

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 23 November 2009

Public Authority: Metropolitan Police Service
Address: Public Access Office
20th Floor Empress State Building
Lillie Road
London
SW6 1TR

Summary

The complainant requested information consisting of the VRM numbers of all VW Golfs and VW Golf R32s that were stolen and recovered in the Metropolitan Police district in the calendar year 2006. The public authority replied that section 40(2) (Personal information of third parties) applied to this information and that it was not prepared to disclose the information. The Commissioner has determined that the public authority was correct to apply section 40(2) to the VRM numbers of cars owned by individuals and sole traders, but not to the VRM numbers of cars owned by commercial entities that are not sole traders. The Commissioner has considered the public authority's application of section 12(1) for the remaining information and finds that it cannot be relied upon. The failure to provide the remaining information is a breach of section 1(1)(b) and section 10(1). The Commissioner therefore requires the VRM numbers of cars owned by commercial entities to be disclosed.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 14 March 2007 the complainant wrote to the public authority and asked for the following information in accordance with section 1 of the Act:

'We ask to be provided information in respect of recorded vehicle thefts within the MPD for the period the 1st January 2006 to the 1st of January 2007, specifically:

- (i) The number of Volkswagen (VW) Golfs reported stolen for the period.*
- (ii) The number of VW Golf R32's [sic] reported stolen for the period.*
- (iii) The number of VW Golf's [sic] reported stolen where keys were not used.*
- (iv) The number of VW R32's [sic] reported stolen where keys were not used.*
- (v) The number of VW Golf's [sic] reported stolen where keys were used.*
- (vi) The number of VW R32's [sic] reported stolen where keys were used.*
- (vii) All information relating to information received by the Police or circulated by the Police in respect of the VW Golf security being overcome i.e. whether this was circulated as a particularly vulnerable vehicle.*

We are attempting to ascertain whether information had come to the knowledge of the Police that the VW Golf was a vulnerable vehicle likely to suffer 'identical targeted crime.'

- (viii) The number of VW Golf's [sic] stolen for the period that were recovered intact.*
- (ix) The number of VW R32's [sic] stolen for the period that were recovered intact.*
- (x) The number of VW Golf's [sic] stolen for the period that were recovered burnt out or the subject of an arson attack or attempted arson attack.*
- (xi) The number of VW R32's [sic] stolen for the period that were recovered burnt out or the subject of an arson attack or attempted arson attack.*
- (xii) The number of VW Golf's [sic] stolen that were recovered having been involved in road traffic collisions.*
- (xiii) The number of VW R32's [sic] stolen that were recovered having been involved in road traffic collisions.*

With regard to the above information, please provide a breakdown of the areas in which each theft occurred.... Ask that the information be supplied for the Metropolitan area but identifying those losses/ recoveries which occurred in the Leyton High Road vicinity.'

3. On 30 March 2007 the public authority wrote to the complainant and informed him that it was having difficulty compiling information relevant to the request. In particular, it indicated that a breakdown to show the VW R32s would not be possible because:

'While this information may be contained within the details of each individual offence, it is not picked out within the record in such a way that it can be searched for. The same is true in respect of the use or non-use of keys, and the same is likely to apply to the state of any vehicle which may or may not have been recovered.'

I can see that this seriously undermines the value of the request, so I am wondering if you still want us to provide the information about the VW Golf's [sic] or not?

I should say that this request did pass through the Stolen Vehicles unit, but they have made no comment about questions 7 – Information relating to VW Golf security. It is not an area which our section would be aware of.'

It asked the complainant to respond by 20 April 2007, failing which it would treat the request as withdrawn.

4. On 30 March 2007 the complainant responded as follows:

'The information in respect of VW Golf's [sic] will be adequate if accompanied by VRM's (Vehicle Registration Mark) – we can pursue an enquiry of the VRM to determine model...

If the VW information can be provided, I will run what analysis I can from this. To assist me further and to ensure I do not seek data that is unavailable, please could you provide a list of the data that is available.'

5. The public authority responded on the same day:

'Our system does not keep the VRM number as a particular field, so the data isn't readily accessible. However, data protection would prevent us from sharing this information anyway.'

...

'Would you still be interested in Theft of Motor Vehicle – VW Golf without VRMs?'

6. The complainant responded on the same day with the following:

'Data Protection – my understanding is that the Information Commissioner has yet to make a ruling [sic] VRMs – hence companies such as HPi can

supply data. The DVLA/VOSA also supply a lot of data under the VRM – free of charge. I would welcome your comments on this.

I'd prefer VW Golfs with VRMS but if that's not possible (aside of the DPA concerns) the Golf stats would be a good start and I'll see what I can make of them. Do you have a schedule of data available – a menu for the 'fields' that can be supplied?'

7. On 4 April 2007 the public authority responded to the complainant:

'I don't have any views on the VRMs really, I've not been asked to supply them before. My first reaction is that they could be used to identify individuals (albeit as victims of crime) and that would lead to an exemption under section 40 – Individuals' Personal Information – Third parties. Maybe I'm wrong. I can seek further clarification from others if you would like?'

'I've been trying to get some sort of idea [sic] what fields the Crime Recording system has for Vehicles. Make, Colour, Model, Status – various codes for stolen cars we expect, Recovery Fields – various fields around recovery, however the problem seems to be interpretation. One person may consider the discovery of a smouldering [sic] wreck as a recovery (we don't need to look for it anymore), while someone else might only consider it a recovery when a serviceable vehicle is restored to its owner!'

VRM - under discussion, Year/ Foreign – we don't know what this is about!, Vehicle type, Vehicle trace check folio number (not sure about Fol position on this) and Value Fields (the quality on these is not very useful, I am being told)..'

8. On 4 April 2007 the complainant responded to the public authority. He said:

'I would appreciate any information on the VRM and data protection. It ties in with a couple of projects I have on the go and I'm keen to ensure that I stay on the right side of everyone! Keeper information would only be available through an inappropriate approach to the DVLA – a breach of the DPA and not something I will engage in.

Recovery – I would have thought they both count as 'recovery'.

VRM – I can envisage difficulties with non-standard VRMs such as the Irish plates, pre 1963 and those registered abroad.

A 'trace check folio number' means nothing to me...

...If you could supply what you feel comfortable with at this time – Golfs by area/data, this would be appreciated.'

9. On 19 April 2007 the public authority wrote to the complainant to inform him that the response was going to be a little later than initially indicated. It set a new target response date of 27 April 2007.

10. On 18 May 2007 the public authority wrote to the complainant. It informed him that:

'Following receipt of your request searches were conducted within the MPS to locate information relevant to your request. I can confirm that the information you have requested is held by the MPS.

The request was passed over to the Performance Directorate for processing. I requested my colleagues in the PIB Crime and Core unit to gather data from the MPS Crime Recording system. I am now sending you the results of their searches.'

The public authority provided the complainant with a bespoke spreadsheet. This spreadsheet listed the number of VW Golfs stolen and recovered in each of the 32 boroughs of London in quarterly breakdowns and annual totals.

11. On 16 August 2007 the complainant requested an internal review. He limited this request to the VRM numbers only, indicating that he wanted:

' "A final response" on the unwillingness of the MPS [ie the public authority] to provide the VRMS of the vehicles. I have asked the Information Commissioner to look at this and offer an opinion.'

12. On 5 October 2007 the complainant chased up a response to this request for an internal review.

13. On 8 October 2007 the public authority conducted an internal review into:

'The unwillingness of the MPS to provide the VRMs of the vehicles'

It informed the complainant that it had upheld the original decision and the information would not be disclosed. It said that it believed that section 40(2) was correctly applied in this case.

The Investigation

Scope of the case

14. On 17 July 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically asked the Commissioner to consider the following points:
- That VRM numbers were not personal data.
 - That his request was not for information identifying the Registered Keepers.

- That the public authority was one step removed and he would be required to make a further application to a different public authority for any third party personal data. This further application should be the only one where the release of personal data is an issue.
15. On 10 November 2008 the Commissioner wrote to the complainant and set the scope of the investigation as the following:

'The VRMs [Vehicle Registration Marks] of VW Golfs and VW Golf R32s stolen and/or recovered between 1st January 2006 and 1st January 2007 in the Metropolitan Police District.'

This was a consolidation of the previous correspondence in the 'Request' section of this Notice.

16. On 8 January 2009 the complainant indicated that he was satisfied with the scope of the investigation as set out by the Commissioner.

Chronology

17. On 8 November 2008 the Commissioner asked the public authority to provide him with a copy of the spreadsheet that it sent the complainant on 18 May 2007. On 10 November 2008 the public authority provided the Commissioner with this.
18. On 10 November 2008 the Commissioner informed the complainant of the scope set out in paragraph 15 above and invited the complainant to provide further evidence if he felt the scope was wider. He sent a reminder on 10 December 2008.
19. On 8 January 2009 the Commissioner received a detailed response from the complainant. He provided the Commissioner with the background to the request, confirmed its scope and provided a number of arguments about why he believes VRM numbers were not personal data.
20. On 9 January 2009 the Commissioner wrote to the public authority to ask in detail about its reliance on section 40(2).
21. On 10 February 2009 the public authority responded. Its detailed arguments are found in the 'Analysis' section below.
22. On 24 March 2009, the Commissioner asked the public authority additional questions about VRM numbers of cars owned by commercial entities as he did not believe that it was correctly withheld on the basis that it was personal data.
23. The public authority responded on 8 April 2009. It said that it was now applying section 12(1) to the VRM numbers of cars owned by commercial entities.
24. On 9 April 2009 the Commissioner asked further questions about the application of section 12(1). The public authority replied on 1 May 2009.

Findings of fact

25. The Vehicle Registration Mark number (VRM) is the number on the number plate of a car.
26. The relevant VRM numbers are held on the MPS' Crime Recording Information System (CRIS).
27. The VRM number is a distinguishing number through which the registered keeper can be located if the car is involved in an accident or violates the law.
28. The VRM number also acts as the pivot to enable access to further information through the Drivers and Vehicle Licensing Agency (DVLA). The DVLA provides information about registered keepers, under Regulation 27 of the Road Vehicles (Registration and Licensing) Regulations 2002. This requires it to release the information from the vehicle register to the Police, to Local Authorities who require it for purposes connected with the investigation of an offence and to anyone else who can demonstrate 'reasonable cause' to have it. VRM details are therefore accessible to a large number and wide ranging group of organisations and individuals.
29. There are also a number of private companies who provide access for the public to information about cars through VRM numbers. Available information includes:
 - a. the make and model of the car;
 - b. the number of former keepers;
 - c. the Vehicle Identity Number [VIN];
 - d. the car's engine number and its size;
 - e. whether the car is subject to outstanding finance;
 - f. whether the car is a stolen vehicle;
 - g. whether the car has previously been stolen and recovered;
 - h. whether the car has previously been an insurance write off;
 - i. whether the car has previously been reported to be scrapped by the DVLA;
 - j. whether the car has been subject to plate transfers; and
 - k. whether the car has been subject to changes in its colour.

Analysis

Procedural matters

Section 1(3)

30. Section 1(3) (the full wording of this section can be found in the legal annex attached to this Notice) allows a public authority, where it reasonably requires further information in order to identify and locate the information requested and has informed the complainant, not to comply with section 1(1) of the Act unless the complainant has provided adequate clarification.

31. In this case, the public authority informed the complainant that it did not hold the distinct categories of information that were asked for but asked whether he wanted relevant information that it did hold.
32. The Commissioner considers that it was reasonable for the public authority to have requested the clarification. The initial request required being able to differentiate between the two sorts of car, and the inability of the public authority to do so leads to its clarification being reasonable in the circumstances.

Section 10(1)

33. Section 10(1) (full wording in the legal annex) requires the public authority to comply with section 1 of the Act within twenty working days of receipt of the request.
34. In this case section 1(3) allows the 'clock to be stopped' between the request for clarification and its receipt. However, the clock begins again from the date it received the clarification.
35. In this case the public authority received the last email from the complainant on 4 April 2007 and did not provide a response until 18 May 2007. This is in excess of the twenty working days allowed.
36. The Commissioner therefore finds a breach of section 10(1) of the Act as the public authority did not confirm or deny holding the information within the statutory timescales in accordance with section 1(1)(a); and a second breach of section 10(1) as it did not comply with section 1(1)(b) within the statutory timescales, by either disclosing the requested information or applying an exemption.

Exemption

Section 40(2)

37. Section 40(2) provides an exemption for information which is the personal data of a third party. The public authority has informed the Commissioner that it was relying on section 40(2) in relation to both parts of the request.
38. Section 40(2) is contingent on two conditions that are found in sections 40(3) and 40(4) of the Act. For clarity, the technical position of the public authority is that it was withholding both parts of the information under section 40(2) by virtue of section 40(3)(a)(i) of the Act. This condition requires, firstly, for the information to be personal information under the Data Protection Act [the 'DPA'] and, secondly, that the disclosure of it would contravene a data protection principle.
39. The full text of section 40 can be found in the Legal Annex at the end of this Notice.

Is the information 'personal data'?

40. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by section 1 of the DPA. It defines personal information as:

*'...data which relate to a living individual who can be identified
a) from those data, or
b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,*

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.'

41. In this case, whether the VRM numbers in this context would be the personal data of any living individual was contentious and the arguments of each side were considered in detail by the Commissioner.
42. The first division the Commissioner has made is between VRM numbers of cars owned by an individual or a sole trader and VRM numbers of cars owned by commercial entities that are not sole traders. He will consider each in turn.

VRMs of cars owned by an individual or sole trader

43. The complainant argued that the VRM numbers of cars owned by an individual or sole trader are not personal data. He submitted a number of arguments in this regard. The principal arguments provided can be summarised in four points.
1. The VRM numbers are 'one step' removed from any individual person. A person cannot be identified by the VRM alone. It only tells people the year when it was manufactured and possibly the city where it is registered. Even personalised plates are often not descriptive enough to identify a specific person.
 2. The complainant argues that the VRM numbers will allow him to discover more information about the cars themselves and how prone they are to be stolen, but he does not want any personal information about the registered keepers.
 3. Not all cars are registered to individuals in any event. It is difficult to see how the VRM numbers of company cars can be regarded as anyone's personal data.
 4. The nature of VRM numbers is that they are in the public domain, as one can read them off a relevant vehicle.
44. The Commissioner wrote to the public authority and asked for it to provide its arguments why the VRM numbers in this case were personal data. The principal arguments that it submitted can be summarised in three points.

1. The VRM numbers cannot be separated from the individuals who own the car as they are interlinked. The VRM provides a route through which the complainant and other members of the public can access information from the DVLA database. The information that can be obtained is mentioned in paragraph 29 of this Notice.
 2. The context in this case meant that sensitive personal data could be revealed should further information be sought from the VRMs. In this case it would expose who were the victims of car crimes.
 3. Page seven of the Commissioner's guidance on personal data states that the assumption when considering identifiability is not referenced to the ordinary man in the street but is instead the means that is likely to be used by a determined individual with a particular reason to want to identify individuals. The public authority asserted that the Commissioner should follow this guidance and find that the VRM numbers are personal data.
45. When considering whether the VRM numbers are personal data the Commissioner has considered the publicly available specialist guidance that he has released in this area. They can be found at the following link:
- http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf
46. From his guidance there are two questions that need to be answered in the affirmative when deciding whether the information, if disclosed to the public, would constitute the personal data of individuals:
- (i) *can a living individual be identified from the data, or, from the data and other information in the possession of, or likely to come into the possession of, the members of the public?*
 - (ii) *does the data 'relate to' the identifiable living individual, whether in personal or family life, business or profession?*
47. It is clear that the VRM number, if linked to identifiable individuals, is the personal data of the registered keeper. The question to be determined is whether a living individual can be identified from this specific data if the information is disclosed to the public.
48. The Commissioner considers that truly anonymised data is not personal data and thus there is no need to consider the application of the data protection principles. The Commissioner consider that even where the data controller holds the additional 'identifying' information, this does not prevent them from anonymising that information to the extent that it would be impossible to identify any living individual from that information alone, which would therefore no longer be personal data. The test of whether information is truly anonymised is whether a member of the public could identify the individuals by cross-referencing the data with information or knowledge already available to the public. This approach is

supported by paragraphs 24 and 25 of Lord Hope's judgement in the House of Lords' case of the *Common Services Agency v Scottish Information Commissioner (2008) UKHL 47*:

'..Rendering data anonymous in such a way that the individual to whom the information from which they are derived ... is no longer identifiable would enable the information to be released without having to apply the principles of [data] protection.'

49. The Commissioner does not consider the withheld information in this case to be truly anonymous. This is because in this context the information could be used with other widely available sources to identify the names and addresses of the victims of car crime, and this makes the information the personal data of those individuals. The Commissioner notes that his guidance states that the point of reference when considering identifiability is whether it is above a slight hypothetical possibility that a very determined individual could identify the individuals involved. He believes that the chance is indeed above a hypothetical possibility in this instance. The Commissioner is therefore satisfied that the VRM numbers of individuals and sole traders constitute those individuals' personal data. However, the Commissioner does not accept that this information would be sensitive personal data, as claimed by the public authority (see paragraph 44.2). It does not fall within the category of sensitive personal data in section 2(g) of the DPA: *the commission or alleged commission by him of any offence.*
50. Having concluded that the information falls within the definition of 'personal data', the Commissioner must therefore consider whether disclosure of the information breaches any of the eight data protection principles as set out in schedule 1 of the DPA.
51. In this case the public authority has informed the Commissioner that it is the first data protection principle that it believes would be contravened by releasing the requested information.
52. The first data protection principle requires that the processing of personal data should be fair and lawful and that at least one of the conditions in Schedule 2 of the DPA must be met. The term 'processing' has a wide definition and includes disclosure of the information under the Freedom of Information Act to a third party.
53. In considering whether or not the disclosure of the VRM numbers of the individuals and sole traders would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:
 - the individuals' and sole trader's reasonable expectations of what would happen to their personal data;
 - the context of the request;

- whether disclosure would cause any unnecessary or unjustified damage to the individuals and sole traders; and
 - the legitimate interests of the public in knowing the VRM numbers of the individuals and sole traders against the effects of disclosure of their VRM numbers.
54. The Commissioner has decided that the disclosure of the information by its nature is likely to remind the data subjects of a distressing situation and will identify those individuals as victims of crime. While the Commissioner does not believe that this would alter their behaviour about reporting their cars stolen, he does not feel that the individuals would expect that this information would be released to the public.
55. The Commissioner has also considered the fact that further personal information would need to be obtained before living individuals could be identified from the VRMs. However, he is aware that whilst the additional information is not freely available, it would not be difficult for a determined person to obtain and therefore finds that this factor would not render disclosure fair.
56. The Commissioner has considered the potential damage that would be done and considers that victims of car crime would expect that their personal details are protected. He has concluded that releasing this information would affect their privacy rights and might cause damage and distress. This is highly persuasive and supports the position that release of this information would be unfair.
57. The Commissioner has considered the public's legitimate interest in knowing the VRM numbers of cars that have been stolen. He appreciates that the public can legitimately want to know how many cars are stolen and also in which Boroughs thefts are most prevalent. However, since this has already been provided in this instance, the VRM numbers do not add anything meaningful into the public domain that would mitigate the potential effects of disclosure in this case.
58. The Commissioner has concluded that the release of the VRM numbers would be unfair to the data subjects and would therefore contravene the first data protection principle. Accordingly, there is no need to consider if the processing of the personal data would meet one of the conditions of Schedule 2.
59. The Commissioner therefore upholds the public authority's position in relation to the VRM numbers of cars owned by individuals and sole traders. He finds that section 40(2) was correctly applied.

VRMs of cars owned by corporate entities that are not sole traders

60. The Commissioner believes that VRM numbers owned by commercial entities cannot be personal data as they do not relate to a 'living individual'.
61. This decision is analogous to the Information Tribunal's judgment in *Mr Colin P England and the London Borough of Bexley v IC* [EA/2006/0060, 0066] where the Tribunal found that the addresses of empty properties not owned by individuals

were not the personal data of 'living individuals' and should be disclosed. This judgment can be found at the following link:

<http://www.informationtribunal.gov.uk/DBFiles/Decision/i146/ENgland.pdf>

Section 12(1)

62. On 24 March 2009 the Commissioner relayed his position on section 40 to the public authority and asked it to outline its position for the VRM numbers of cars owned by corporate entities. On 8 April 2009 the public authority responded that it would apply section 12(1) to this part of the request. This was because the amount of work that would be required to look up each of the 1,172 VRM numbers would far exceed the costs limit in this instance. The public authority was therefore attempting to apply section 12 in response to the Commissioner's finding on section 40, rather to the request as a whole.
63. On 9 April 2009 the Commissioner asked further questions to clarify the public authority's estimate in this case. He received a response on 1 May 2009.
64. Section 12(1) states that the public authority is not required to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the 'appropriate limit'.
65. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Regulations") provide that this cost limit for non central government public authorities is £450. This is calculated at the rate of £25 per hour, providing an effective time limit of 18 hours. If a public authority estimates that complying with a request would exceed 18 hours, or £450, section 12(1) provides that the request may be refused.
66. Section 12(2) provides that a public authority can refuse a request if the cost of complying with section 1(1)(a) alone (that is the cost of confirming or denying whether the information requested is held) would exceed the cost limit. In this case the public authority is not able to confirm precisely what is held that falls within the scope of the request, but does not dispute that information of relevance is held. The Commissioner's considerations therefore relate to whether the cost limit would be exceeded through compliance with the requirement of section 1(1)(b).
67. Regulation 4(3) provides that the following factors can be taken into account by a public authority when formulating a cost estimate:
 - (a) determining whether it holds the information,*
 - (b) locating the information, or a document which may contain the information,*
 - (c) retrieving the information, or a document which may contain the information, and*
 - (d) extracting the information from a document containing it.'*

68. The public authority has informed the Commissioner that it believes that (b), (c) and (d) are relevant here.
69. The public authority has described to the Commissioner the process that would need to be undertaken to analyse each VRM number in this case to work out who was the owner of the cars.
70. It explained that in order to assess vehicle ownership, staff within the MPS would have to check two separate references, the crime reports recorded at the time of the original request (to work out the VRM details about the stolen vehicles) and the Police National Computer (PNC) (to check current owner status). This is because the passage of time since March 2007 means that the ownership status of a particular vehicle may have changed: i.e., a vehicle registered to a company in 2007 may now be registered to a private individual and vice versa.
- (1) *The process for checking an individual crime record*
71. The public authority has indicated in detail the process for checking an individual crime record. When an individual reports that their car is stolen, a full computerised record is made of the allegation on the CRIS. CRIS is an online system that allows staff to enter and report Crime Report (CR) details and make enquiries.
72. For each of the VRM numbers the MPS have informed the Commissioner that the searcher would be required to enter the VRM number, locate the relevant CRIS record and then extract information from three separate screens. The public authority has estimated that this will take five minutes for each record.
73. The Commissioner appreciates that there is the possibility that some of the cars stolen would also have been recovered in the same year and therefore there would be no need to duplicate some work. The public authority agreed to base its estimate on the minimum number of records to be checked (809 – the number of cars stolen).
74. It therefore indicated that it felt that the costs limit would be exceeded in this instance because the likely time burden amounted to 5 minutes (per record) x 809 (minimum number of records), which is a total of 67 hours 25 minutes.
- (2) *The process for checking the PNC*
75. The public authority would then need to enter the VRM number into the PNC to check the current ownership status of the car.
76. The public authority informed the Commissioner that it would take approximately 45 seconds to enter the VRM number into the PNC in order to check whether the current registered owner was a commercial entity, which for at least 809 recorded would amount to 10 hours 6 minutes.

77. This would make the estimated minimum of the total work to be done to be 77 hours. At the rate of £25 per hour, this gives a total cost estimate of £1,925, well in excess of the limit of £450.
78. The Commissioner has considered the arguments and understands that there are resource implications in differentiating between those cars owned by commercial entities and those owned by people. However, he believes that the task can be viewed as being analogous to redacting the personal data from the list of all of the VRM numbers. His view is that redacting the exempt information cannot fall within the activities included in the fees regulations and therefore the time taken cannot be taken into account.
79. He is supported by the Information Tribunal in *Jenkins v the Commissioner and Defra* ([EA/2006/0067](#)). The Tribunal addressed the issue of whether the words “extracting the information from a document containing it” include the redaction of exempt information containing it:
- “The Tribunal agrees with the Commissioner that such an act of deletion, i.e. removal of what may be thought to be exempt material, even at the stage at which the exercise is carried out, cannot sensibly be viewed as coming within the provisions of Regulation 4(3)(d) as it is presently drafted.”*
80. This has also been recently confirmed in *DBERR v ICO and FoE* ([EA/2007/0072](#)) where the Tribunal again commented that the time taken to redact is not caught by the 2004 Regulations and should not be taken into account when calculating the appropriate limit and that the decision in *Jenkins* “should not be interpreted in any other way”.
81. He is therefore unable to accept the public authority’s estimate as it takes into account activities which are not allowed by the Fees Regulations. It follows that the estimate is unreasonable and that the public authority has not applied section 12(1) correctly and it cannot rely on this exclusion for this information.
82. The Commissioner therefore finds a breach of section 1(1)(b) in failing to provide this information to the complainant and a breach of section 10(1) in failing to do so within twenty working days.
83. As the public authority has applied no other exemptions to this information, then it follows that the Commissioner must order disclosure. The Commissioner does understand the resource implications for the public authority but notes that they have not sought to rely on any other relevant provisions in the Act. This decision should not be taken as precedent that this information will be readily available under the Act, each case must be considered on its merits.

The Decision

84. The Commissioner’s decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act.

- Section 1(3) - the Commissioner accepts that the public authority complied with section 1(3) as it was reasonable to seek clarification of the request in this instance.
 - Section 40(2) (in relation to the VRM numbers of individuals and sole traders) - the Commissioner has found that the public authority applied section 40(2) correctly to this category of VRM numbers.
85. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act.
- Section 40(2) (in relation to the VRM numbers of commercial entities) - the Commissioner has found that section 40(2) was not applied correctly to this subsection of the VRM numbers requested.
 - Section 12(1) (in relation to the VRM numbers of commercial entities) - the Commissioner has found that section 12 could not be relied upon and that the public authority is therefore required to comply with section 1(1)(b) in relation to this information.
 - Section 1(1)(b) (in relation to the VRM numbers of commercial entities) - the Commissioner has found that the information should have been disclosed and the failure to do so was a breach of section 1(1)(b),
 - Section 10(1) (in relation to the VRM numbers of commercial entities) for failing to provide this information to the complainant within twenty working days.
 - Section 10(1) - the Commissioner has found two more breaches of section 10(1) because the public authority failed to comply with either section 1(1)(a) or section 1(1)(b) of the Act within the statutory timescales.

Steps Required

86. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- Disclose the VRM numbers for those cars owned by corporate entities that are not sole traders
87. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

88. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

89. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 23rd day of November 2009

Signed

**Steve Wood
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

The Freedom of Information Act 2000

Section 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.

(2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.

(3) Where a public authority—

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

...

Section 10 - Time for compliance with request

(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

(2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.

(3) If, and to the extent that—

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.

...

Section 12 – Exemption where cost for compliance exceeds the 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.

(4) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority—

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.

(5) The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated.

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.

Section 40 – Personal information

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if—

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied.

(3) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the [1998 c. 29.] Data Protection Act 1998, that the

disclosure of the information to a member of the public otherwise than under this Act would contravene—

- (i) any of the data protection principles, or
- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the [1998 c. 29.] Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

(5) The duty to confirm or deny—

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either—

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the [1998 c. 29.] Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

(6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the [1998 c. 29.] Data Protection Act 1998 shall be disregarded.

(7) In this section—

- “the data protection principles” means the principles set out in Part I of Schedule 1 to the [1998 c. 29.] Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;
- “data subject” has the same meaning as in section 1(1) of that Act;
- “personal data” has the same meaning as in section 1(1) of that Act.

Data Protection Act 1998

Section 1 - Basic interpretative provisions

(1) In this Act, unless the context otherwise requires—

- “data” means information which—
 - (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,

(b)
is recorded with the intention that it should be processed by means of such equipment,

(c)
is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or

(d)
does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;

- “data controller” means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;
- “data processor”, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;
- “data subject” means an individual who is the subject of personal data;
- “personal data” means data which relate to a living individual who can be identified—

(a)
from those data, or

(b)
from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

- “processing”, in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including—

(a)
organisation, adaptation or alteration of the information or data,

(b)
retrieval, consultation or use of the information or data,

(c)
disclosure of the information or data by transmission, dissemination or otherwise making available, or

(d)
alignment, combination, blocking, erasure or destruction of the information or data;

- “relevant filing system” means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible.

(2) In this Act, unless the context otherwise requires—

(a) “obtaining” or “recording”, in relation to personal data, includes obtaining or recording the information to be contained in the data, and

(b) “using” or “disclosing”, in relation to personal data, includes using or disclosing the information contained in the data.

(3) In determining for the purposes of this Act whether any information is recorded with the intention—

(a) that it should be processed by means of equipment operating automatically in response to instructions given for that purpose, or

(b) that it should form part of a relevant filing system,

it is immaterial that it is intended to be so processed or to form part of such a system only after being transferred to a country or territory outside the European Economic Area.

(4) Where personal data are processed only for purposes for which they are required by or under any enactment to be processed, the person on whom the obligation to process the data is imposed by or under that enactment is for the purposes of this Act the data controller.