confidentiality. However, in terms of the undisclosed parts, this would depend on whether the partial disclosure revealed the substance of the non-disclosed information. If the answer to this was yes, then confidentiality of the undisclosed information would also have been lost. However, if the answer was no, the confidentiality would still apply and LPP would still be engaged. Alternatively, a restricted disclosure to interested relevant third parties will not result in the loss of confidentiality and again, LPP will still be engaged.
47. The DVLA has confirmed that the withheld information has only been disclosed to a distinct group of strategic persons within the DVLA, the DfT and the ICO. The Commissioner is therefore satisfied that in this case, the confidentiality of the documents has not been lost and legal professional privilege i.e, section 42(1) of the Act is engaged in relation to all information withheld on the basis of section 42(1) of the Act. He has therefore gone on to consider the public interest test.

Public interest arguments in favour of disclosing the requested information

48. The Commissioner is mindful that there will always be an assumption in favour of disclosure due to the need for accountability and transparency in the decision making process of the public authority.
49. This particular case is no exception and the Commissioner notes there is a strong public interest in favour of disclosure of the information in the interests of transparency regarding the decision made by the DVLA in respect of the application of 'Regulation 27' to the Directive.

50. There is also a strong public interest in favour of disclosure of the information so that the DVLA is accountable for its decision to past and present vehicle keepers, and the wider public.
51. The age of the advice is also significant. Generally, the older the advice, the more likely it is to have served its purpose and the less likely it is to be used as part of the decision making process. This may mean that any harm (adverse affect) to the privilege holder is slight and gives greater weight to arguments in favour of disclosure.
52. The documents and redactions subject to this complaint are dated 1999, 2005-2008 and would not therefore on face value be considered recent.

Public interest arguments in favour of maintaining the exemption

53. The Commissioner is mindful of the inherent strong public interest test in favour of maintaining the right of LPP between a client and a legal advisor in the interests of safeguarding the right of any person to obtain free and frank legal advice which goes to serve the wider administration of justice. This position was endorsed by Justice Williams in the High Court case of DBERR v Dermod O'Brien who stated:

"...Section 42 cases are different simply because the in-built public interest in non-disclosure itself carries significant weight which will always have to be considered in the balancing exercise (para 41)."

54. However, the Commissioner is mindful that LPP should not be elevated 'by the back door' to be an absolute exemption and accepts that the proper approach is to:

"...acknowledge and give effect to the significant weight to be afforded to the exemption in any event, ascertain whether there were particular or further factors which pointed to non-disclosure and then consider whether the features supporting disclosure (including the underlying public interest which favoured disclosure) were of equal weight at the very least..."

[Lord Justice Williams in the High Court case of DBERR v Dermod O'Brien para 53]

55. The Commissioner accepts the Tribunal's view stated in its substituted decision notice that public interest factors in favour of maintaining an exemption are more likely to be of a general character. He also accepts the basis for this argument in that just because a factor may be of a general rather than a specific nature it does not mean that it should be accorded less weight or significance.

"A factor which applies to very many requests for information can be just as significant as one which applies to only a few. Indeed, it may be more so."

(Keith J at paragraph 34, Home Office and Ministry of Justice v Information Commissioner [2009] EWHC 1611 (Admin)).

56. The Commissioner has also considered some case specific arguments in favour of maintaining the exemption and notes that one relevant factor in favour of maintaining the exemption relates to whether the advice is still being implemented or relied on ('live') at the time of the request or whether it may continue to give rise to challenges by those unhappy with the course of action adopted.
57. The circumstances of this case (both at the time of the request and currently) indicate that the advice is still subject to legal challenges and the Commissioner would point out that there is an on-going legal challenge to the European Commission instigated by the complainant.

Balance of the public interest arguments

58. Whilst the Commissioner accepts that there are indeed strong general and case specific public interest factors in favour of disclosure including the need for accountability and transparency in the decision making process and that the age of the documents/redactions would not automatically be considered 'relatively recent', he considers that the public interest arguments in favour of maintaining the exemption, including the strong inherent interest in maintaining the right of LPP between a client and a legal advisor and the fact that this legislation is subject to an on-going legal challenge to be of greater weight. The Commissioner has therefore concluded that the balance of public interest weighs in favour of maintaining the exemption.

Section 40(2) – Personal information

59. Section 40(2) of the Act states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the Act would breach any of the data protection principles.
60. In its letter to the complainant dated 25 August 2010 the DVLA enclosed 4 documents it had identified as falling within the scope of the complainant's request. It confirmed that it was redacting the signatory of both document 1 and 2 and the named individuals on the second page of document 2 on the basis that the DVLA considered disclosure would breach at least one of the principles of the Data Protection Act 1998 ('the DPA').

61. In order to reach a view regarding the application of this exemption, the Commissioner firstly considered whether or not the requested information was in fact personal data.

Is the requested information personal data?

62. Personal data is defined at section 1(1) of the DPA as:

"personal data means data which relate to a living individual who can be identified-

(a) from those data,

(b) from those data and other information which is in the possession of, or likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual."

63. When considering whether the information is personal data, the Commissioner had regard to his own published guidance: *"Determining what is personal data"*.¹

64. Taking into account his guidance on this matter, there are two questions that need to be considered when deciding whether disclosure of information into the public domain would constitute the disclosure of personal data:

(i) "Can a living individual be identified from the data, or, from the data and other information in the possession of, or likely to come into the possession of, the members of the public?"

(ii) "Does the data 'relate to' the identifiable living individual, whether in personal or family life, business or profession?"

65. The Commissioner is satisfied that the names of individuals do constitute personal information.

66. Although the DVLA did not specify which of the data protection principles it considered would be breached by disclosure, its submissions to the Commissioner did refer to fairness and the reasonable expectations of

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http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/what_is_data_for_the_purposes_of_the_dpa.pdf

the data subjects. This accords with the Commissioner's view that the first principle is the most relevant in this case.

Would disclosure contravene the first data protection principle?

67. The first data protection principle requires that the processing of personal data be fair and lawful and,
- at least one of the conditions in schedule 2 is met, and
 - in the case of sensitive personal data, at least one of the conditions in schedule 3 is met.

68. In the case of personal data, both requirements (fair and lawful processing, and a schedule 2 condition) must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing will not be in accordance with the first data principle.

Would disclosure be fair?

69. In considering whether disclosure of the withheld information would be fair, the Commissioner has taken the following factors into account:
- The reasonable expectations of the data subjects.
 - Consequences of disclosure.
 - The legitimate interests of the public.

The reasonable expectations of the data subjects

70. The Commissioner's awareness guidance on section 40 suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private life.² Although the guidance acknowledges that there are no hard and fast rules it states that:

"Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned."

²http://www.ico.gov.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/PERSONAL_INFORMATION.ashx

71. The Commissioner's guidance therefore makes it clear that where the information relates to the individual's private life (i.e. their home, family, social life or finances) it will deserve more protection than information about them acting in an official or work capacity (i.e. their public life).
72. The Commissioner notes that the requested information relates to the individual's professional life. However, the Commissioner is mindful that not all information relating to an individual's professional or public role is automatically suitable for disclosure. He notes that whilst there may be little expectation of privacy with regard to information relating to a person's work duties, the seniority of the relevant individual(s) should be taken into consideration with a greater expectation of disclosure the more senior the role.
73. The DVLA has informed the Commissioner that it has a policy of not disclosing names of employees below the level of senior manager and has confirmed that the named individuals are of a grade below that of senior management. The DVLA has added that the individuals would therefore have an expectation that their names would not be disclosed.
74. Whilst the Commissioner accepts that the individuals concerned would not therefore have had any expectation that their names would be disclosed, the Commissioner does not consider that a public authority creating a policy of non-disclosure is absolutely determinative.
75. The DVLA has further argued that the documents containing the redacted names are now over 12 years old and those individuals no longer work within the relevant department of the Agency. The DVLA considers that there is a risk that disclosure of the individuals' names may draw them into a matter that they no longer have any knowledge of and no prospect of contributing to. It has therefore argued that to involve these individuals at this stage would be unfair.

Consequences of disclosure

76. In his assessment of the consequences of disclosure, the Commissioner is mindful of the fact that it is not always possible to quantify or prove the impact that disclosure may have on the data subjects. In this particular case, the Commissioner considers that disclosure is likely to cause unwarranted and unnecessary distress to the data subjects at the centre of the request particularly in the light of the DVLA's concerns that the individuals could be dragged into an issue of which they now have no knowledge.

The legitimate public interest in disclosure

77. Notwithstanding the data subjects reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure. For example, in the case involving the MP's expenses the former Information Tribunal commented that:

'79. ...in relation to the general principle application of fairness under the first data protection principle, we find:

(..) the interests of data subjects, namely MPs in these appeals, are not necessarily the first and paramount consideration where the personal data being processed relate to their public lives'.

78. In considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach, i.e. it may still be possible to meet the legitimate interest by only disclosing some of the requested information rather than viewing the disclosure as an all or nothing matter.
79. In this particular case, the Commissioner accepts that in addition to the broad general principles of accountability and transparency there is a legitimate interest in knowing the names of the individuals whose identities have been redacted.
80. In balancing the reasonable expectations of the data subject and the consequences of disclosure of the information against the legitimate public interest in disclosure, whilst the Commissioner accepts that there is a legitimate interest in disclosure he considers it to be outweighed by the reasonable expectations of the data subject and the potential consequences of disclosure. The Commissioner has therefore determined that it would not be fair to disclose the requested information and in his view, disclosure would breach the first data protection principle. He therefore upholds the Council's application of the exemption at section 40(2).

Procedural Requirements

Section 1(1) – Access to information held by public authorities

81. Section 1(1) of the Act places a duty on each public authority to provide access to information requested by an individual or organisation.

Section 10(1) – Time for compliance with the request

82. Section 10(1) places a duty on all public authorities to comply with section 1(1) promptly and in any event, not later than the twentieth working day following the date of receipt of the request.
83. The DVLA's failure to recognise the correct nature of the complainant's first request for information meant that it did not provide information falling within the scope of the request to the complainant within the required timescales. This therefore represents a breach of sections 1(1) and 10(1) of the Act.

The Decision

84. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- The DVLA correctly concluded that information in respect of question 3 was not held.
 - The DVLA correctly applied section 42(1) to information attracting LPP.
 - The DVLA correctly applied section 40(2) to the third party personal information in documents 1 and 2.
85. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- The DVLA's failure to recognise the correct nature of the complainant's first request and to provide information falling within the scope of the request within the required timescales represents a breach of sections 1(1) and 10(1) of the Act.

Steps Required

86. The Commissioner requires no steps to be taken.

Other matters

87. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

Understanding of the nature of the request

88. The Commissioner notes that there were a number of procedural issues regarding the DVLA's handling of this request for information which, although they did not result in breaches additional to those outlined in paragraphs 82 to 84 of this notice, nevertheless resulted in an unsatisfactory response to this request from the outset.
89. For example, the failure to understand the nature of the original request does not represent good practice on the part of the DVLA and falls short of adherence to the Section 45 Code of Practice. In the Commissioner's opinion, the complainant's letter of 16 June 2010 quite clearly requested information in respect of the 'application' of 'Regulation 27' as opposed to its 'compatibility' with the Directive.
90. This was further compounded when the DVLA interpreted the complainant's letter of 23 July 2010 as a new request for information, and in the process completely discounted the complainant's requests numbered 3, 4 and 5.
91. The Commissioner would have anticipated that a large public authority such as the DVLA, accustomed to high volumes of requests for information under the Act, would have handled this request in a manner more closely aligned to the recommended standards in the Section 45 Code of Practice and he expects that all future requests should demonstrate closer adherence to procedural efficiency.

The internal review

92. Whilst there are no timescales specified in the Act for the communication of the internal review, the Section 45 Code of Practice recommends that the internal review should be considered promptly.
93. The Commissioner has also produced guidance in relation to this matter and considers 20 working days from the date of the request for a review to be a reasonable time in most cases. He does nevertheless recognise that there may be a small number of cases where it may be reasonable to take longer. The Commissioner's view is that no review should exceed 40 working days and, as a matter of good practice, the Commissioner expects the public authorities to notify the applicants in cases where more time is needed and to provide an explanation of why that is the case.
94. The Commissioner notes that the complainant requested an internal review of the original decision on 23 July 2010. However, as stated in paragraph 20 of this notice, the DVLA did not communicate the outcome of its internal review until 17 November 2010.

95. The Commissioner also notes that even if the DVLA had correctly treated the complainant's letter of 23 July 2010 as a new request for information, his letter of 2 October 2010 requesting an internal review exceeded the 20 working days considered by the Commissioner as a reasonable time in most cases. The Commissioner also notes that the complainant was not informed by the DVLA why any more time was needed.
96. The Commissioner considers that this is an unacceptable response to the request for an internal review and does not take account of the Section 45 Code of Practice or his own guidance on the matter. The Commissioner therefore expects the Council to ensure that all future requests for internal reviews are dealt with in accordance with both the Section 45 Code of Practice and his guidance.

Right of Appeal

97. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk.

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

98. 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.
99. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 20th day of October 2011

Signed

**Anne Jones
Assistant Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides that -

"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."

Time for Compliance

Section 10(1) 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."

Vexatious or Repeated Requests

Section 14(1) provides that –

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious"

Personal information.

Section 40(2) provides that –

"Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied."

Legal Professional Privilege

Section 42(1) provides that –

"Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information