



**IN THE MATTER OF AN APPEAL TO THE FIRST TIER TRIBUNAL (INFORMATION RIGHTS) UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000.**

EA/2016/0295

**Between:**

**NICHOLAS STEEL**

Appellant

and

**THE INFORMATION COMMISSIONER**

First Respondent

and

**DRIVER AND VEHICLE LICENSING AGENCY**

Second Respondent

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**Tribunal**

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**Brian Kennedy QC  
Henry Fitzhugh  
Narendra Makanji**

**Oral Hearing 9 May 201 – Field House, London  
11 August 2016 London**

**Subject Matter: Application of exemptions under s12(1) (cost/time exceeds appropriate limit) of the Freedom of Information Act 2000 (“FOIA”)**

**Result: Appeal refused.**

**Introduction**

**[1]** This decision relates to an appeal brought under section 57 of the Freedom of Information Act 2000 (“the FOIA”). The appeal is against the decision of the Information Commissioner (“the Commissioner”) contained in a Decision Notice dated 24 November 2016 (reference FS50634853) which is a matter of public record.

**[2]** The Tribunal Judge and lay members sat to consider this case on 7 June 2017. The Tribunal dismisses the appeal.

## REASONS

### **Factual Background to this Appeal:**

[3] Full details of the background to this appeal, Mr Steel's request for information and the Commissioner's decision are set out in the Decision Notice ("the DN") and not repeated here, other than to state that, in brief, the appeal concerns the questions of whether the Driver & Vehicle Licensing Agency ("the DVLA") holds the information, and where it does hold the information, whether or not the cost of disclosure would exceed the appropriate cost limits.

### **CHRONOLOGY**

20 March 2016	Appellant's request for information regarding the number of households with vehicles in particular postcodes
8 April 2016	DVLA provided the Appellant with information and advice regarding the number of vehicles registered, but said it did not hold information regarding number of vehicles per household Appellant requests an internal review
31 May 2016	DVLA provides further information regarding data potentially of interest held by the Department for Transport, but stated that gathering the number of vehicles per household would require the creation of new data
22 June 2016	Appellant complains to the Commissioner
24 Nov 2016	DN FS5064853 upholding

### **RELEVANT LEGISLATION**

#### **[4]**

#### **1 General right of access to information held by public authorities.**

- (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 12 Exemption where cost of compliance exceeds appropriate limit.**

(1) 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.

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

(3) In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.

### **section 16 Duty to provide advice and assistance.**

(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 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

### **COMMISSIONER’S DECISION NOTICE**

**[5]** The Commissioner found that the cost estimate must be reasonable in the circumstances of the case. The current appropriate limit for a public authority such as the DVLA is £450. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to DVLA. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:

- (a) determine whether it holds the information
- (b) locate the information, or a document which may contain the information
- (c) retrieve the information, or a document which may contain the information, and
- (d) extract the information from a document containing it.

**[6]** The Appellant argued that, as the number of postcodes he cited was so low, conducting a bespoke search of the DVLA database would not exceed the cost limits. However, the Commissioner deduced that the actual number of postcodes contained within his request may be in excess of 1,300. The DVLA stated that the setup of their databases was not designed to generate management information, as access to information about specific vehicles must be

gained by inputting that vehicle's registration mark. A rough estimate, using the Department for Transport's figures, suggested that the requested postcodes could contain around 18,000 vehicles. Breaking these figures down to households would require manual interrogation, as often one postcode covers many households.

The Commissioner accepted that these steps would exceed the cost limit, and upheld the decision to withhold the information. Regarding the s16 obligation to provide advice and assistance, the Commissioner was satisfied that the request could not be narrowed and so there was no breach of the obligation.

## **APPELLANT'S NOTICE OF APPEAL**

**[7]** The Appellant pointed out that the DVLA did hold the requested information, and denied that the costs of compliance would exceed the legal limits. He stated that a simple query of the database should yield all the data without issue, and that in relative terms the amount of information requested is "small beer". The idea of 'manual interrogation' is, in the Appellant's view, a "red herring".

## **COMMISSIONER'S RESPONSE**

**[8]** The Commissioner agreed that the Appellant's request would not cause the DVLA to create any new information. However, the database in question was designed in the 1970s, and the Commissioner has no reason to doubt the DVLA's evidence regarding the steps and time necessary to collate the requested information. The application of s16 is not a material consideration, as if the Tribunal considered that s12 did **not** apply, then the DVLA would be obliged to furnish a fresh response to the requests.

## **DVLA'S RESPONSE**

**[9]** The DVLA adopted the Commissioner's response, and provided information regarding the setup of the database in question and the process of creating a bespoke scan to extract the information. The time estimate for delivering the database was given as 45 hours, with a further 4127 hours to remove personal data, at a cost of around £50,000. The DVLA strongly refuted any suggestion of misleading the Appellant or the Commissioner in regards to these requirements. In respect of s16, any re-focussing or narrowing of the request would not negate

the necessity of creating a bespoke scan, and would therefore have no impact upon the cost projections.

## **APPELLANT'S REPLY**

**[10]** The Appellant refuted that there is any personal information in the database that would need to be removed, and therefore the 4127 hours can be discounted. The Appellant argued that as the basis of s12 refusals is time, any cost estimate is irrelevant. He instead provided a suggested method for the extraction of the information from the database.

**[11]** This Tribunal accepts and adopts the Commissioner's' reasoning in the DN and finds no grounds for establishing an error of Law in the DN. The Appellants argument is that the calculation of time and/or cost made by the DVLA is wrong and this is a matter of fact.

**[12]** In their Response dated 5 February 2017, the DVLA deal with the issues of the cost to respond to the appellant's request. In particular this Response sets out at Paragraphs 6 – 9 the background to their estimate of the costs involved. The Tribunal accept these assertions on the basis of the comprehensive and detailed witness statement of David Stephen Powlson dated and sworn 21 March 2017. In particular we refer to paragraphs 5 – 17 therein he provides an analysis of the costs involved to the DVLA in relation to the request by the Appellant (see paragraph 10). We accept the facts as asserted by the DVLA through this witness and have no evidence that we find would undermine or otherwise discredit it.

**[13]** Accordingly we find no error of Law or Fact relating to the reasoning in the DN and refuse this appeal.

**Brian Kennedy QC**

**14 June 2017.**