

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 8 March 2019

**Public Authority:** Sunderland City Council  
**Address:** Civic Centre  
Burdon Road  
Sunderland  
Tyne and Wear  
SR2 7DN

#### **Decision (including any steps ordered)**

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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) and section 31(1)(a) (prevention and detection of crime) applied.
2. The Commissioner's decision is that the council was correct to apply section 40(2) to the information. She has also decided that the council was correct to apply section 31(1)(a) to the information.
3. The Commissioner does not require the council to take any steps.

## Request and response

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4. On 2 August 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 1<sup>st</sup> 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 13 August 2018. It provided the manufacturer and model of the vehicle, together with when the registration became active and when it expired.
6. However it refused to provide the VRM's of the relevant vehicles on the basis that the exemptions in section 40(2) (personal data) and section 31(1)(a) (prevention and detection of crime) applied.
7. Following an internal review the council wrote to the complainant on 28 August 2018. It maintained its position that the exemptions applied and continued to withhold the requested information.

## Scope of the case

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8. The complainant contacted the Commissioner on 11 October 2018 to complain about the way her request for information had been handled.
9. She believes that the council is wrong to withhold the information on the basis claimed.
10. 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) and section 31(1)(a) applies.

## Reasons for decision

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11. 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.
12. 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.
13. In this case the relevant condition is contained in section 40(3A)(a)<sup>1</sup>. 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').
14. 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.
15. 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.

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

Is the information personal data

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

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

17. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.
24. 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?

25. 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.
26. 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 VRM<sup>2</sup>.
27. However the Commissioner notes that where the owner of a vehicle is a corporate body or an organisation rather than a living identifiable individual then VRM information cannot be personal data. Section 40(2) cannot therefore apply to this information.
28. In her guidance "*In the picture: A data protection code of practice for surveillance cameras and personal information*<sup>3</sup>", 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*

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<sup>2</sup> Paras 47-49: [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/2009/494046/FS_50186040.pdf)

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

*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."*

29. 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.
30. 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.<sup>4</sup>
31. 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.
32. 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.
33. 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.
34. 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.

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<sup>4</sup> [https://ico.org.uk/media/action-weve-taken/decision-notice/2009/494046/FS\\_50186040.pdf](https://ico.org.uk/media/action-weve-taken/decision-notice/2009/494046/FS_50186040.pdf)  
<https://ico.org.uk/media/action-weve-taken/decision-notice/2017/2172663/fs50689632.pdf>  
[https://ico.org.uk/media/action-weve-taken/decision-notice/2007/409080/FS\\_50127657.pdf](https://ico.org.uk/media/action-weve-taken/decision-notice/2007/409080/FS_50127657.pdf)

*Would disclosure contravene principle (a)?*

35. 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”*

36. 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**

37. 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.

38. 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”<sup>5</sup>.*

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<sup>5</sup> 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”*.

39. 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.
40. 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**

41. 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 accountability and transparency for their own sakes as well as case specific interests.
42. 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.
43. 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.



44. 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.
45. 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?**

46. '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.
47. 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.
48. 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.
49. 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.
50. 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.

51. 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 car was previously used for this purpose by searching the London Borough of Croydon's register prior to purchasing the vehicle.
52. 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**

53. 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*

54. 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.
55. 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 occur<sup>6</sup>. As a result purchasers may overpay for vehicles, and may not realise that the

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

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.

56. 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*

57. The Commissioner notes that the taxi and PHV owners would have an expectation that their details, and details about their vehicles will be 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.
58. 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.
59. 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.
60. 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.
61. 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.<sup>7</sup>"*

62. 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.
63. 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 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.
64. 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:

*"I/We consent to the information provided in this application and the supporting documents being used by Sunderland City Council for the purposes of undertaking its statutory licensing functions in relation to the owners of private hire vehicles and understand that it may disclose any information to any third party, as may be required by law."*

65. The council's privacy notice, provided to both hackney carriage and PHV vehicle applicants, provides a list of potential recipients of the information. Of relevance is a section that states:

*"Members of the Public – Some limited information such as licensee names and associated badge or licence numbers, together with the status and expiry dates of those licences may be made publicly available, in accordance with the Town and Police Clauses Act 1847 and Local Government (Miscellaneous Provisions) Act 1976, as applicable."*

66. The Commissioner therefore notes that the potential for this information to be published on the internet is not specifically provided to licence applicants, i.e. PHV and taxi drivers.

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

67. However in this case 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 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*

68. The Commissioner has also considered the impact such a disclosure 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.

69. The council has also 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 has 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. This is considered further below.

*Conclusions*

70. A disclosure of the information would not fall within the expectations of the individuals. There is no statutory requirement for the council to disclose the information, 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.

71. 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.

72. A disclosure of a VRM which is inaccurate still risks personal data being disclosed. The council would have no immediate means of checking whether an individual now owns the vehicle without checking the details of each individual VRM it has registered to an organisation or a company to see if they still own the relevant vehicle 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.
73. The 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. 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 by the Commissioner.
74. 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.
75. 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.
76. 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)

77. The council applied section 31(1)(a) on the basis that disclosing the information would be likely to result in criminals using the information for the purposes of criminal activity, such as the cloning of vehicles for the purposes of, for instance, theft and the traffic offence avoidance.



78. The Commissioner has decided that the council application of section 40(2) to withhold information was correct in cases where the vehicle owner's data would be personal data for the purposes of the DPA 2018. Therefore she has not found it necessary to consider the application of the exemption in section 31(1)(a) to this information.
79. However where the vehicle owners information is not personal data this information cannot be exempted under section 40(2). The Commissioner has therefore considered the application of section 31(1)(a) to this information.
80. Section 31(1)(a) provides that:
- "Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-*
- (a) the prevention or detection of crime,*
81. In order for a prejudice based exemption, such as section 31, to be engaged the Commissioner considers that three criteria must be met:
- Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
  - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
  - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.
82. The council argues that it is apparent that disclosing the VRM's would be useful to criminals wishing to use the information for unlawful or criminal purposes.

83. It argues that:

*"Specifically, the release of the full dataset requested in this case would have the effect of creating a ready-made resource that would be of use to those engaged (or thinking of becoming engaged) in VRN and/or vehicle cloning – namely a set of data linking valid VRNs to specific makes and models of vehicle. This would allow someone wanting to 'blur the identity' of a (say) Skoda Octavia to search FOI – published data for the appropriate vehicle and be presented with a range of VRNs that actually do belong on Skoda Octavias. This would be of great help to individuals seeking to 'disguise' a vehicle by cloning a number plate to make it look like someone else's machine."*

84. It argues that cloning is not a new phenomenon and provided links to media reports addressing the subject. It recognises that cloning can occur without the disclosure; criminals can simply observe similar makes and models of cars to those they wish to clone and make a note of the VRM. However it considers the disclosure of the requested information would make it easier for criminals to do so. It further pointed out the types of crime such activity could facilitate beyond the simple act of cloning the vehicle itself. These included traffic violations, Road tax, MOT and insurance avoidance and the fencing of stolen vehicles.

85. Looking at the factors outlined for the exemption to apply therefore:

- Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption would be the use of the data for the purposes of facilitating criminal activity, in this case the use of the information for the cloning of vehicles;
- Secondly, the council has highlighted a causal relationship exists between the potential disclosure of the information and the prejudice which the exemption is designed to protect. In essence the disclosure would provide information which can be used for the purpose of cloning a vehicle as the make, model and VRM of that vehicle would be published. Further, information, such as the colour of the vehicle is also available online using the VRM information. The resultant prejudice which is alleged is real, and of substance; and
- Thirdly, the council has established the level of likelihood; i.e. disclosure 'would be likely' to result in prejudice. The Commissioner recognises that the chance of prejudice occurring is more than a hypothetical possibility; there is a real and significant risk that such information could be used by criminals if it became easily accessible.



86. The Commissioner recognises that many authorities do disclose current information on their registers, however the council has not provided evidence of its use for criminal purposes as suggested above.
87. Nevertheless the Commissioner considers that the level of likelihood is met as organised crime would find such information inevitably of use if it was able to access that information more freely, and there may be little physical evidence that this is how they obtained the information.
88. As the Commissioner has decided that the three criteria have been met she agrees that the council was correct to apply section 31(1)(a) to the information. She must therefore consider the application of the public interests test required by section 2(2)(b) to the information. The test is "*whether, in all of the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information*".

The public interest

*The public interest in the information being disclosed*

89. The Commissioner outlined the reason for the complainant requesting this information. The complainant's reasons for wishing the information tie in with the public interest in being able to access information on vehicles formerly used as taxis. There is a public interest in allowing such access generally for these reasons.
90. The Commissioner notes however that as she has agreed with the council application of section 40(2), any disclosure which could be ordered through her making a decision regarding the application of section 31 would be limited in scope, she would not be able to provide national coverage of cars formerly used as taxis. This significantly weakens the public interest arguments as regards the application of section 31.

*The public interest in the exemption being maintained*

91. In addressing the points in favour of the information being disclosed the council has highlighted that there are other means of identifying whether vehicles have previously been used as taxis or PHV's. It pointed out that an internet search provides a wealth of advice for those concerned about this prospect. It argues that free availability of such advice lessens the public need for a disclosure of this information, and argues that this is clearly outweighed where there is a real risk of the information being subsequently used to facilitate criminal activities if it is disclosed.

92. The council also argues that the selling of former taxis and PHVs is not a crime, whereas the cloning of a vehicle and the other associated activities it has raised are crimes. The Commissioner notes however that whilst the selling of former taxis and PHVs is not a crime, the sale of such vehicles whilst misrepresenting their former use as such is a breach of industry and advertising guidelines. She notes media reports on an ongoing group legal action against some manufacturers and dealers for precisely these reasons. Misrepresenting the fact that a vehicle was previously used for these purposes may also result in action being taken under the Consumer Protection from Unfair Trading Regulations 2008.<sup>8</sup>

### Conclusions

93. The only information remaining which would be exempted under section 31(1)(a) would be the VRM of vehicles where the owner is registered as an organisation or a company. However the Commissioner has highlighted above that due to the dates for this information which were requested by the complainant, some of this information is likely to be out of date and no longer accurate. The information would, however, still be suitable for the complainant's purposes in that it would identify vehicles formerly used as taxis or PHV's.
94. The council has no easy way to check the accuracy of its older data. The Commissioner has also noted that the inaccurate data may now be personal data and disclosure may risk the council breaching the provisions of the DPA 1998.
95. The amount of information which would be disclosed is severely curtailed given the Commissioner's finding that section 40(2) is applicable. This significantly undermines the complainant's arguments for the disclosure of the information. A comprehensive database for the public to check whether a vehicle was previously used as a taxi or not cannot be obtained via requests such as this without breaching the requirements of the DPA 2018.
96. The Commissioner notes that a disclosure of the information risks significant affects for the organisations/individuals involved. Their vehicles may be cloned and used for criminal purposes, and the time spent responding to any investigation which ensues over the use of a cloned vehicle for criminal purposes will cost the businesses resources and time. Additionally the time spent by the police or other agencies

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<sup>8</sup> <https://www.thisismoney.co.uk/money/cardsandloansguides/article-5442623/Why-used-car-youve-got-eye-taxi.html>

excluding the genuine vehicle from their investigations may mean that criminals responsible for carrying out crime have more time to hide evidence of their activities.

97. The Commissioner has therefore decided that the public interest rests in the information being withheld. The council was correct to apply section 31(1)(a) in this instance.

## Right of appeal

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98. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

99. 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.

100. 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 .....**

**[Name of signatory]**

**[Job title of signatory]**

**Information Commissioner's Office**

**Wycliffe House**

**Water Lane**

**Wilmslow**

**Cheshire**

**SK9 5AF**