

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 03 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 requested details on complaints forwarded to the Independent Complaints Assessor by the DVLA. The DVLA provided some information to the complainant, but cited the cost limit at section 12(1) of the Act in relation to the remainder of the requested information. The Commissioner is satisfied that the DVLA correctly relied on section 12(1), but finds that the DVLA breached 16(1) 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 Driver and Vehicle Licensing Agency (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 of 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. The DVLA operates a complaints procedure which is now outlined in leaflet INS 101 leaflet ('Customer Service Guide and what to do if things go wrong') that explains the procedure and the steps that must be followed before cases can be referred to the ICA. There is a 4 step procedure in place. This leaflet has replaced leaflet INS121.

4. Dame Elizabeth Neville, DBE QPM, is currently the Independent Complaints Assessor ('the ICA') for the agencies of the Department for Transport which includes DVLA, Driving Standards Agency, Vehicle Certification Agency, the Vehicle and Operator Services Agency and the Highways Agency.
5. The ICA deals with complaints concerning unreasonable delays, mistakes, discourtesy, bias or unfairness, withholding information and giving wrong advice or information.

The Request

6. On 18 June 2007 the complainant requested the following information from the DVLA in relation to the role of the ICA:

"(1) How many complaints have been referred to you [the Chief Executive of the DVLA] under step 3 of leaflet INS121 in the last twelve months?
(2) How many complaints did you uphold of that number?
(3) How many complaints were the DVLA asked to forward to the ICA in the last twelve months?
(4) How many did you/DVLA allow to be forwarded to the ICA.
(5) How many complaints forwarded to the ICA were upheld?
(6) Please provide a copy of [an officer's] report to you on this matter."

7. The DVLA acknowledged receipt of the request on 22 June 2007.
8. The DVLA responded on 19 July 2007 as follows:

Question 1

The DVLA explained in relation to question 1 that, between 1 July 2006 and 30 June 2007, 1029 complaints were addressed for the Chief Executive's attention.

Questions 2 and 3

In relation to questions 2 and 3 the DVLA explained that it did not hold information on complaints in a way which would allow the DVLA to provide the level of detail requested. The DVLA explained that to ascertain the detail requested it would need to undertake a manual interrogation of each complaint file. The DVLA therefore cited section 12 of the Act.

Questions 4 and 5

The DVLA advised the complainant that it had taken the period in which he was interested in as the period outlined in questions 2 and 3 (between 1 July 2006 and 30 June 2007). The DVLA confirmed that, within this period, 12 cases were referred to the ICA. Of those, 10 were upheld in the DVLA's favour.

Question 6

The DVLA provided a copy of the report, with names of junior staff redacted.

9. On 16 August 2007 the complainant requested an internal review of the DVLA's decision. In particular the complainant challenged the DVLA's application of section 12 of the Act to questions 2 and 3 of his request.
10. On 12 October 2007 the DVLA responded to the complainant. The DVLA confirmed that it had upheld its decision to rely on section 12 of the Act and refuse these parts of the request.

The Investigation

Scope of the case

11. On 31 October 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant requested that the Commissioner consider whether the DVLA was correct to rely on section 12 of the Act to refuse questions 2 and 3 of his request.

Chronology

12. On 19 December 2008 the Commissioner contacted the DVLA asking it to explain its stance in relation to section 12. The Commissioner requested a sample of the case files which would need to be manually interrogated.
13. On 27 January 2009 the DVLA provided a response to the Commissioner. The DVLA outlined its calculations in respect of question 2 of the request and explained that it would be required to manually interrogate the complaint cases which had been addressed to the Chief Executive.
14. In relation to question 3 the DVLA limited its response to Continuous Registration (CR) complaints and explained that the continuous registration enforcement files are managed via a computerised local network. The DVLA explained that whilst this computerised network existed a manual interrogation of each enforcement file would be required to determine whether a referral to the ICA was requested.
15. On 30 March 2009 the Commissioner requested further clarification from the DVLA on the manner in which it recorded customer complaints
16. The DVLA responded on 7 May 2009 and provided the Commissioner with a representative sample of the electronic case files. The DVLA also provided a further explanation of the electronic casework system in place.
17. On 29 May 2009 the Commissioner contacted the DVLA outlining that he considered that the request in question 3 referred to all complaints made to the DVLA and not just CR complaints. The Commissioner requested further details of the calculation of the costs associated with providing information in relation to all the complaints made to the DVLA.

18. On 8 June 2009 the DVLA explained that all complaints received by the DVLA were manually entered onto an Excel spreadsheet by a Clerk in the Chief Executive's Office. The Clerk would allocate the complaints to a directorate for response and forward the complaint. The DVLA advised that no statistics were held on the number of complaints upheld. The DVLA provided details of the spreadsheet for the period July 2006-June 2007 which detailed all customer complaints. The DVLA also provided the further clarification in relation to the DVLA's estimate requested by the Commissioner.

Analysis

Substantive Procedural Matters

Section 12 – cost limit

19. Section 12(1) indicates that the public authority is not required to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
20. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') provide that the cost limit for central government departments is £600. This must be calculated at the rate of £25 per hour, providing an effective time limit of 24 hours. If a public authority estimates that complying with a request would exceed 24 hours, or £600, section 12(1) provides that it may be refused.
21. Regulation 4(3) of the Fees 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.”
22. 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 guided by the following points made by the Tribunal 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*”

Question 2 of the request

23. In order to ensure that it was reasonable to base its estimate on extraction of the information about complaints from the individual case files the Commissioner has considered whether the DVLA held the information in any other format.
24. The Commissioner asked the DVLA to explain how the information requested was held.
25. The DVLA advised that there had been a long standing need to record customer complaints and traditionally this information had been recorded within MS Excel spreadsheet format 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.
26. 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.
27. This information allowed the DVLA to confirm that between 1 July 2006 and 30 June 2007 1029 complaints were addressed to the Chief Executive and 3136 complaints had been received in total across all departments.
28. The DVLA explained that it had developed an electronic system to record complaints, which maintains all DVLA complaint data and provides management and statistical information regarding customer complaints. The DVLA however stated that this system recorded customer complaints from March 2007. At the time of the complainant's request the system was not in place, and therefore the DVLA would be required to manually interrogate the case files identified.
29. The DVLA informed the Commissioner that it had a casework management system called a Local Office Casework System (LOCS) which held details of all continuous registration enforcement files. The DVLA explained that considered that complaints about CR would be held electronically in LOCS.
30. The DVLA advised that the LOCS system contains closure codes which local offices use when closing enforcement cases. It explained that it was able to search the database based on these closure codes.
31. The DVLA provided the Commissioner with the relevant codes and explained that there were no closure codes that correlated to the requested information and that the DVLA could not therefore use closure codes as a method of searching the raw data.
32. 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 a manual interrogation of the case files. 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 the Excel spreadsheet.
33. The DVLA confirmed that 1029 complaints had been forwarded for the Chief Executive's attention for the period requested. It explained that it held some information electronically, for example complaints in relation to continuous registration on LOCS, and some information in hard copy files. The DVLA explained that hard copy complaint case files vary to some degree. It outlined that one complaint case file alone consisted of six lever arch files, without any index system. The DVLA provided the Commissioner with a copy of a paper complaint file for his consideration.
 34. The DVLA indicated that on average it would take 6 minutes to check each complaint file (electronic and/or hard copy) to ascertain if a referral to the ICA had been requested.
 35. The Commissioner has had regard to a representative sample of the electronic case files which would need to be considered, and the DVLA's submissions in relation to the hard copy complaint files. The Commissioner is satisfied that the DVLA's estimate is reasonable. The Commissioner has therefore taken 6 minutes to be a reasonable estimate of the time required to consider one electronic file.
 36. In terms of manual files, as the DVLA has advised that some complaint files consist of up to 6 lever arch files, and there is no index to the information, the Commissioner is satisfied that it would take a minimum of 6 minutes to check each manual file. He has therefore taken 6 minutes to be a reasonable estimate of the time required to consider one manual file.
 37. The overall estimate would therefore be 6 minutes x 1029 = 6174 minutes, which equates to 102.9 hours. The Commissioner notes that the estimated time for complying with the request is 4 times the 'appropriate limit'.
 38. The Commissioner therefore considers that section 12(1) is engaged in respect of question 1 of the request.

Question 3 of the request

39. The Commissioner notes the DVLA's submission that in order to answer this part of the request the DVLA would be required to undertake the same process as outlined in respect of question 2. The DVLA explained that in order to ascertain how many complainants requested a referral to the ICA, a manual interrogation of the case files would be required.
40. The Commissioner is satisfied that responding to question 2 of the request would exceed the 'appropriate limit'. It therefore follows that section 12 is engaged in respect of question 3 of the request for the reasons outlined in paragraphs 23-37 above.

Conclusion

41. Under the Act, a public authority does not have any obligation to provide information in the event that complying with the full request exceeds the costs limit. The Commissioner considers that it was reasonable to conclude that responding to questions 2 and 3 of the request would exceed the appropriate limit. Therefore the Commissioner upholds the application of section 12(1) in this instance.

Procedural Requirements

Section 10(1) – time for response

42. 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.'

43. 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.'

44. The Commissioner notes that the initial request was made to the DVLA on 18 June 2007 but that the response was not sent until 19 July 2007. Therefore in failing to confirm that it held information in relation to the request within 20 working days, technically the DVLA has breached section 10(1) of the Act.

Section 16 – advice and assistance

45. Section 16(1) provides that public authorities are required to provide advice and assistance to complainants.

46. Where a public authority refuses a request because the appropriate limit has been exceeded, paragraph 14 of the Code of Practice¹ recommends that the public authority should consider providing an indication of what, if any, information could be provided within the appropriate limit. It also states that the public authority should consider advising the applicant that a narrowed or refocused version of the request could be handled within the limit.

47. The Commissioner considers that the DVLA should have offered advice and assistance to the complainant in order to help reduce the scope of his request. In

¹ issued under section 45 on the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000

failing to offer such advice or assistance, the DVLA has breached section 16(1) of the Act.

The Decision

48. The Commissioner's decision is that the DVLA correctly relied on section 12(1) of the Act in relation to the request.
49. The Commissioner however finds that the DVLA breached section 16(1) of the Act.

Steps Required

50. The Commissioner requires the DVLA to take the following step to ensure compliance with the Act:
 - Contact the complainant and discuss what it can provide within the costs limit, in order for the Council to comply with its obligations under section 16(1) of the Act
51. The DVLA must take the steps required within 35 calendar days of the date of this notice.

Failure to comply

53. Failure to comply with the step described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

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

Internal review

53. The outcome of the internal review was finally communicated to the complainant on 10 October 2007. Although there is no requirement under the Act, the Section 45 Code of Practice recommends that the internal review should be considered promptly.

54. 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 smaller number of cases where it may be reasonable to take longer. However, the Commissioner expects the public authority as a matter of good practice to notify the applicant and explain why more time is needed. The Commissioner's view is that no case should exceed 40 working days.
55. The Commissioner notes that the internal review took 41 working days from the time the complainant formally requested an internal review and that the DVLA offered no explanation for this to the complainant.

Right of Appeal

56. 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 3rd 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 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.’

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

“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.”

Duty to provide Advice and Assistance

Section 16(1) provides that -

“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it”.

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.”