

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 1 August 2017

Public Authority: Vehicle Certification Agency (VCA)
Address: The Eastgate Office Centre
Eastgate Road
Bristol
BS5 6XX

Decision (including any steps ordered)

1. The complainant made a request for correspondence between the VCA and Porsche that contains any information relating to type approval or emissions or 50 km/h throttle defects of any 3.4 litre Porsche 987.2 vehicle. The VCA has now provided the complainant with the requested information but made redactions under section 40(1) and (2) FOIA and regulation 13 EIR.
2. The Commissioner's decision is that the VCA has correctly applied section 40(1) and (2) FOIA and/or regulation 5 and 13 EIR in this case.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 24 November 2014 the complainant requested information of the following description (only part 2 of the request is still in dispute):

Part 2 of the request was for "All correspondence between VCA and Porsche that contains any information relating to type approval or emissions or 50 km/h throttle defects of any 3.4 litre Porsche 987.2 vehicle."

5. On 21 September 2016 the VCA provided the complainant with 6 documents but made redactions under sections 40(2), 41 and 43(2) FOIA and regulation 12(5)(a) and (c) and 13 EIR.
6. The complainant requested an internal review on 25 October 2016. The VCA sent the outcome of its internal review on 24 November 2016. It upheld its original position however it did replace the application of section 40(2) to some redactions with the section 43(2) exemption instead.

Scope of the case

7. The complainant contacted the Commissioner on 5 January 2017 to complain about the way his request for information had been handled.
8. During the course of the Commissioner's investigation the VCA withdrew the application of all exemptions and exceptions apart from section 40(1) and (2) FOIA and regulation 13 EIR.
9. The Commissioner has considered whether the VCA was correct to apply section 40(1) and (2) FOIA and/or regulation 5 and 13 EIR in this case. The Commissioner is also considering regulation 5 EIR in case the information to which section 40(1) FOIA was applied was considered to be environmental information as the same rules apply under either piece of legislation.

Reasons for decision

Section 40(1) FOIA/Regulation 5 EIR

10. Section 40(1) FOIA provides an exemption for information which would constitute the personal data of the applicant. Similarly regulation 5 EIR removes the requirement to comply with a request under this legislation if the information would constitute the applicants own personal data.
11. Section 1 of the Data Protection Act 1998 (DPA) defines personal data as information which relates to a living individual who can be identified:
 - from that data,
 - or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
12. In this case the VCA has withheld the applicant's vehicle's identification number (VIN number). It has said that this information will already be known to the applicant, but for the purposes of the VCA's response

under FOIA, it considers that this is information that can be linked to the applicant and should not therefore be released into the public domain. It has said that should the applicant wish to separately see a copy of this document with the VIN number unredacted, it would provide it to him outside of this process as part of a subject access request under the DPA.

13. The Commissioner considers that the VIN number of the applicant's vehicle is information from which the applicant could potentially be identified. The VCA was therefore correct to redact this information under FOIA and/or EIR.

Section 40(2)/Regulation 13 EIR

14. Section 40(2) FOIA provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in section 40(3)(a)(ii) is satisfied.
15. One of the conditions, listed in section 40(3)(a)(ii), is where the disclosure of the information to any member of the public would contravene any of the principles of the DPA.
16. Similarly regulation 13 EIR provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in regulation 13(2)(a)(i) is satisfied.
17. One of the conditions, listed in regulation 13(2)(a)(i), is where the disclosure of the information to any member of the public would contravene any of the principles of the DPA.
18. The Commissioner has first considered whether the withheld information would constitute the personal data of third parties.
19. Section 1 of the DPA defines personal data as information which relates to a living individual who can be identified:
 - from that data,
 - or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
20. In this instance the withheld information includes the names and contact details of junior staff within the VCA and at Porsche with the exception of one individual at Porsche who could not be considered to be a junior member of staff.
21. The Commissioner does consider that this is information from which the data subjects would be identifiable and therefore does constitute personal data.

22. The Commissioner has gone on to consider whether the disclosure of this information would be in breach of the first principle of the DPA. The first principle requires, amongst other things, that the processing of personal data is fair and lawful. The Commissioner has initially considered whether the disclosure would be fair.
23. The VCA has explained that the names and contact details of four staff from Porsche have been redacted from the requested information. Three of those individuals can be considered junior members of staff not occupying public facing roles. One individual cannot be classed as a junior member of staff. However as an employee of a private company rather than a public sector organisation there is less of an expectation that even the names of more senior staff will be disclosed. This is particularly so given that the dispute to which the withheld information relates, between Porsche, the VCA and the complainant, is yet to be independently adjudicated.
24. The Commissioner is therefore satisfied that all four members of staff from Porsche would have a reasonable expectation of privacy with regard to their personal information and that their names would not be released into the public domain.
25. The VCA has also explained that the name and contact details of a member of its own staff has been redacted. Again it has confirmed that this member of staff occupied a junior and non-public facing role. It has explained to the Commissioner the role that this member of staff occupied and the Commissioner is satisfied that this is the case.
26. Again the Commissioner therefore considers that the member of staff from the VCA would have a reasonable expectation of privacy with regard to their personal information and that their name would not be released into the public domain.
27. The Commissioner has therefore gone on to consider whether any of the Schedule 2 conditions can be met, in particular whether there is a legitimate public interest in disclosure which would outweigh the rights of the data subjects.
28. The Commissioner considers that there is a wider public interest in transparency and accountability however the majority of the requested information has been disclosed with limited redactions under section 40(2) FOIA and 13 EIR. The information disclosed is extremely meaningful and gives the public a detailed understanding of the subject matter of the dispute between the complainant, the VCA and Porsche. The redacted staff names would provide very little more, given the junior roles of the majority of those staff, the fact that the more senior member of staff works for a private company and the dispute has not yet been independently adjudicated upon.

29. After considering the nature of the withheld information, the fact that the majority of the requested information has been provided, the reasonable expectations of the data subjects and the fact that the dispute has not yet been independently adjudicated upon, the Commissioner considers that disclosure under FOIA or EIR would be unfair and in breach of the first principle of the DPA. She considers that any legitimate public interest would not outweigh the rights of the data subjects in this case.
30. Therefore the Commissioner's decision is that section 40(2) FOIA and/or 13 EIR is engaged and provides an exemption from disclosure of the redacted information.

Right of appeal

31. 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: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Gemma Garvey
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF