

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

### **Decision notice**

**Date:** 4 November 2022

**Public Authority:** Department for Transport  
**Address:** Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR

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

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1. The complainant has requested information regarding the number of licensed vehicles in the UK, based on 2011 Census.
2. The Commissioner's decision is that the Department for Transport (the DFT) has not demonstrated that section 40(2) is engaged and therefore is not entitled to rely on this exemption.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Send withheld information to the complainant which has been suppressed as the value 'C.'
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

#### **Request and response**

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5. On 21 December 2021, the complainant wrote to the DFT and requested information in the following terms:

"I would like to request some information about the number of licensed vehicles in the UK, based on 2011 Census geography.

I am interested in this data for its general utility, and for purposes of analysis in combination with other public datasets that are produced based on Census geography, rather than any more specific purpose.

I am submitting this request under the Freedom of Information Act and Re-use of Public Sector Information Regulations. I appreciate it may be administratively easier to treat this as a business as usual request. However, the formalities are necessary because I may need to document the provenance of the data and may need to challenge DfT's response to my request.

Details of request:

I am aware that the DfT and the DVLA publishes statistics for licensed vehicles by postcode district and body type (Table VEH0122) at <https://www.gov.uk/government/statistical-data-sets/all-vehicles-veh01>.

I am requesting equivalent data – i.e. the number of licensed cars, motorcycles, and all other vehicles – by 2011 Census Output Area (OA) in England, Scotland and Wales, and Small Area (SA) in Northern Ireland.

I am requesting this data without any rounding or suppression of small numbers. OAs and SAs have a confidentiality threshold of 40 households. There should be no need to apply any rounding or suppression of the vehicle counts, as even a single vehicle could not be related to an identifiable individual within the pool of households.

On this subject, I draw your attention to the Upper Tribunal's recent decision in NHS Business Services Authority v Information Commissioner and Spivack: [2021] UKUT 192 (AAC) <https://www.gov.uk/administrative-appeals-tribunal-decisions/nhs-business-services-authority-v-information-commissioner-and-spivack-2021-ukut-192-aac>

If DfT does consider that it cannot release data for OAs/SAs without rounding or suppression of small numbers, please also provide the number of licensed cars, motorcycles, and all other vehicles in each 2011 Census Lower Layer Super Output Area (LSOA) for England and Wales, Data Zone (DZ) for Scotland, and Super Output Area (SOA) for Northern Ireland.

Please provide the data as at Q2 2021 or as at Q3 2021 (whichever is the most recent held by the DfT) and specify the date to which the figures have been calculated.

There is no need to provide statistical names for Census areas, if they are represented by ONS statistical codes.

Please provide the data in a re-usable data format such as CSV, Excel or ODS.

I further request, in accordance with regulation 6 of the Re-use of Public Sector Information Regulations 2015, permission to re-use all information provided in response to the above access to information request for the purpose of combining that information with data from existing open public datasets and making the outputs available to others in a re-usable electronic form under an open licence. I request that the DfT grants permission to re-use the information for this purpose under the terms of the Open Government Licence v3 (<http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>). Given my intended use, any more restrictive licensing terms would be likely to "unnecessarily restrict" the way in which the information can be re-used, contrary to RoPSIR regulation 12."

6. The DfT responded on 26 January 2022. It provided some information within the scope of the request, but withheld the remaining information under Section 40(2).
7. Following an internal review, the DfT wrote to the complainant on 3 March 2022. It stated that it was upholding its decision to withhold the information under section 40(2).

### **Scope of the case**

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8. The complainant contacted the Commissioner 18 April 2022 to complain about the way his request for information had been handled.
9. The Commissioner considers whether the DfT has correctly applied Section 40(2) when withholding the information.

## Reasons for decision

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### Section 40 personal information

10. Section 40(2) of 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(3A)(3B) or 40(4A) is satisfied.
11. 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 ("the DP principles"), as set out in Article 5 of the UK General Data Protection Regulation ("UK GDPR").
12. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ("DPA"). If it is not personal data, then section 40 of FOIA cannot apply.
13. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

### Is the information personal data?

14. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual."
15. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
16. 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.

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<sup>1</sup> As amended by Schedule 19 Paragraph 58(3) DPA.

17. 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.
18. The withheld information in this case is the total number of "vehicles/motorbikes/other" within Output areas and Lower Super Output areas<sup>2</sup>. The Commissioner has been provided with a copy of the withheld information.
19. A key factor in this case is to determine whether individuals are identifiable from the withheld information. The DFT explained that the withheld information relates to a small number of individuals and, due to the low numbers, they could be identified. The Commissioner does not, however, see how those individuals could be identified from the information requested and notes that the DFT did not provide any detailed reasoning to corroborate its argument on this point.
20. The DFT was also unable to confirm if all the withheld information is personal data due to "the volume of information" the DFT went on to advise that "it would not be practicable for the DFT to check each Output area."
21. The Commissioner refers to the recent Upper Tribunal case NHS Business Services Authority v Information Commissioner and Spivack GIA/0136/20215.<sup>3</sup>

"Identifying a pool that contains or may contain a person covered by the data is not sufficient. Saying that it is reasonably likely that someone is covered by the data is not sufficient. Still less is it sufficient to say that it is reasonably likely that a particular individual may be one of the pool. Linking any specific individual to the data in any of these circumstances does not rely solely on the data disclosed and other data available by reasonable means; it involves speculation."
22. The above Tribunal hearing explains that a public authority needs to make a case for the identifiability of an individual or individuals.
23. The DFT advised that it had used the Commissioner's guidance when making its decision to withhold the information. The DFT advises the Commissioner's guidance stated that removing numbers relating to five

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<sup>2</sup> [Output areas - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk)

<sup>3</sup> [GIA\\_0136\\_2021-00.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

or 10 individuals or fewer may be a reasonable rule of thumb for minimising the risk of identification.

24. In its submission to the Commissioner the DFT provided a map which displayed two pinpoints that marked two different properties. The DFT advised that these "two specific buildings ... will likely be the location of the registered keeper." The Commissioner viewed the map provided and agreed that two buildings are marked by the pinpoints, however the map clearly states that this is an 'active postcode' and goes on to state that there are 'approximately 37 households'. The DFT failed to clearly explain how this map from a third party service would hold and publish the information regarding the location of the owners of vehicles.
25. In this case, the Commissioner considers that the DFT has failed to demonstrate how an individual could be identified from the data requested. Even if an individual was motivated to find the location of an owner of certain vehicles, the Commissioner is unsure how knowing the amount of "Vehicles/Motorcycles/other" in an Output area /Lower Super Output area, would allow for owners to be identified – unless the individual already knew the precise information such as registration of the car, make, model or colour, in which case, disclosure of the withheld information would not tell them anything they did not already know.

### **The Commissioner's Decision**

26. While the Commissioner notes that there are low numbers involved, the data on its own, would not allow any individuals to be identified. As such, the Commissioner considers that the requested information is not personal data and, therefore, the Council is not entitled to rely on section 40(2) of FOIA to withhold it.

### **Other matters**

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27. The Commissioner notes that the complainant has specifically asked for the information to be made available both under the FOIA and the Re-use of Public Sector Information Regulations (RPSI).
28. One of the provisions of the RPSI is that, where a request for re-use is made, a public authority may not unreasonably restrict further re-use of information it has made available.
29. The DFT did not place any restrictions on the re-use of the information it originally disclosed, the Commissioner is doubtful that it would be reasonable to apply more restrictive re-use conditions to the information it is now being required to disclose. If further restrictions to the re-use

of information is applied and the complainant finds unreasonable, they would be entitled to make a fresh complaint to the Commissioner.

## Right of appeal

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30. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

31. 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.
32. 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 .....**

**Catherine Fletcher  
Team Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**