



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

EA/2016/0268

B E T W E E N:

PAVEL MATVEYEV

Appellant

-and-

INFORMATION COMMISSIONER

-and-

DRIVER AND VEHICLE LICENSING AGENCY

Respondents

Hearing

Held on 22 May 2016 at the Employment Appeals Tribunal, London.

Before Gareth Jones, Marion Saunders, and Judge Claire Taylor.

Decision

We unanimously dismiss the Appeal, finding in favour of the Respondents.

No further steps are required to be taken.

We note an error in the Decision Notice as set out at paragraph 18(a) below. However, it makes no material difference to the finding in this case.

REASONS

Background

1. The Appellant seeks to research the 'environmental impact of planned obsolescence of all vehicle makes and models'. He intends for the results to help motorists to buy vehicles which are likely to last longer than competitors, thereby reducing environmental impact of vehicle recycling and providing greater value for money.
2. The DVLA holds the database of over 39 million vehicles that are registered in the UK. □When a vehicle is registered with the Driver and Vehicle Licensing Agency ('DVLA'), it issues a vehicle registration certificate called the 'V5C' form. Part 4 of that certificate contains details including the make, model, colour, change of keeper dates and mileage. DVLA explains that this is not an exhaustive list as that part of the document provides an extract of the vehicle's register in hard copy.

The Request

3. On 28 January 2016, the Appellant made a request of the DVLA, as an agency of the DVLA as an executive agency of the Department of Transport, a public authority for the purposes of the Freedom of Information Act 2000 ('FOIA'):

"... For each vehicle (including scrapped ones) the information of which is kept by DVLA in digital form please provide me with the following information:

- *All vehicle details as provided in part 4 of V5C form (or similar details from pre-2001 design logbooks) excluding those not allowed to release under the Act.*
- *Dates of: first and later registrations, registered keeper changes, SORNs, SORN cancellations (new tax disc purchases), scrap/write off notifications, unscrap applications, owner changes, export and re-export along with the type of change and any other applications except changes of keeper's address.*
- *Mileage at dates requested above if known.*

I would like the above information to be provided to me as electronic copy on a CD or a DVD in CSV (as described in RFC 4180), SQL or XML file format inside a ZIP archive."

4. On 22 February 2016 the DVLA confirmed that it held the requested information, but relied on section 12 (costs) to exempt it from complying, explaining that the cost of locating, retrieving and extracting the information exceeded the appropriate limit of £600. It also explained that even if the request were narrowed in scope, the process of extraction of the information from the database would still mean the cost limit would be exceeded. It further elaborated that even if it were possible to retrieve and extract the information within the cost limit, some of the information requested would be exempt from disclosure under section 31 FOIA (*Law Enforcement*).
5. An internal review, by the DVLA maintained this position. There followed correspondence between the Appellant and the DVLA, including additional requests for information. These are outside the scope of this appeal.
6. The Appellant proceeded with a complaint to the Commissioner, who in her Decision Notice found that the DVLA had correctly relied on section 12 and further complied with its duty under section 16 FOIA (*Advice and Assistance*).

The Notice of Appeal

7. The Appellant now appeals on the grounds that section 12 was wrongly relied on.

The Task of the Tribunal

8. 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.
9. We have received a bundle of documents, authorities and submissions, and have benefitted from hearing from the Appellant and DVLA in person. Pursuant to an application by the Appellant, further directions were made at the hearing resulting in our receiving further submissions and evidence, all of which we have considered.
10. The Appellant has made other requests to DVLA. These are outside the remit of this appeal.

The Law

11. 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

12. 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.)
13. 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). □
14. 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).
15. 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, at para. 12*). □

Commissioner's Decision Notice

16. The Commissioner found that the Appellant had requested a copy of, or at least a substantial extract of, the vehicle database held by DVLA. In finding this exceeded

the cost limit, it relied on the detailed estimate of the time and cost made in relation to earlier decisions concerning the DVLA.¹ This is because the process it would have to go through to scan the vehicle record had not changed.

17. As regards section 16, the Commissioner accepted that even a considerably narrowed request would still have necessitated a scan, and this would have exceeded the cost limit.

Appellant's Evidence and Submissions

18. The Appellant's statements or submissions include:

- a. The Commissioner applied the wrong cost limit, where the correct limit for the DVLA is £600, which is 24 hours of work. (This has been accepted. As it does not alter the Respondents' case, it is not further discussed here.)
- b. He argued that the cost estimate has been hugely inflated. He cannot see any other explanation of extraordinary incompetence of DVLA's technical team, enormous failures of the DVLA database design, or more likely DVLA's attempt to block any FOI database request no matter how trivial.
- c. He provided his own estimate making some reasonable assumptions, where a response to three separate requests would take less than half an hour. Any reasonably qualified database engineer would be similarly capable of doing this.
- d. The argument related to the age of the database was misleading. According to Mr Powlson's oral evidence his team uses Oracle, MongoDB and Red Hat Enterprise Linux which are very reasonable and up to date selection of technologies for organisations like DVLA. Many technologies built decades ago are still fit for purpose. For instance, Macbooks use the Unix built in the early seventies. Whilst impossible to imagine the database has never been upgraded, he would still be able to program a query to run within 24 hours once technical details of the database were available.
- e. He recognised the similarity to the Bromley case, and as an experienced IT developer, (with a strong background in this and security) he supports every argument Mr Bromley made. He questioned DVLA's claim that the database was built in the 1970s and therefore is so costly to run bespoke scans. To argue the accuracy of the estimation he made further requests for information on the database design, infrastructure, etc. These were vital to demonstrate the cost estimates were unreasonable. The DVLA is now using section 12 as an excuse and also not providing any clarity as to their apparently unprecedented inefficient database to allow external IT professionals like himself to verify cost estimates. He could not see how it is possible to establish whether the estimation is sensible and realistic without database design details available for questioning the estimations.
- f. He had offered help to DVLA with the engineering tasks required to fulfil his request, but they refused his request.
- g. Redaction cannot be included in a cost estimate.

¹ See Commissioner Decision Notices FS50345802 (at para.s 17-28) and FS50544618 (para.14) and the Tribunal Decision EA/2014/0212 ('Bromley').

- h. No independent technical expert has been involved in interrogating the estimates, such that DVLA's 'bespoke scans' cannot be relied upon.
 - i. Assuming that the cost estimate were correct, he attempted to split his initial request so that in one request all they would need to do was run two to seven lines of SQL query and save it, which should only take 20 to 40 minutes.
 - j. The costs argument appears to make DVLA immune to any FOI request requiring access to the database. He compared this to an organisation where an FOI officer could only type letters with one finger so slowly that it always takes longer than 24 hours to type a response letter to any FOI request. DVLA appears to have similar tactics to deny FOI requests when it comes to accessing their database. And unlike typing letters, it appears to be more difficult to expose poor performance when it comes to technologies. As a software engineer he understood that the DVLA's estimations are enormously inflated and DVLA did not provide the evidence why those estimations are sensible, realistic and supported by cogent evidence.
 - k. DVLA's database is neither too complex nor large by modern standards. For example, the database of World Data Centre for Climate seems to be at least 10,000 times larger than DVLA's one. Library of Congress looks like about 5,000 times larger.
 - l. DVLA failed to send a database engineer to the hearing so there was no one to give evidence on technology questions.
 - m. DVLA appears to be using 'security by obscurity approach' (which rarely helps to achieve security and is significantly discouraged) to deny any further technical information which can prove that their costs/time estimations are incorrect. DVLA did not seem to care about security in the same way when selling their Bulk Data product to commercial clients. While strictly speaking it is technically true that disclosing a database schema may potentially assist a cyber-attack, this risk cannot be considered any way significant. If disclosing the database schema is still considered a significant security concern, a hearing could be conducted in private, but in this case he would require a real DVLA's database engineer (as opposed to civil servant) to be available for long questioning.
19. The Appellant produced an extract from *The Mythical Man-Month* by Dr Brooks, first published in 1975. He argued that this showed that a developer would produce an average of 5.24 lines of code a day on the MULTICS operating system. This would be far more complex than the DVLA system. He reasoned that this would imply that it would take no more than 1.33 days to perform the request.
20. The Appellant also produced an email from the DVLA of 2 February 2016, that set out bulk and mileage data products available to be purchased. For instance, bulk vehicle data was available costing £96,000 p.a. The Appellant reasoned that this showed evidence of the DVLA being capable to query their database in order to sell the data to private clients. (See pages 43 to 45 of the Bundle.)
21. The Appellant provided an extract from *Cracking the Code Interview* by G Laakmann McDowell, without specific reference to how it supported his case against the DVLA's estimate.

DVLA's Evidence and Submissions

22. DVLA's submissions includes:

- a. Complying with only the part 4 request would cost significantly more than the appropriate limit. The Appellant wished to obtain a copy, or at the least a substantial extract, of the vehicle database held by DVLA. This was built in 1975 to create a centralised system of registration. Its purpose is for access to records of specific vehicles by specified criteria for a specified purpose. It is accessed by entering the vehicle's vehicle registration or identification number.
- b. The DVLA has no business need for data to be extracted in the way the Appellant seeks. Therefore, it would be required to create a bespoke scan to interrogate the database to meet the Appellant's request. Although the criteria would differ, the process for doing so has not changed since the Decision Notice FS503458802.
- c. The Appellant's formulae (which he asserted a junior database engineer could employ in less than half a day), were not usable for the DVLA's database. Under *Williams v Information Commissioner (EA/2008/0043)*, the Tribunal cannot disallow reliance on the basis that the authority could have organised its records more effectively. The Mythical Man Month text was not specific or applicable to the DVLA database. Disclosure of the database design would be resisted by the DVLA for security reasons.
- d. The DVLA deals with 400 FOI requests a year. It depends on the question as to whether the information is provided.
- e. As regards the Appellant's request for information as to the design of the database, Mr Powlson referenced the recent NHS cyber-attack. He provided general details of systems used to assist as best he could in the circumstances. As per *Evans v Chief Constable of Surrey [1988] QB 588*, it is up to the Court to undertake a balancing exercise and in terms of burden, "*if a public immunity claim is raised, and it is usually only raised on sound or solid ground, it is necessary for those who seek to overcome it to demonstrate the existence of a counter acting interest calling for disclosure of the particular documents involved. It is then, and only then that the court may proceed to the balancing process*" The fact that the Tribunal has sufficient evidence to apply the applicable test in *Randall* is a factor against ordering disclosure.

23. Mr Powlson, the Head of Application Support and Infrastructure gave a statement that included the following:

- a. DVLA holds around 110 million vehicle records of which around 39 million concern vehicles currently on the road. These records are held on one core database, originally designed and commissioned in the mid-1970s. It is the means by which DVLA organises the vehicle records held. The scope of the request covers 110 million records that contain a very large number of individual fields that can be dependent on each other; for example, a change of engine might also involve a change of fuel type (both pieces of information being contained in Part 4).
- b. The DVLA does not provide public information about database designs,

operational technologies, processes or system or service design for operational and security reasons. Its type is commonly available, and an industry standard which many people may be familiar with. However, the structures of the tables within the database are unique to DVLA. A person unfamiliar with the DVLA vehicle database is unlikely to understand the complexities of its structure. Each of the individual records contained within the database is made up of 168 fields and each record of vehicle information is not stored in a simple table format. The structure has developed over time but inherits limitations and constraints of the original system for legislative and operational reasons.

- c. On 11 September 2015, DVLA brought IT work in-house, such that there is no longer a requirement to engage a contracted supplier. This has been removed from the cost estimate, but mainly makes a difference to the terminology rather than the cost..
- d. A bespoke scan that would need to be developed to retrieve and extract the requested information because it has not been retrieved/extracted before. The estimated time set out (at pages 168 and 169 of the Bundle) reflects the hardware, software and database structures as well as the complexities and scheduling constraints in carrying out the requirements because the vehicle database is constantly changing and is subject to multiple amendments by multiple users every day.
- e. Outside of FOIA, buyers can request specialist vehicle data from DVLA including a 'bulk data set', 'anonymised data set' and vehicle mileage data.

24. At the hearing, Mr Powlson explained:

- a. He was not an IT specialist, but was accountable for the IT staff. Bespoke scans were not a core part of the DVLA business. It ran operational activities involving outputs for the register and updates for the Police. Between April 2016 and 2017, DVLA had done 15 bespoke scans. The largest scan took 144 hours, the shortest 61 hours. In the present case, the figure of 41-hour estimate was conservative. Without fundamental modernisation, it was not possible to resolve queries more quickly.
- b. DVLA hoped to modernised its systems, however the estimate was based on the present system. Currently, the critical IT aspects were the complexity of the structure and large number of fields.
- c. He could not provide technical detail as to why the Appellant's suggested approach would not work. The experts working from him had advised him that it would not. Whilst he provided some detail at the hearing, he could not provide, for instance, the version of oracle used for security reasons where this could cause the agency harm.
- d. The DVLA have agreements with various companies, providing information and the costs set out on page 43 of the Bundle reflect the recovery of costs.
- e. As to the argument that an IT specialist should have appeared at the Tribunal, he considered that IT specialists needed to do 'IT things' and they were needed to respond to issues they had in running their services that day. He objected to the Appellant's assertions as to DVLA trying not to provide information under FOI requests. DVLA's approach was professional, and held its reputation very dear, providing an estimate without padding. It was trying to improve its systems by being the first part of Government to insource its IT.

- f. He gave details of the steps set out in his estimate, which he stated assumed the simplest solution where there was no way around creating a bespoke scan. These were typical activities conducted by the DVLA in performing its scans. There was no process for giving access of the database to the public. For instance:
- i. In the first step, the 8 hours to agree a detailed scan were necessary to ensure the scan achieved precisely what the requester needed. It involved business analyst and software engineers taking the requester through the specifics and the areas of complexity. If this step were skipped, there would be no sense that the outcome achieved what was required.
 - ii. A 'small change request' was a means of processing the order, and was a necessary part of internal governance within the DVLA. It was not a tick box exercise. It involved four pages of writing with a degree of technical detail including to show how it aligned with the strategy, that the engineers had properly done their preparatory work, concerning what type of request was being made, that security had been considered and so on.
 - iii. Likewise, it would be reviewed by the 'Small Change Board' where 10 minutes was a conservative estimate.
 - iv. The development and test stage involved a list of actions and testing to ensure the code worked efficiently, providing data within a safe environment to ensure the scan did what it was meant to.
 - v. Scheduling was a key activity where a range of jobs were running such that thought needed to be given as to how to fit it within the timeframe. Scheduling tended to be 'tight' because of the services being supported were over-subscribed. It covered the entire IT estate vehicles.
- g. He gave his reasons why he rejected the Appellant's assertion that the DVLA could simply copy the whole database and provide a binary image without a bespoke scan. He made clear that the DVLA system was not as simple or amenable as the Appellant assumed. He also rejected the Appellant's suggestion that the steps could be made quicker by providing a more rough and ready copy. He explained that the DVLA would be duty-bound to provide accurate and reliable information. It was a complex national database and there would be a need to ensure the material provided was not corrupt. The internal processes were rigorous to ensure the right work was executed.

25. Robert Mark Lees, Head of Cyber Security Services at DVLA, gave a statement subsequent to a Tribunal direction made at the hearing. It included a statement that the Appellant made a request for the Tribunal to make a direction that the DVLA disclose all details of technical design of the DVLA database. His statement set out why the DVLA database system is a vitally important service to the UK Government, citizens and law enforcement. He gave details of why disclosing details on the technical design of the DVLA database would be of significant benefit to anyone who wished to cause the DVLA harm and would increase the risk of a successful electronic attack against DVLA infrastructure. It is noted that the Appellant responded that he had not required 'all technical details', but for details of design and infrastructure of the database. We consider that paragraph 4 of Mr Lees' statement incorrectly summarised what was requested. However, on balance, we do not

consider the Appellant's comments in this regards, significantly alters the substance of Mr Lees' statement, where paragraph 7 sets out the risks of disclosing details of technical design.

26. The Commissioner's Response does not substantially differ from DVLA's, and is not repeated here.

Finding

27. In essence, this case turns on whether the estimate provided by the DVLA was reasonable within the meaning of regulation 3 of FIDP. The Appellant argued that it was not. The DVLA argued that his assumptions and arguments were not apt to the bespoke structure and design of its database. The panel itself probed Mr Powlson to a significant degree on every part of the estimate and as to the reasonableness of the estimate provided. On balance, we found his responses withstood the probing and were compelling, serious, sincere, patient and professional. The Appellant assertions included that DVLA were simply using 'every possible excuse' to avoid or block its duty to respond to FOI requests, or were otherwise incompetent. This appeared to us somewhat cynical and not based on anything more than 'mere assertion', where Mr Powlson had provided considerable information in the circumstances. The Appellant seems to have requested a copy of a substantial amount of the DVLA's database for his project. It seems more likely than not that such a request would be complex to comply with in the circumstances. Mr Powlson explained why the process to retrieve and extract the data was not simply about adding a line of code as the Appellant appeared to assume.

28. At the hearing, a substantial amount of time was given to the Appellant to question the witness. He did so in a very technical manner. It was made clear to him that the goal of questioning ought be aimed at convincing the panel of his case. He raised the concern at the hearing that DVLA's witness was unable to provide responses to all questions at the technical level he was looking for. However, it seemed to the panel that Mr Powlson was able to provide a reasonable level of detail and showed himself to be extremely helpful to the extent that he was able to within the limits he considered he was able to do so when taking into account security requirements. We were persuaded of the importance to the Government agency of not disclosing details that would cause any reasonable risk to security and found Mr Lees' statement on the matter sufficiently compelling. Accordingly, we found that adjourning to order a further witness with IT expertise to appear before the Tribunal substantially fell short of the overriding objective set out in rule 2 of the Rules. Factors considered of most relevance were the need to deal with the case in ways proportionate to the importance of the case, the complexity of the issues, the anticipated costs and resources of the parties and the Tribunal. Likewise, we saw no case for adjourning to order an independent technical expert to assess the estimate as this would also be disproportionate. Having considered the submissions and evidence outlined above, we considered there to be sufficient evidence to assess the reasonableness of the estimate.

Other

29. In section 6 of his Notice of Appeal form, the Appellant stated that he sought for an order such that DVLA be required to provide certain information prior to the hearing. The Commissioner rightly stated that it is for a party to appeal proceedings to put

forward its case. Having considered all submissions and evidence, the Tribunal has found that it has sufficient material and argument in order to reach a decision in this case.

30. The Appellant also requested we make an order concerning what DVLA may state in other requests for information. This is beyond our remit. It is for the DVLA to decide how it conducts itself in relation to the request it receives, and for an unsatisfied requester to decide whether to progress the matter in accordance with the FOIA.
31. The Appellant also requested the Court to order fulfilment of four other requests made by him. At the time of the appeal, the Tribunal was informed that there had not been Decision Notices in relation to these four requests and subsequent Notices of Appeal. Accordingly the Tribunal had no jurisdiction to hear these cases. The Appellant subsequently asked for the hearing to be postponed until a month after DVLA had provided information on his requests. At the time the matter came before the panel, it did not consider it proportionate within the meaning of the overriding objective as set out in rule 2 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ("rule" or "Rules"). The panel took into account that a postponement on that basis would have caused a substantial and disproportionate delay, and this would have been disproportionate within the meaning of rule 2(2)(a).
32. Finally, the Appellant asked for the Commissioner to reconsider two decisions it made, where the Appellant was not a party. The Commissioner addresses this in paragraphs 40 to 42 of her Response.
33. In the Appellant's Response, the Appellant asked for the Tribunal to inform him if his arguments were not convincing enough, at least a month before the hearing. It was explained to him at the hearing that the Tribunal needed to be fair to all parties, and it was not its role to assist in the preparation of his case. However, as the Court operated what is called an inquisitorial system, it may ask questions of any parties. In view of him not being legally represented, the Tribunal made sure to ask those questions of the witness that a legal representative may have posed.
34. To conclude, we unanimously find that the DVLA were not required to provide the information requested under section 12. Accordingly, we have not found it necessary to consider other issues raised, such as the application of other exemptions or the issues raised regarding the redaction of certain data.

Judge Taylor

15 August 2017