



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER (INFORMATION RIGHTS)**

EA/2014/0212

BETWEEN:-

MR ROBERT BROMLEY

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

and

DRIVER AND VEHICLE LICENSING AUTHORITY

Second Respondent

Hearing

Held on 22 January 2014 on the papers¹
Before: M Hake, M Jones and Judge C Taylor

Decision

The appeal is unanimously dismissed.

Date of Promulgation

19/03/15

¹ (An appeal 'on the papers' means we considered the papers without the parties being present at an oral hearing.)

Our Reasons

Background

1. On 17 March 2014, the Appellant requested from the Driver and Vehicle Licensing Authority (DVLA) (An executive agency of the Department for Transport²):

"I would like to analyse the cherished car registration numbers that have survived from the days before letters came fully into use [which is 50 years ago this year]. However, I am fairly certain that DVLA does NOT record the date a registration was first used so could I request ...

EITHER □ A list of car registrations that were first used before 1965 [if the first used date is known] [‘Part A’]

OR □ A list of car registrations that either begin with a digit (0-9) or end with a digit.” [‘Part B’]”

2. The DVLA responded that it did not hold Part A and that whilst it did hold information relevant to Part B, producing the information would exceed the appropriate cost limit under s.12 of the Freedom of Information Act 2000 ('FOIA' or 'the Act') would also 'be likely to be exempt' under s40(2)FOIA (on personal data). The Appellant was no more successful following the DVLA's internal review of its decision, and complained to the Information Commissioner ('ICO'). The ICO concluded that complying with Part B would exceed the cost limit.

Grounds of Appeal

3. The Appellant now appeals on the grounds that the ICO's decision is arbitrary and contains no justification for the alleged costs that would be incurred.
4. Additionally, he argued that he was willing to contribute to the costs so as to reduce the cost estimate. However, it is clear from s.13 FOIA that whilst the public authority has a power to charge for information in cases where s.12 FOIA applies, this is discretionary and it is not obliged to take payment. Therefore, we do not consider this below, as it cannot be a successful ground of appeal. □
5. The Appellant also suggested another means of reducing the costs by him liaising with the IT specialists. Again, there is no duty on the authority requiring the authority to consider assistance from the requester so as to reduce its estimated costs.
6. He also complained that "the spirit" of freedom of Information is not being adhered to by the process. This also is not a matter we can consider. The remit of the Tribunal is restricted to considering whether the requester has a right to have the requested material disclosed to him based solely on considering the application of the Act.
7. Accordingly, the main ground of appeal, as advanced in paragraph 3 above might fairly be summarised as the Appellant argues that s.12 has not been properly relied upon, on the basis that the authority failed to provide a proper justification for their cost estimate.
8. When reviewing the papers the panel also noted that no arguments had been received addressing whether s.16 FOIA (setting out the duty on the authority to

² As such, a government department includes all of its executive agencies.

advise and assist a requestor), and the parties were directed to provide arguments on this issue as well.

The Law

9. A person making a request of a public authority for information is generally entitled to be informed in writing whether it holds the information requested, unless exemptions or exclusions set out in the FOIA apply. If it holds the information, the public authority is generally required to disclose it subject to exemptions. (See S.1(1)(a)and(b)FOIA).

Section 12

10. A public authority is not required to comply with a request for information under the FOIA if the authority estimates that the cost of complying would exceed the 'appropriate limit'. (See s12(1)and(2) FOIA.)
11. The "appropriate limit" is set by the *Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004* (FIDP). Regulation 3 of the FIDP provides that for a public authority listed under Part I of Schedule 1 of the Act (which includes government departments), the 'appropriate limit' is £600. This is regarded as 24 hours of the public authority's time (See Regulation 4 of FIDP). □
12. In making its estimate, a public authority may only take account the costs it reasonably expects to incur in relation to the request in—
 - (a) determining whether it holds the information,
 - (b) locating it, or a document which may contain the information,
 - (c) retrieving it, or a document which may contain the information, and
 - (d) extracting it from a document containing it. (See regulation 3 of FIDP).
13. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate, which must be 'sensible, realistic, and supported by cogent evidence' (*Randall v Information Commissioner EA/2007/0004*). □

Section 16

14. Section 16 provides:

'(1) 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.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 ['the Code'] is to be taken to comply with the duty imposed by subsection (1) in relation to that case.'

15. In other words, a public authority has a duty to advise and assist a requester, and in circumstances where the cost of complying with the request would exceed 24 hours of the officials' time, it would be considered to have complied with that duty provided it has conformed with the Code. Paragraph 14 of the Code provides:

"Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the "appropriate limit" (i.e. cost threshold) the authority should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee."

The Task of the Tribunal

16. The Tribunal's remit is governed by s.58 FOIA. This requires the Tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the ICO's decision involved exercising discretion, whether he should have exercised it differently. The Tribunal may receive evidence that was not before the Commissioner, and may make different findings of fact from the Commissioner.
17. We have received a bundle of documents and submissions, and further arguments in response to our further directions, all of which we have considered.

Submissions

18. The arguments submitted by the ICO and DVLA include:

- 18.1. The DVLA 's vehicle database:
 - Is the register of vehicles that are and have been registered in Great Britain, with almost 38 million vehicles currently active on the register.
 - Records details of a vehicle (e.g. make, model, and colour); the current and previous registered keeper.
 - Is accessed by entering the vehicle's vehicle registration number (VRN) or vehicle identification number (VIN).
 - It is not designed or meant to be used as a 'management information tool'.

Cost estimation

- 18.2. Since the DVLA does not need to produce the information requested, a bespoke scan of the database with the assistance of DVLA's IT suppliers would be required. The information is not held in a simple Excel spreadsheet. In assessing the costs under s.12, of relevance would be the costs of retrieving and extracting it. □ The DVLA has considered the time it would take to progress the scan and design it, through the process in place at DVLA.
- 18.3. The DVLA maintained that it was unable to provide a definitive estimate as the estimate itself would incur considerable costs to the DVLA.
- 18.4. They therefore adopted the arguments advanced in an ICO Decision Notice FS50345802 dated 2 June 2011 issued in relation to a request of the DVLA's vehicle database. The estimation of cost relied on there for creating a scan to be run on the register:
 - DVLA staff to write and log the requirements of the scan (1 hour)
 - DVLA's Small Change Initiative Board (SCIB) to review the requirements (10 minutes x 12 members = 2 hours)

- IT supplier to produce a 'solution overview' and this overview to be quality assured by IT supplier (estimated 12 hours)
- 18.5. IT supplier to deliver the requirement – design, build, test, schedule and implement the scan. The scan would be run at each stage to test performance. The time taken to run the scan has not been included, but the time taken to analyse the results has been. (Estimated to be 36 hours).
- 18.6. They also relied on the ICO Decision Notice FS50197237 involving a request for the number of surviving A40 Farinas (a classic car). In this case the DVLA assessed that to collate the information requested, it would have to extract information from its database, requiring it to run new data-sets which would involve extensive work for members of staff. It estimated that such work would take approximately:
- 1 day of design work (what type of parameters, coding, software, and script type would be required to run the scan against the DVLA database);
 - 3 days development (the actual physical writing/coding i.e. development of the scan script in the appropriate software tool that will be used.); and
 - 2 days unit testing (the stage whereby the scan is run in a test environment and the output checked to make sure it delivers what it has been designed to deliver).

18.7. The DVLA explained in that decision that the DVLA outlined that its vehicle records are designed specifically for the fast input and retrieval of two specific fields, the Vehicle Registration Mark (VRM) and Vehicle Identification Number (VIN). In order for the DVLA to obtain details of specific vehicle records (such as make and model) the record can only be accessed by inputting the VRM or VIN. In the absence of these two pieces of information, each of the records held (which at June 2008 was 39,667,960) would have to be interrogated to establish whether the make and model fields contained 'A40' and 'Farina'. It is this that would necessitate the development work described above.

19. The Appellant's arguments include that:

19.1. He contested that the DVLA had given any actual indication of what estimated costs were arrived at or how they were calculated. He stated that as he was an IT specialist, he knew how easy it would be to do the "scan" of the database and how little of an IT specialist's time it would take. He suggested that if he was provided with a schema of the database he could come up with the necessary "scan" in a matter of minutes, so either DVLA did not know how easy it would be to provide the information or they were being given questionable advice on the amount of effort that would be required to provide the information. He suggested he liaise with the IT team, and then they would together be able to retrieve the information with very little effort.

Further Submissions

20. The panel was not satisfied that the arguments from the respondents gave sufficient information upon which we could fairly make a decision. As regards S.12 FOIA, we noted that, amongst other things: whilst we had been referred to two previous decisions, based on different requests but both involving the vehicle database the estimates differed for the two cases -(one estimated 51 hours, the other estimated 6

days, or presumably 42 hours) - such that the cost was not exactly comparable to each other, and that it was likely that they will not be exactly comparable to this case; and their submissions had not fully addressed the Appellant's arguments. We also required the parties to address whether s.16 FOIA had been complied with.

21. The DVLA's response included the following arguments:

Section 12

- 21.1. In respect of the present request, the DVLA had not precisely calculated the cost of providing this information since the suppliers and the process for developing the software was the same as in the case of Decision Notice FS50345802, and the costs would be similar.
- 21.2. *Randall v Information Commissioner* had indicated that a precise calculation was not required, and that the estimate be 'sensible, realistic and supported by cogent evidence'.
- 21.3. The vast majority of the costs involved in complying with Mr Bromley's request related to the work required to develop new software so as to run a report that could extract the information that the Appellant sought.
- 21.4. The Appellant's offers to help would not substantively reduce the work required to bring the costs of compliance down. The vehicle database was run on a 'Legacy system' had been in place since DVLA was formed in the 1970s and had been developed over time. While the Appellant suggested that the work involved in providing this information was relatively straightforward, and put forward his experience as an IT Developer as a factor in making this suggestion, this was not the case. It was not the scan itself which would take over 24 hours work to complete, but rather the process of commissioning the required scan, which needed to be done through DVLA's IT contractor. As referred to in Decision Notice FS505345802, this included writing and logging the requirements of the scan, having the scan reviewed at senior level, producing and quality assuring a solution overview, and finally the design, build, testing, scheduling and implementation of the scan.
- 21.5. There was a difference between the two figures quoted in previous decisions (see because of the difference in the criteria for the scan, but the same process was required regardless. Nevertheless both the estimates exceeded the ceiling of 24 hours by a considerable margin. Neither was a 'borderline' case.

22. The Appellant's arguments included that he was amazed at the alleged complexity of retrieving basic information from DVLA's database. If genuine, he thought it would mean that no one could expect to be given any information stored within a government department's database due to the costs involved. He thought this looked like a convenient excuse for denying information requests.

Section 16

23. The DVLA explained that it considered:

- 23.1. the request had been very specific and required information spanning 50 years. They considered that it would not have been helpful to have suggested that the Appellant restrict the time span of his request or restrict his request to those car registrations which began or ended with a digit.

23.2. Restricting the request would not have affected the cost of providing the information as the process involved would have been the same. They had also referred the Appellant to previous decision notices in relation to s12 of the FOIA before he complained to ICO, which illustrated that point.

24. The ICO noted in relation to this point:

24.1. A public authority must therefore give the requester reasonable advice and assistance to refine their request where this is possible. This will generally involve explaining why the limit would be exceeded and what information, if any, may be available within the limits. However, it is not always the case that a request can be refined so as to bring it within the costs limit. A more specific request can sometimes take just as long to answer, and this is the position of the DVLA in this case, ie any refining of the request would not have any significant effect on the time taken to prepare the scan.

Our findings

25. We accept that:

25.1. the DVLA has no business need to hold the information that has been requested in a readily extractable way;

25.2. ready access to the register is through entering a vehicle's vehicle registration number (VRN) or vehicle identification number which would then provide details outlined in paragraph 18.1 above.

25.3. to answer the request would require the DVLA to produce bespoke software or a scan to interrogate its database, akin to that described in paragraph 18.4 above, and these would be costs of retrieving and extracting which as such would exceed the 24 hour limit.

26. We accept the reasoning set out in paragraph 21 in their entirety, and accordingly accept that the DVLA provided a reasonable estimate, that was sensible, realistic, and supported by cogent evidence. We do not accept the Appellant's assumptions in paragraph 22 above as sufficient to undermine the DVLA's position. The DVLA did not appear to have been disingenuous and using s12 FOIA as an excuse to try to deny information. It seems to us entirely plausible that a register devised many years ago, (in the 1970s), and developed according to need, would not be able to quickly retrieve the information requested as it had no business need. The Appellant's assertion that if the DVLA's arguments were true, then information stored on a government database could never be retrieved seems to us without foundation. We have no indication that all government department databases are the same, as the Appellant seems to be implying.

27. As regards, s16 FOIA, we accept that any refocusing or narrowing of the request would have no effect on the time taken to prepare the scan. Accordingly, we accept that the authority complied with the Code and therefore s.16 FOIA. This is because it considered that it was not possible to 'provide an indication of what, if any, information could be provided within the cost ceiling, and determined that this was not possible in the circumstances', and that there would have been no point in considering advising on reforming or re-focussing the request as this would not have been achievable based on the subject of the request.

28. Our decision is unanimous.

Judge Taylor
19.3.15