

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 March 2019

Public Authority: Tandridge District Council
Address: Council Offices
Station Road East
Oxted
Surrey
RH8 0BT

Decision (including any steps ordered)

1. The complainant has requested information relating to vehicles licensed, or formerly licensed, as hackney carriage licences or Private Hire Vehicles (PHV's). The council provided the requested information other than the vehicle recognition marks/licence plate numbers (VRM's). It withheld these on the basis that section 40(2) (personal data) applied.
2. The Commissioner's decision is that the council was correct to apply section 40(2) to the information. The Commissioner has also decided that other information is exempt from disclosure under section 31(1)(a) (prevention and detection of crime).
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 10 September 2018 the complainant wrote to the council and requested information in the following terms:

"I would like to make a request under the freedom of information act 2000 for the following information:

Motor Vehicles registered for public hire i.e. Taxi or Chauffeur hire relating to the period January 1st 2012 to the current date.

Specifically, I would like to know: (If any of these elements are not available, please supply the ones that are)

Vehicle registration

Manufacturer (Make)

Model

Date at which they were first licensed

Date at which the license ceased

Would you also please advise of any additional information that may be available that pertains to this request assuming it does not breach the Data Protection Act.

If possible, I would like the data supplied in spreadsheet format."

5. The council responded on 17 September 2018. It provided some information however it withheld the vehicle recognition marks (the VRM's) of the vehicles on the basis that section 40(2) of the Act applied (personal data).
6. Following an internal review the council wrote to the complainant on 19 September 2018. It maintained its initial position that section 40(2) is applicable to the information.

Scope of the case

7. The complainant contacted the Commissioner on 20 September 2018 to complain about the way her request for information had been handled.
8. She believes that the council is wrong to withhold the information on the basis claimed.
9. The Commissioner considers that the complaint is that the council is not correct to withhold the requested information on the basis that section 40(2) applies.

Reasons for decision

10. As council's refusal of the request was after 25 May 2018, the date the new Data Protection Act 2018 (DPA 2018) and General Data Protection Regulation (GDPR) legislation came into force, the Commissioner considers that the DPA 2018/GDPR applies.
11. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3) or 40(4) is satisfied.
12. In this case the relevant condition is contained in section 40(3A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data set out in Article 5 of the General Data Protection Regulation EU2016/679 ('GDPR') ('the DP principles').
13. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the DPA 2018. If it is not personal data then section 40 FOIA cannot apply.
14. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA 2018.

Is the information personal data

15. Section 3(2) of the DPA 2018 defines personal data as:-

"any information relating to an identified or identifiable living individual".

16. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
17. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

¹ As amended by Schedule 19 Paragraph 58(3) of the Data Protection Act 2018

18. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
19. The requested information is about vehicles which have been licensed by the council as taxis or private hire vehicles (PHV's). The request also asks for the VRM's. It is the VRM's which have been withheld by the council under the exemptions claimed. The information is not therefore special category data or criminal offence data.
20. The licensing of hackney carriages is governed by the *Town Police Clauses Act 1847* ("the 1847 Act"), section 42 of which requires councils to maintain 'a book' containing the name and address of the vehicle proprietor, the granted licence number and any convictions in respect of the proprietor or driver, and to open this to public inspection. For private hire vehicles, section 51(3) of the *Local Government (Miscellaneous Provisions) Act 1976* ("the 1976 Act") requires local authorities to maintain 'a register' of driver's licensed to drive private hire vehicles with the name of the driver, the granted licence period and the licence number, and to keep the register available at its principal offices for inspection by members of the public.
21. Neither of these acts requires that VRM data is published in the register by local authorities, however, the council processes VRM information, together with the information required for the 'book' (1847 Act) or 'register' (1976 Act), in order to identify either the driver or registered keeper, or both, and verify that the tax, MOT and insurance correspond with the licensed vehicle.
22. The VRM will therefore relate to an identifiable individual and relate to the relevant vehicle keeper's private life and falls within the definition of "personal data" for the purposes of the DPA.
23. It is noted however that the complainant's request asks for information dating back to 2012. The Commissioner therefore notes that some of the entries for previous years are likely to refer to vehicles which are no longer being used as taxis or PHV's. They may have been sold on to other private owners who now use these for their own private domestic purposes. Therefore a disclosure of this information is likely to provide VRM's which relate to vehicles no longer owned by the licenced taxi driver named in the relevant register entry for that vehicle– the information for these entries will be out of date and inaccurate.

Is a VRM number personal data in its own right?

24. Following on from this, a disclosure of the VRM's of vehicles which are now being used for private purposes potentially discloses personal data relating to individuals who have never been taxi or PHV drivers. The Commissioner has considered whether a disclosure of the VRM's from these older entries would also be a disclosure of personal data, relating to the current owner of the vehicle.
25. The Commissioner has previously considered the status of VRM's under the DPA 1998 and decided that where the VRM belongs to a vehicle which is owned by a living individual the VRM itself will be personal data without associated information being disclosed with it. This is because information identifying the owner of the vehicle is obtainable simply from having access to the VRM².
26. In her guidance "*In the picture: A data protection code of practice for surveillance cameras and personal information*³", on page 20, she provides the following example relating to excessive retention of data:

"Example: If a supermarket uses an ANPR system to monitor use of its car park when there is a two hour free parking limit and retains the details gathered from the ANPR system for those cars that have not exceeded the parking limit, then this is unnecessary and excessive and unlikely to comply with the data protection principles. In this example, the VRM would be the individual's personal data."
27. Following on from this, a disclosure of any VRM data which refers to vehicles which have since been sold on to private individuals would also be a disclosure of personal data, relating to the new owner of the vehicle. A motivated individual with access to the VRM number of a vehicle would be able to take steps to identify the current owner of that vehicle.
28. The Commissioner has also previously issued a number of decisions finding that a disclosure of VRM's without any other identifiers is a disclosure of personal data for the purposes of the DPA as information on the registered owner of the vehicle.⁴

² Paras 47-49: https://ico.org.uk/media/action-weve-taken/decision-notices/2009/494046/FS_50186040.pdf

³ <https://ico.org.uk/media/1542/cctv-code-of-practice.pdf>

⁴ https://ico.org.uk/media/action-weve-taken/decision-notices/2009/494046/FS_50186040.pdf
<https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2172663/fs50689632.pdf>

29. In the context of the requested information, it would provide information from which a specific individual, the owner, can be identified, and provide biographical information about that individual; primarily that they own that vehicle, that their vehicle used to be used as a taxi, and that the vehicle was not brand new when it was purchased by that individual.
30. The Commissioner is therefore satisfied that a disclosure of the VRM of a vehicle is a disclosure of personal data where the owner of the vehicle is a living individual.
31. However in cases where the VRM belongs to a vehicle which is not owned by a living individual, (i.e. where it is owned by a corporate body or other organisation), then that information will not amount to personal data as no living individuals can be identified with the VRM.
32. The Commissioner has decided therefore that where the current owner is a living individual rather than a corporate body or another sort of organisation this information falls within the definition of 'personal data' in section 3(2) of the DPA.

Would disclosure contravene principle (a)?

33. Article 5(1)(a) GDPR states that:-

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject"

34. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful (i.e. would meet one of the lawful bases for processing listed in Article 6(1) GDPR), fair, and transparent.

Lawful processing: Article 6(1)(f) GDPR

35. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that "*processing shall be lawful only if and to the extent that at least one of the*" bases for processing listed in the Article applies. One of the bases in Article 6(1) must therefore be met before disclosure

of the information in response to the request would be considered lawful.

36. The Commissioner considers that the basis most applicable on the facts of this case would be that contained in Article 6(1)(f) GDPR which provides as follows:-

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"⁵.

37. In considering the application of Article 6(1)(f) GDPR in the context of a request for information under FOIA it is necessary to consider the following three-part test:-

- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
- iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

38. The Commissioner considers that the test of "necessity" under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

39. In considering any legitimate interest(s) in the disclosure of the requested information public under FOIA, the Commissioner recognises that such interest(s) can include broad general principles of

⁵ Article 6(1) goes on to state that:-*"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks"*. However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA 2018) provides that:-*"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted"*.

accountability and transparency for their own sakes as well as case specific interests.

40. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
41. The complainant has explained that her company intends to use the data to provide a method for the public to assess whether vehicles have ever been used as a taxi or a private hire vehicle. The use of a vehicle for these purposes may affect the value of the vehicle in question. It may affect its long term reliability given that taxi journeys are often short, through urban traffic and the start/stop nature of such journeys. Additionally there will be extra wear and tear throughout the vehicle, including the inside furnishings and seats from the use of paying passengers etc.
42. Whilst there is a requirement not to misrepresent the fact that a vehicle was formerly used as a taxi or a PHV, the media have reported that this does not always occur. There is also no direct requirement that potential purchasers are informed of this prior use before purchasing a vehicle. The intention of the complainant is therefore to provide a means for the public to check this independently from the company or individual selling the vehicle.
43. The Commissioner is therefore satisfied that the public as a whole has a relatively strong legitimate interest in the disclosure of the information.

Is disclosure necessary?

44. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity which involves the consideration of alternative measures, and so disclosure would not be necessary if the legitimate aim could be achieved by something less. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
45. The Commissioner accepts that it is a legitimate purpose for members of the public to be able to access information on whether vehicles have been formerly used as a taxi or a PHV.

46. The complainant's reason for requesting the information is to set up a publicly accessible database of vehicles formerly registered as taxis and private hire vehicles. In order to be able to create such a database the VRM information which she has requested is necessary in order for the public to be able to identify the vehicle they are interested in on the database.
47. The complainant argues that the majority of authorities provides this information in response to her request, and some already publish their own register on their websites. Nevertheless in order to provide a comprehensive ability for the public to check whether vehicles have previously been used as taxis or PHV's this would need to be true for all local authorities.
48. Although the registers compiled by the council are required to be provided for inspection, the Commissioner considers that this method effectively limits the accessibility of the information compared to that which a disclosure via the internet provides. Any disclosure via the internet is essentially a global disclosure of the information, whereas inspection of a public register requires that individuals wishing access to the information must physically visit the relevant council offices to inspect the register.
49. The publication by each individual authority separately also creates a difficulty for members of the public to identify the correct authority with which to check the status of vehicles. For instance if a vehicle is being considered for purchase in Croydon, but was formerly being used as a taxi in a different authority's area, members of the public may not identify that the vehicle was previously used for this purpose by searching the London Borough of Croydon's register prior to purchasing the vehicle.
50. The Commissioner is therefore satisfied that the public has a legitimate interest in being able to access such information. In order to provide an easily accessible, internet based checking facility it would be necessary for the information requested to be disclosed so that companies such as the complainant's have access to all of the relevant information which they require to produce the database.

The balancing test

51. It is necessary to balance the legitimate interests in disclosure against the data subject(s)' interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.

The legitimate interest in disclosure

52. The complainant has sought the information to produce a publicly accessible database of vehicles formerly used as PHV's and taxis. The Commissioner considers that members of the public wishing to purchase vehicles may wish to check whether they have been used as a taxi previously, and that this is a legitimate aim. The complainant's aim is to provide a means for the public to do so. This is also a legitimate aim.
53. A disclosure of the information in this case would benefit the public to the extent that those considering purchasing vehicles would be able to check whether the vehicle had previously been used as a taxi or a PHV. Whilst there is a requirement for dealers not to misrepresent whether that is the case, there is evidence that this does not always occur⁶. As a result purchasers may overpay for vehicles, and may not realise that the vehicle was previously used as a taxi or a PHV until they receive the log book, potentially some weeks after they have purchased the vehicle.
54. The complainant has highlighted that many authorities already provide this information upon request. Some authorities also already publish their registers on the internet. A decision by the Commissioner that this practice breaches the rights of individuals may, in some cases, bring the continuity of this practice into question by other authorities. This could result in information which is currently available being removed from wider publication. This would interfere with the complainant's legitimate interests, however, the Commissioner must make her decision based upon the application of the law to the rights and freedoms of the individuals.

The individual's expectations

55. The Commissioner notes that the taxi and PHV owners would have an expectation that their details, and details about their vehicles will be

⁶ <https://www.thisismoney.co.uk/money/cardsandloansguides/article-5442623/Why-used-car-youve-got-eye-taxi.html>

56. included in a register, and that this register will be made available by the individual councils for inspection. The law requires local authorities to keep and maintain such registers, and to make them available to the public for inspection by members of the public.
57. Having said this, the Commissioner notes that VRM data is not required to be published in the register by either the *Town and Police Clauses Act 1847* or the *Local Government (Miscellaneous Provisions) Act 1976*. The licence numbers it refers to relate to the licenced taxi or PHV driver numbers, an identifier provided by the council which is displayed inside all such vehicles.
58. Publication by the internet provides a much wider scope to access the information than publication via public inspection. Local authorities are not required to publish their registers online by the legislation. They are only required to maintain the register and make it available for public inspection.
59. In essence therefore, the council is not under a duty to publish VRM data in its register, and it is not required to publish its register online. Those that do so publish this information based on choice rather than legal necessity.
60. In a monetary penalty notice issued by the Commissioner against Basildon Council in 2017, at para 28(c), the Commissioner noted that:

"In any event, disclosure on a website is materially different to the right of inspection. Even on Basildon's legal analysis, it chose to make its planning register available online. That choice cannot override individual's rights under the DPA, Directive 95/46 or Article 8 ECHR."
61. Individuals who complete the taxi registration application form would not expect that their details would subsequently be published in such a wide a manner on the internet unless the council informed them that this would be the case, or unless the council's publication of the register on the internet was already in place and widely known about.
62. Even where the latter is the case, the Commissioner would expect authorities to provide a privacy notice to applicants which makes it explicitly clear that details from the registers will be published via the internet, and provide further information on the information which would

⁷ <https://ico.org.uk/media/action-weve-taken/mpns/2014149/mpn-basildon-borough-council-20170522.pdf>

be published. Prospective applicants will then be fully aware of the likelihood that information about them or about their vehicles will be published in this manner.

63. The council's application registration form does not include a privacy notification outlining that this could occur. It's PHV Licence application form on its website states:

"Data Protection Act 1998:

Tandridge District Council ("The Council") will act as Data Controller in respect of your personal data held. By signing and returning this form to the Council you give consent to us to process sensitive personal data about you where this is necessary, for example health information.

You have the right to apply for a copy of your personal data (for which a small fee will be charged) and to have any inaccuracies corrected.

Audit Commission Act 1998:

The Council is under a duty to protect the public funds it administers and to this end may use the information you have provided on this form for the prevention and detection of fraud. It may share this information with other departments within the Council or external organisations responsible for auditing and administering public funds for these purposes."

64. The Commissioner therefore notes that the potential for this information to be published via the internet is not specifically provided to licence applicants, i.e. PHV and taxi drivers.
65. However, in this case, some of the data subjects under consideration are further removed from this as they have purchased a vehicle from the taxi driver or a taxi or PHV company (or a third party reseller). The Commissioner has outlined how the complainant's request seeks information from the register dating back to 2012. The Commissioner recognises that during this period of time many of the vehicles may have been sold on to private owners who are using them for their own domestic purposes. These owners would have no general expectation, and would not have received any notification from the council, that details of their vehicles could be published online. Disclosing the VRM's of these vehicles will therefore disclose a valid VRM of a vehicle which is now owned by a new owner. The new owner may not be using the vehicle as either taxi or a PHV but as a domestic vehicle.

The impact of a disclosure of the information

66. The Commissioner also considered the impact a disclosure of the information would have on vehicle owners. A disclosure of the information would amount to an infringement into their private lives, particularly in the case where the individual owners have not used the vehicle as a taxi or a PHV.
67. Other councils have suggested the possibility of vehicle 'cloning' by criminals should the information be disclosed more widely. The Commissioner has considered this argument. There may be a risk of criminals using the published information for criminal purposes should it be made more widely available. Cloned vehicles may be used for criminal purposes, may be used to avoid liability for traffic violation fines and may be used as part of a chain for moving vehicles for 'fencing' purposes. The council outlined how the provision of the data requested would make it easier for criminals to use that data, together with other information already in the public domain for such purposes. All of these factors would have a potential impact upon the owner of the vehicle, the data subject.

Conclusions

68. A disclosure of the information would not fall within the expectations of the individuals. There is no statutory requirement for the council to obtain or publish VRM information for inspection, and there is no requirement for it to publish the information on the internet. The council's privacy notice does not highlight the potential for such a widespread disclosure to take place. It notifies applicants of the potential for limited data disclosures for specified purposes.
69. Additionally the Commissioner notes that where cars have been sold on and purchased by private individuals they would not have received any form of privacy notice or any other form of notification from the council that as the vehicle they are driving was previously used as a taxi or a PHV, the VRM of their vehicle could be published on the internet and provided to third parties for their own purposes.
70. Another council has highlighted how a disclosure of the VRM, together with the information it has already disclosed, and with other information in the public domain, could be used for the purposes of cloning vehicles, and there would be obvious, and potentially significant repercussions on owners were this to occur, including potential traffic violations being laid against innocent owners.

71. Whilst the Commissioner considers that the potential for this is likely to be low given that other councils do publish this information, there is nevertheless a risk of this occurring, and therefore the detriment identified does need to be considered as a relevant risk of detriment being created for individuals should the information be disclosed.
72. Having considered the above, the Commissioner has decided that the legitimate interests of the requestor, and of the public as a whole, do not outweigh the rights and interests of the individual given their lack of expectation that this may occur, and the likely and potential impact of such a disclosure.
73. As the Commissioner has decided that a disclosure of the information does not pass the balance of the legitimate interests test she has not found it necessary to go on to consider the requirements for fairness and transparency within this notice.
74. Finally, the Commissioner has outlined above that as the complainant has requested information dating back to 2012 some of the information held by the council is likely to be inaccurate – vehicles registered as taxis and PHV's on some of the older entries may have been sold on to private individuals. A disclosure of a VRM which is inaccurate risks personal data being disclosed. Even if the council's records show that a vehicle is registered to an organisation rather than to a living individual, the council would have no immediate means of checking whether an individual now owns the vehicle. To be sure, it would need to check each individual VRM to see if the vehicles are still owned by the organisation or are now owned by an individual before disclosing it to the complainant. This is likely to be time consuming, burdensome and potentially costly for the council. Disclosing the information without carrying out relevant checks may result in the council breaching the data protection principles of the DPA 2018 if they disclose a VRM of a vehicle which is now owned by a living individual. This would however be less likely to apply to information which the council currently has registered as taxis or PHV's.
75. The Commissioner has therefore decided that the council was entitled to withhold the information under section 40(2), by way of section 40(3A)(a).

Section 31(1)(a)

76. The council has not sought to claim any other exemption is applicable to VRM data of vehicles owned by non-individuals. Nevertheless the Commissioner has the discretion to consider exemptions which she recognises may be applicable and to consider the withheld information in light of this and order the information withheld where she considers that the exemption applies.
77. The remaining information is VRM information belonging to non-individuals, i.e., information which is not personal data as the VRM is owned by a corporate body or an organisation and so disclosure is not a disclosure of personal data for the purposes of section 40(2).
78. In case *FS50793373 Sunderland City Council*, an associated case, the council applied section 31(1)(a) to withhold this sort of information from disclosure. It argued that disclosing this sort of information would provide an easily accessible list of vehicles and VRM's which could be used by criminals to facilitate vehicle cloning. Vehicle cloning can be used for various criminal purposes, such as vehicle fencing, and avoiding traffic violation penalties.
79. In deciding that the exception was applicable in that case the Commissioner considered that whilst the potential for this to occur was relatively low, the impact upon individuals and upon businesses which were cloned in this way could be relatively high. She also noted that the use of this information in this manner could affect the ability of police forces to prevent or detect crime.
80. In considering the public interest test, she noted that the aims of the complainant, to provide a usable database for individuals to be able to check whether the vehicle they were considering was previously used as taxi were stultified by her decision that section 40(2) is applicable to the personal data of individuals held within the information. A fully comprehensive database could not be provided using information disclosed under the FOI Act for this reason. When balanced against the likelihood of the information being used for criminal purposes as outlined above, she therefore decided that the greater public interest rests in the exemption being maintained.
81. For the reasons she has outlined in decision notice FS50793373 therefore, the Commissioner has used her discretion to apply section 31(1)(a) to withhold this information.

Right of appeal

82. 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

83. 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.
84. 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

Andrew White
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