IN THE UPPER TRIBUNAL **Appeal No. GIA/779/2019**
ADMINISTRATIVE APPEALS CHAMBER

On appeal from the First-tier Tribunal (General Regulatory Chamber)

Driver and Vehicle Licensing Agency (DVLA)
(Appellant)

-v-

The Information Commissioner
(First Respondent)

and

Mr Edward Williams
(Second Respondent)

Before: Upper Tribunal Judge Wikeley

Ruling date: 10 August 2021

Decided on consideration of the papers

Representation:

Appellant:	Ms Victoria Barnes, Solicitor
First Respondent:	Mr Nicholas Martin, Solicitor
Second Respondent:	In person

RULING ON THE SECOND RESPONDENT'S RULE 14 APPLICATION

I dismiss the application by Mr Williams (the Second Respondent) to lift the Rule 14 Order issued on 27 October 2020 (as corrected on 30 October 2020).

This ruling is made under section 11 of the Tribunals, Courts and Enforcement Act 2007 and rules 2, 5, 14(1)(a), 21 and 22 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

REASONS

Introduction

1. This application is simply the latest skirmish in a long line of such clashes and broader battles in the FOIA wars between Mr Williams and the Driver and Vehicle Licensing Agency (DVLA). It concerns Mr Williams's application to publish to the world the open First-tier Tribunal and Upper Tribunal bundles in earlier appeal proceedings between himself, DVLA and the Information Commissioner. This decision concerns the Upper Tribunal electronic bundles (which, of course, included a substantial amount of documentation relevant to the First-tier Tribunal).

An abbreviated chronology of the substantive case

2. For present purposes the following summary of the chronology of the main proceedings will suffice. Mr Williams made a FOIA request to the DVLA for information about the use of data obtained through the DVLA's computerised 'Keeper At Date Of Event' (KADOE) information service. A typical use of the KADOE service is for parking companies to request drivers' details for the purpose of recovering unpaid parking fines. The DVLA refused the FOIA request. The Information Commissioner upheld that refusal in her Decision Notice. Mr Williams appealed to the First-tier Tribunal, which allowed Mr Williams's appeal and ruled that the principal exemption relied upon by the DVLA (FOIA section 31: law enforcement) was not engaged.

3. The DVLA then appealed on various grounds to the Upper Tribunal. In preparation for the Upper Tribunal's hearing of the appeal, the Government Legal Department (GLD), acting for the DVLA, provided the Upper Tribunal and the parties, in accordance with case management directions, with e.g. an agreed open core bundle of documents in electronic format. Soon afterwards the DVLA and Mr Williams made competing applications for an Upper Tribunal order in relation to these open documents. These applications were respectively not to publish or for publication of the electronic open bundles. Mr Williams subsequently withdrew his own application, leaving DVLA's to be determined.

4. In my ruling dated 27 October 2020 (as corrected on 30 October 2020), I granted the DVLA's application prohibiting publication of the relevant materials on the web. I made the following Rule 14 Order (in those proceedings the DVLA was the Appellant and Mr Williams was the Second Respondent):

> **The Appellant's application under rule 14(1)(a) is granted.**
>
> **The Upper Tribunal's Order is that the Second Respondent may not publish the electronic documents and bundles (including the skeleton arguments) provided in accordance with the case management directions for the purposes of these proceedings. For the avoidance of doubt, this Order includes both the First-tier Tribunal electronic bundle and the Upper Tribunal electronic bundle. The First-tier Tribunal's decision in *Williams v Information Commissioner and DVLA* [2019] UKFTT 2017_0180 (GRC) (06 February 2019), as publicly available on Bailii, is excluded from the scope of this Order.**

5. That ruling was published with the allotted NCN as *DVLA v Information Commissioner and Williams (Rule 14 Order)* [2020] UKUT 310 (AAC). Mr Williams subsequently applied for permission to appeal that Rule 14 Order to the Court of Appeal. I refused

that application in a ruling dated 8 February 2021. In doing so, I observed in part as follows:

> 7. Mr Williams relies for his grounds of appeal on the critical commentary on the decision by Mr J. Fitzsimons, Barrister, as published in the journal *Freedom of Information* (at Vol 17, issue 2, pp.9-11 and especially at p.11). That commentary might suggest that "the proposed appeal would raise some important point of principle or practice", but there are equally counter-arguments (as set out in my original ruling). There may also be other arguments which were not canvassed in that decision. For example, if a party is genuinely concerned about showing the documents to someone or otherwise making use of them, then there is a ready-made solution, namely applying to the judge for permission to do so. That route provides for the necessary exercise of judicial judgement and nuance that is needed (rather than, for example, a prescriptive set of rules written into the Tribunal Procedure (Upper Tribunal) Rules 2008). For example, if there had been no data protection issues in the instant case, the result might possibly have been different, or different in part, but the protection of needing to apply for permission means that the other party or parties (here the DVLA and the ICO) were given the opportunity to make representations.
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> 8. All this leads me to conclude it would not be appropriate for me to give permission to appeal. Rather, the Court of Appeal, which is better placed than I am with its oversight of courts and tribunals generally, should make the decision on permission (assuming Mr Williams renews his application).

6. It appears from the file (I put it no higher than that) that Mr Williams did not renew his application for permission to appeal directly before the Court of Appeal. Whether or not he did, it appears now that no such case is listed on the Court of Appeal's on-line Case Tracker.

7. Meanwhile the remote oral hearing of DVLA's Upper Tribunal appeal went ahead on 4 and 5 November 2020. In my decision dated 26 November 2020, I dismissed DVLA's appeal in a judgment published under the further NCN as *DVLA v Information Commissioner and Williams (Section 31)* [2020] UKUT 334 (AAC). After some deliberation, the DVLA decided not to pursue an application for permission to appeal to the Court of Appeal against my substantive decision.

The present application by Mr Williams

8. On 25 April 2021, Mr Williams made an application by e-mail in the following admirably concise terms:

> "I apply to lift the Rule 14 Order and for permission to publish both the OPEN bundles from the FTT and UT.
>
> **REASONS**
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> This appeal is over and all information was heard in public.
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> The DVLA spent an enormous amount on barrister fees, the public has a right to know how its money is spent."

9. I invited submissions on Mr Williams's application from both the Information Commissioner and the DVLA. This included a second round of submissions to give the parties the opportunity to make any further representations in the light of the more

recent decision by Upper Tribunal Judge Jones in *Williams v Information Commissioner and the Chief Constable of Kent Police* [2021] UKUT 110 (AAC). Judge Jones had arrived at the same conclusion on the issue of principle as I had done in *DVLA v Information Commissioner and Williams (Rule 14 Order)* [2020] UKUT 310 (AAC), albeit with more detailed reasoning.

The parties' submissions

10. The Information Commissioner made the following submissions on Mr Williams's application:

> The Commissioner is ultimately neutral with regards to this application, given that it raises issues relating to Tribunal policy and procedure which are materially different to the access regime provided under the Freedom of Information Act 2000. However, in order to assist the Upper Tribunal the Commissioner sets out her observations regarding the application below, followed by other points that the Upper Tribunal may wish to consider given the wider application and impact the Upper Tribunal's ruling in this matter may have. With regards to the Second Respondent's application:
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> 1. The application does not explain how the publication would advance open justice, and why the burden of any review and potential redaction of such a large volume of information is proportionate for this, or any other, purpose. In this regard it is important to note that open justice concerns holding the Upper Tribunal to account, and understanding the Upper Tribunal's decision and process. The Commissioner notes the DVLA's submissions concerning open justice at [6] – [10][1] of its submissions dated 26th October 2020 in this regard.
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> 2. The entire contents of both the First-Tier and Upper Tribunal were not read out in full in open court.
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> 3. It is unclear how the publication of the entire contents of the bundles would demonstrate how much the DVLA spent on counsel / the DVLA's spending and budgeting regarding this matter.
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> 4. Given the above issues it would appear to be disproportionate to review the content of both bundles on the basis of the application presented.
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> When considering the application, and any wider guidance the Upper Tribunal may wish to provide given the number of appeals in which this issue is now arising, the Commissioner believes it is necessary to consider:
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> > 1. The burden of any review and redaction exercise that may be required by the Commissioner, public authority or requestor, when compared to the value of the information sought and for what purpose. It is noted in this regard that the Court of Appeal in *Cape Intermediate v Dring* [2018] EWCA Civ 1795 stated at [112] that a party would not normally be expected to provide a third party with copies of the trial bundle or exhibits.

[1] Excluding 10.2 which no longer applies.

> 2. Whether to provide the Commissioner, public authority and requestor (whether or not joined) an opportunity to review the information the subject of the application for any further redactions to its / his / her own information. The Commissioner, as an independent party, cannot act on behalf of another party in respect of information which does not belong to her. Furthermore the Commissioner considers that it would be for each party to bear the burden of redactions to its own information.
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> • Note in regard to this specific application that the Second Respondent has not indicated whether he is content for his own personal data included in the bundle, such as home address, to be capable of disclosure to the world.

11. The DVLA raised both a procedural objection and a substantive objection to the application made by Mr Williams.

12. The DVLA puts its procedural objection in the following way:

> Given both the background to this application and the fact of a Rule 14 order backed by a reasoned decision, the DVLA queries whether the Applicant/Second Respondent has locus to make the present application. It appears to be an attempt to appeal the previous order out of time under the guise of a fresh application. It appears that the proper course ought to have been to seek permission to appeal the Rule 14 order of 27 October 2020 which is now over 6 months ago. There is in place an order under Rule 14. This order was made following a reasoned decision and in accordance with the sub-rules of Rule 14. A Rule 14 order is not one that is made lightly; in this case it was made following submissions from all the parties and a balanced fully reasoned decision.

13. As to the substantive issues, the DVLA submitted as follows:

> In response to the present application, the DVLA adopts and repeats the submissions it made previously via leading Counsel ... The DVLA submits that the reasoning adopted by the UT in its decision of the 27 October 2020 equally applies to the instant application. The only difference is that a hearing has now taken place but all of the reasons given previously by the UT (set out above) still apply.
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> As to paragraph 38.4 quoted above, although the hearing has taken place, it remains the case that the present application is not about the scrutiny of the judicial decision making process; it is asserted to be about legal fees paid by the DVLA – see further below.
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> The DVLA also adopts the submissions made by the Information Commissioner's Office ("ICO") in response to the present application in the letter from the ICO dated 18 May 2021.
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> To those submissions the DVLA add the following additional points:
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> 1. This is not an application about open justice because open justice concerns scrutiny of the judicial decision making process. The Applicant and Second Respondent was a party; he already has a copy of the material and is able to understand the judicial decision making. The reason he gives for his application is ostensibly that "The DVLA spent an enormous amount on barrister fees, the public has a right to know how its money is spent." This

relates to the money spent by a government department; it is not about scrutiny of the judicial decision making at all.

2. The reason given by the Applicant ("The DVLA spent an enormous amount on barrister fees, the public has a right to know how its money is spent.") is totally unconnected to the content of the hearing bundles. The material that goes into the hearing bundles is arrived at by agreement inter partes including with the ICO. The content of the hearing bundles does not assist the Applicant or the public in relation to the purported reason given.

3. As the Supreme Court said in *Dring v Cape Intermediate Holdings Ltd* [2020] A.C. 629 at [45] (in relation to genuine third party open justice applications, which this is not for the reasons given above) (emphasis added):

> "Although the court has the power to allow access, **the applicant has no right to be granted it (save to the extent that the rules grant such a right). It is for the person seeking access to explain why he seeks it and how granting him access will advance the open justice principle…**"."

The reasons given for the present application are even weaker than that given in respect of the first application. The ostensible reasons (barristers fees) is not about open justice at all as set out above. The fact that an appeal is over and/or there was a public hearing will be so in the vast majority of cases. In and of itself, it is submitted this is not an adequate reason within the scope of *Dring* [45]; otherwise publication would be the default position after the conclusion of every hearing.

4. The UT should be aware that the Applicant has made several Freedom of Information Requests for information relating to Counsel's fees in this case (not just Counsel who acted at the final hearings before the First Tier Tribunal ("FTT") and UT but also in respect of previously instructed Counsel). These include requests dated 30 July 2018, 10 December 2020 and 19 April 2021. These have been answered either wholly or in part, most recently by the provision of the total figures paid to Counsel in respect of the entirety of these appeals, which included fees charged relating to work undertaken by counsel from 5 Essex Court chambers and 11 Kings Bench Walk. Accordingly, information related to the amount spent by the DVLA in respect of barristers' fees is in the public domain. Insofar as the Applicant contends there is public interest in relation to information about barristers fees, he has made the above requests and has received the relevant information as set out above.

5. It is also incorrect that all of the information before the UT and FTT was "heard in public" as Mr Williams suggests. The entire contents of both the FTT and UT were not read out in full in open court and there were a number of decisions by the FTT and UT made on the papers. Similarly, numerous documents were not referred to by either Tribunal or by any party either at the hearing or by the Tribunals in their respective decisions. As far as the DVLA is aware, the FTT hearing was not recorded and the exercise of trying to identify which documents were in fact referred to in open Court would be disproportionate, if not impossible.

6. A decision to allow the Applicant to publish the entire bundles online would be a decision without prior precedent so far as the DVLA is aware. It would be one of great significance because it would have wider application beyond the facts of this case and act as a precedent. At a time where parties, Courts and Tribunals are still working remotely and providing electronic bundles, such a decision is likely to have a grave and adverse impact on the core principle that courts should deal with cases justly and at proportionate cost because:

   6.1. Parties will become reluctant to agree to documents being included in a hearing bundle if they perceive it is likely that an electronic copy will be forever available on the internet.

   6.2. Courts and Tribunals will inevitably be drawn into adjudicating on disputes arising as a result. It is likely there will be satellite litigation as the judiciary are drawn into either arbitrating what should go into a bundle or dealing with numerous page by page r.14 applications/orders restricting publication on the internet.

   6.3. The time and cost to the parties of dealing with bundle inclusion issues will be disproportionate to any benefit gained by the public or the media. The rules and principles exist allowing third parties access to documents which meet the open justice requirements. As the Supreme Court noted in *Dring* at [47], both the practicalities and the proportionality are relevant to the determination of a request for non-party access. It was observed that the non-party who seeks access will be expected to pay the reasonable costs of granting that access and that also the burdens placed on the parties may be out of all proportion to benefits to the open justice principle.

14. Mr Williams, by way of reply, made his points typically succinctly:

> My case is simply that the public interest is best served in allowing the application.
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> A great deal of public money was spent resisting this appeal, and the IC only changed sides at half-time. I think that the public should know how this came about and why.
>
> Furthermore, a complete set of papers, less any personal data, being available to the public could help current and future tribunal users. It would show that even someone like me, with no legal qualifications or training, and the brains of an ashtray, can prevail, if the law is on their side. It shows that the tribunal system can work. And that is a good thing.
>
> …
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> As regards personal data redactions, I am happy to allow the GLD and ICO to redact whatever they like as regards names, email addresses, phone numbers etc.
>
> I ask that the application is granted, on the papers, and that the appropriate order is made regarding possible redactions. I should add that this is an application allowing me but not the GLD, ICO or anyone to publish the bundles.

> This is because **I would want to redact my personal data** and perhaps some other stuff.

Two preliminary points

15. There are two preliminary matters to deal with first.

16. First, Mr Williams has pointed out that the particular FOIA requests referred to by the GLD in paragraph 4 of its response in fact related to another set of First-tier Tribunal proceedings in which he had been involved. The GLD accepted that it had made an error in this regard. However, the particular details of those FOIA requests (notably which cases and which counsel were involved) are not material to the issues I have to determine in this application, so I need say no more about the matter.

17. Second, I am not persuaded by DVLA's procedural objection. It is, of course, correct that the Rule 14 Order has not been appealed by Mr Williams. However, as the GLD also very fairly points out, the Upper Tribunal has a general power to make a direction amending, suspending or setting aside any earlier direction (see rules 5(2) and 6(5) of the Tribunal Procedure (Upper Tribunal) Rules 2008). A cynic might view Mr Williams's current application as a form of subterfuge to challenge the Rule 14 Order by a sidewind without exposing himself to the risk of costs in appeal proceedings in the Court of Appeal. However, I do not subscribe to that cynical view. Any order made under rule 14 may well be susceptible to modification in the light of a material change in circumstances. The Rule 14 Order in this case was made following an application on particular grounds and was made before the hearing of the Upper Tribunal appeal. The present application is made for a different reason and after that hearing has taken place. The background context is therefore substantially different. There is no abuse of process here by Mr Williams in making the application. I therefore turn to the substantive issue.

Discussion

18. Perhaps the obvious place to start is the judgment of the Supreme Court *in Cape Intermediate Holdings Ltd v Dring (Asbestos Victims Support Groups Forum UK)* [2019] UKSC 38; [2020] AC 629, here simply referred to as '*Dring*'). True, the factual matrix is not on all fours. In the *Dring* litigation, the courts were concerned with an application made by an interested third party for access to documents disclosed for the purposes of personal injury litigation. In the present case, Mr Williams was a party and so has already had access to all relevant documents (other than those which were closed material). All that said, the Supreme Court's restatement of the general principles about open justice is clearly of great relevance to the present application.

19. Lady Hale P, giving the judgment of the Court, analysed the principle of open justice (at [34] - [40]), echoing the Court of Appeal's observation that "the purpose of open justice 'is not simply to deter impropriety or sloppiness by the judge hearing the case. It is wider. It is to enable the public to understand and scrutinise the justice system of which the courts are the administrators'" (*R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court (Article 19 intervening)* [2012] EWCA Civ 420; [2013] QB 618 (at [79]). Furthermore, as Lord Reed held in *A v British Broadcasting Corporation (Secretary of State for the Home Department intervening)* [2014] UKSC 25; [2015] AC 588 at [41]:

> Whether a departure from the principle of open justice was justified in any particular case would depend on the facts of that case. As Lord Toulson JSC observed in *Kennedy v Information Comr (Secretary of State for Justice*

intervening) [2015] AC 455, para 113, the court has to carry out a balancing exercise which will be fact-specific. Central to the court's evaluation will be the purpose of the open justice principle, the potential value of the information in question in advancing that purpose and, conversely, any risk of harm which its disclosure may cause to the maintenance of an effective judicial process or to the legitimate interests of others.

20. Lady Hale concluded as follows:

> 41. The constitutional principle of open justice applies to all courts and tribunals exercising the judicial power of the state. It follows that, unless inconsistent with statute or the rules of court, all courts and tribunals have an inherent jurisdiction to determine what that principle requires in terms of access to documents or other information placed before the court or tribunal in question. The extent of any access permitted by the court's rules is not determinative (save to the extent that they may contain a valid prohibition). It is not correct to talk in terms of limits to the court's jurisdiction when what is in fact in question is how that jurisdiction should be exercised in the particular case.
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> 42. The principal purposes of the open justice principle are two-fold and there may well be others. The first is to enable public scrutiny of the way in which courts decide cases - to hold the judges to account for the decisions they make and to enable the public to have confidence that they are doing their job properly. In *A v British Broadcasting Corpn*, Lord Reed reminded us of the comment of Lord Shaw of Dunfermline, in *Scott v Scott* [1913] AC 417, 475, that the two Acts of the Scottish Parliament passed in 1693 requiring that both civil and criminal cases be heard "with open doors", "bore testimony to a determination to secure civil liberties against the judges as well as against the Crown" (para 24).
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> 43. But the second goes beyond the policing of individual courts and judges. It is to enable the public to understand how the justice system works and why decisions are taken. For this they have to be in a position to understand the issues and the evidence adduced in support of the parties' cases. In the olden days, as has often been said, the general practice was that all the argument and the evidence was placed before the court orally. Documents would be read out. The modern practice is quite different. Much more of the argument and evidence is reduced into writing before the hearing takes place. Often, documents are not read out. It is difficult, if not impossible, in many cases, especially complicated civil cases, to know what is going on unless you have access to the written material.
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> 44. It was held in *Guardian News and Media* that the default position is that the public should be allowed access, not only to the parties' written submissions and arguments, but also to the documents which have been placed before the court and referred to during the hearing. It follows that it should not be limited to those which the judge has been asked to read or has said that he has read. One object of the exercise is to enable the observer to relate what the judge has done or decided to the material which was before him. It is not impossible, though it must be rare, that the judge has forgotten or ignored some important piece of information which was before him. If access is limited to what the judge has actually read, then the less conscientious the judge, the less transparent is his or her decision.

45. However, although the court has the power to allow access, the applicant has no right to be granted it (save to the extent that the rules grant such a right). It is for the person seeking access to explain why he seeks it and how granting him access will advance the open justice principle. In this respect it may well be that the media are better placed than others to demonstrate a good reason for seeking access. But there are others who may be able to show a legitimate interest in doing so. As was said in both *Kennedy*, at para 113, and *A v British Broadcasting Corpn*, at para 41, the court has to carry out a fact-specific balancing exercise. On the one hand will be "the purpose of the open justice principle and the potential value of the information in question in advancing that purpose".

46. On the other hand will be "any risk of harm which its disclosure may cause to the maintenance of an effective judicial process or to the legitimate interests of others". There may be very good reasons for denying access. The most obvious ones are national security, the protection of the interests of children or mentally disabled adults, the protection of privacy interests more generally, and the protection of trade secrets and commercial confidentiality. In civil cases, a party may be compelled to disclose documents to the other side which remain confidential unless and until they are deployed for the purpose of the proceedings. But even then there may be good reasons for preserving their confidentiality, for example, in a patent case.

47. Also relevant must be the practicalities and the proportionality of granting the request. It is highly desirable that the application is made during the trial when the material is still readily available, the parties are before the court and the trial judge is in day to day control of the court process. The non-party who seeks access will be expected to pay the reasonable costs of granting that access. People who seek access after the proceedings are over may find that it is not practicable to provide the material because the court will probably not have retained it and the parties may not have done so. Even if they have, the burdens placed on the parties in identifying and retrieving the material may be out of all proportion to benefits to the open justice principle, and the burden placed upon the trial judge in deciding what disclosure should be made may have become much harder, or more time-consuming, to discharge. On the other hand, increasing digitisation of court materials may eventually make this easier. In short, non-parties should not seek access unless they can show a good reason why this will advance the open justice principle, that there are no countervailing principles of the sort outlined earlier, which may be stronger after the proceedings have come to an end, and that granting the request will not be impracticable or disproportionate.

48. It is, however, appropriate to add a comment about trial bundles. Trial bundles are now generally required. They are compilations of copies of what are likely to be the relevant materials - the pleadings, the parties' submissions, the witness statements and exhibits, and some of the documents disclosed. They are provided for the convenience of the parties and the court. To that end, the court, the advocates and others involved in the case may flag, mark or annotate their copies of the bundle as an aide memoire. But the bundle is not the evidence or the documents in the case. There can be no question of ordering disclosure of a marked up bundle without the consent of the person holding it. A clean copy of the bundle, if still available, may in fact be the most practicable way of affording a

non-party access to the material in question, but that is for the court hearing the application to decide.

21. There is a single, short and snappy reason why I refuse Mr Williams's application to lift the Rule 14 Order. The onus is on him, in effect, to show good cause for doing so (see *Dring* at [45]). However, in reality his application has nothing whatsoever to do with the principle of open justice, as properly understood. Rather, Mr Williams is concerned to make a political (with a small 'p') point about (as he sees it) public authorities' willingness to devote a considerable amount of (by definition, public) funding in seeking to overturn a First-tier Tribunal decision reached in favour of a requester who is a litigant in person. He may, or may not, have a good point in that respect, but it is hardly a sound rationale for lifting the Rule 14 Order. There is nothing to stop Mr Williams making his point in all sorts of other arena, but he does not need publication to the world of the hearing bundle to do so.

22. In any event, the principle of open justice in the Upper Tribunal is served in various ways. Its hearings are in public (subject, exceptionally, to any direction under rule 37(2)) – and in the pandemic that has necessitated arrangements being put in place for observers to 'dial in' to an Upper Tribunal remote hearing). Its decisions are also made public, subject to any closed reasons (and I recall that in the instant case, and as a means of furthering the goal of transparency in decision-making, I subsequently approved my (initially) closed annex for issue in open once it was clear that no onward appeal was in prospect). The publication of my fully reasoned decision also enables third parties to understand why the decision was taken in the way it was and so more generally serves the interests of open justice.

23. I therefore dismiss Mr Williams's application for the first of the four reasons identified by the Information Commissioner in her written response. This rationale is echoed by DVLA in the first and third of its additional points in its own written response.

24. I also agree, at a practical level, that there is in any event no meaningful correlation between the contents of the hearing bundles and the resources devoted by DVLA to resisting the substantive appeal (the Information Commissioner's point (3) and DVLA's additional point (2)). For example, any lawyer will confirm, as any judge knows, that there are cases where a slim hearing bundle conceals a highly technical and knotty legal issue requiring the attention of the best legal minds while a large hearing bundle may be so much dross dressed up in bulk in a usually fruitless attempt to disguise the weakness of the underlying case.

25. However, I do not attach much weight to the Information Commissioner's and DVLA's other point that only parts of the hearing bundles were directly referred to in the course of the remote hearing (the Information Commissioner's point (2) and DVLA's additional point (5)). This is because it is in the very nature of modern legal proceedings that documents are not read out and yet there will be circumstances where it will be difficult to understand fully what is going on without access to such documents (see Lady Hale's judgment in *Dring* at [43] and [44]). In any event, this is not such a case. I am simply not persuaded that the twin open justice goals of holding members of the judiciary to account and enabling members of the public to understand how the judicial system operates would be materially advanced one iota by lifting the Rule 14 Order in this case.

26. However, Mr Williams contends that making the bundles available will assist both current and future tribunal users. As he puts it, in an unnecessarily and unfairly self-

deprecating way, "It would show that even someone like me, with no legal qualifications or training, and the brains of an ashtray, can prevail, if the law is on their side. It shows that the tribunal system can work. And that is a good thing." Hooray to that, I say – although perhaps it is hardly for me to express a view on whether the outcome of the substantive appeal proceedings in this case was (or was not) a textbook example of the tribunals' inquisitorial ethos in action. However, I am struggling to see how access to the full hearing bundle could appreciably further a lay person's understanding of either the issues in this particular case or an awareness of e.g. the role of tribunals in ensuring there is equality of arms in FOIA litigation.

27. If I am wrong about all that, and the interests of open justice could be served in some meaningful if marginal way by lifting the Rule 14 Order, I decline to do so bearing in mind the importance of taking a proportionate approach. For, as the Supreme Court held in *Dring* (at [47]), "the practicalities and the proportionality of granting the request" are always going to be relevant. The present case has already involved the devotion of considerable resources in closed proceedings to (i) agreeing the issuing in open of the closed annex to the Upper Tribunal's reasons; and (ii) agreeing, also for issue in open, a redacted version of the First-tier Tribunal's detailed closed reasons. I do not begrudge Mr Williams that time – it seemed to me that having succeeded in resisting the DVLA's appeal to the Upper Tribunal, Mr Williams was perfectly entitled to see the (appropriately redacted) closed reasons of the First-tier Tribunal. Indeed, that Tribunal had prefaced its closed reasons with the following direction:

> This document is not to be disclosed to the Appellant or promulgated without further order. Following confirmation of the disclosure as ordered in this document and the open decision, it is intended that a redacted version of this document will be provided to the Appellant upon further order. The redactions relating to information that the Tribunal has not ordered be disclosed which would therefore remain redacted after compliance with the Tribunal's order for disclosure appear in **red bold underlined** type.

28. I am acutely conscious of the considerable amount of both judicial time and the time of the GLD, DVLA and Information Commissioner's legal teams and staff that has already been invested in these processes (especially the latter process of agreeing redactions to the First-tier Tribunal closed reasons in the light of the Upper Tribunal's final decision). Even so, both these documents were relatively short – the longer of the two being the First-tier Tribunal's closed annex, running to some six printed pages. The electronic hearing bundles were inevitably very much longer. For example, the First-tier Tribunal open bundle, amended to include Upper Tribunal e-bundle pagination links, ran to 649 pages while the Upper Tribunal core bundle was a mere 141 pages. In that context Mr Williams understandably states, with regard to the Upper Tribunal hearing bundle, that "**I would want to redact my personal data** and perhaps some other stuff." The same, however, is equally true of the DVLA and the Information Commissioner. In my assessment it is not in accordance with the overriding objective of dealing with cases fairly and justly for me to contemplate imposing the burden on the DVLA and the Commissioner of checking the bundles with a view to making appropriate redactions for such little (if any) potential benefit in terms of furthering the principles of open justice.

29. The Commissioner points to two further matters she suggests need to be borne in mind "when considering the application, and any wider guidance the Upper Tribunal may wish to provide given the number of appeals in which this issue is now arising".

Both these further matters relate to the burden of any review and redaction process. As it happens, I do not consider it appropriate to lay down any "wider guidance", not least as this matter is being dealt with purely on the papers and with limited submissions. That said, I am confident that the Commissioner's points about the burden involved with review and redactions is a good starting place.

30. I therefore dismiss the application to lift the Rule 14 Order.

Nicholas Wikeley
Judge of the Upper Tribunal

Authorised for issue: 10 August 2021