

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 December 2017

Public Authority: Driver and Vehicle Licensing Agency

Address: Longview Road
Morrison
Swansea SA6 7JL

Decision (including any steps ordered)

1. The complainant has requested information from the Driver and Vehicle Licensing Agency (DVLA) about Bulk data, Anonymised data and Mileage data products. DVLA withheld the information under section 21(1) of the FOIA (information already reasonably accessible to applicant). During the Commissioner's investigation, DVLA withdrew its reliance on section 21(1) and advised that it considers that the requested information engages section 31(1)(a)(law enforcement), section 40(2) (personal data), section 43(2)(commercial interests) and section 44(1)(a) (prohibitions on disclosure). It also considers that the request could be categorised as vexatious under section 14(1).
2. The Commissioner's decision is that the requested information is exempt from disclosure under section 31(1)(a) with the public interest favouring maintaining this exemption.
3. The Commissioner does not require DVLA to take any steps in order to ensure compliance with the legislation.

Request and response

4. On 11 April 2017, the complainant wrote to the DVLA and requested information in the following terms:

"Under the FOIA please provide the digital copy of the most recent Bulk Data and Mileage Data products of DVLA. Please redact or withhold any information which is exempt under FOIA preserving all existing relations

between records (e.g. it should be possible to see after redaction whether any pair of records belonged to the same vehicle, the same registered keeper and/or any other similar parental node)"

5. DVLA responded on 8 May 2017. It withheld the information the complainant requested under section 21(1)(a) of the FOIA as it considered it was already reasonably accessible to him, on payment of a fee. It provided the complainant with a web link to where information on Anonymised data can be found. This link was incorrect and in later correspondence DVLA provided the complainant with the correct link to where information on accessing Bulk, Anonymised and Mileage data can be found. This involved contacting DVLA's Data Strategy & Compliance team.
6. The complainant requested an internal review on 22 May 2017. He was dissatisfied because the Data Sharing Strategy & Compliance team had informed him that to access the information he has requested would require payment of a fee of up to £96,000. DVLA provided a review on 21 June 2017. It upheld its original position with regard to section 21(2)(a). DVLA also referred to the provision under section 21(2)(b) of the FOIA. It explained that under this section, information is considered to be reasonably accessible if DVLA is obliged by or under any enactment to communicate it to members of the public on request, whether free of charge or on payment. DVLA said that regulation 28 of the Road Vehicles (Registration and Licensing) Regulations 2002 ('the Regulations') placed that obligation on it.
7. During the Commissioner's investigation, DVLA withdrew its reliance on section 21 and advised that, on further consideration, it considers that section 14(1), section 31(1)(a), section 40(2), section 43(2) and section 44(1)(a) of the FOIA apply to the requested information. On 4 December 2017, the Commissioner advised DVLA to communicate this new position to the complainant, if it had not already done so.

Scope of the case

8. The complainant contacted the Commissioner on 3 July 2017 to complain about the way his request for information had been handled.
9. During her investigation, the Commissioner noticed that, in its submissions to her, DVLA had referred to the complainant having requested *Anonymised* data as well as Bulk and Mileage data. DVLA explained that in his original request on 11 April 2017, the complainant did just ask for Bulk and Mileage data. When DVLA responded to the request it had mistakenly provided him with a web link to the Anonymised data product. In wider correspondence with the complainant, he had asked for information relating to the Anonymised data. As a result, in its internal review DVLA considered that Bulk, Anonymised and Mileage data was within the scope of the request and that section 21 applied to all three products. The complainant had not questioned DVLA's inclusion of the Anonymised data and therefore it considers that this data is within the scope of his request.
10. Of more significance, the Commissioner went back to the complainant's original request and noted that it includes the following instruction:

"Please redact or withhold any information which is exempt under FOIA preserving all existing relations between records (e.g. it should be possible to see after redaction whether any pair of records belonged to the same vehicle, the same registered keeper and/or any other similar parental node)"
11. The complainant has effectively requested information that, if necessary under FOIA, has already been redacted. In its response and internal review, and submissions to the Commissioner, it appears that DVLA has approached the request as a request for *everything* ie complete and unredacted information relating to the three databases. It has then cited particular exemptions that it considers apply to this unredacted information.
12. The Commissioner queried this with DVLA. DVLA initially confirmed that, as far as it knows, it would not be possible to redact the information it would need to withhold AND *"still preserve all existing relations between records"* as the complainant has requested. However DVLA acknowledged that it had not pointed this out to the complainant in its initial handling of the request. DVLA suggested that its handling of the request as a request for unredacted information was an oversight and not as a result of being unable to comply with the request as it is framed.

13. DVLA subsequently explained that, on receipt of the request, it had considered the information, without redactions, was reasonably accessible to the complainant and had applied section 21 of the FOIA as a result. DVLA confirmed that if the complainant meets the requirements of regulations 27 and 28 of the Regulations he would be treated as any other Bulk, Anonymised and Mileage data customers and would receive the data with no redactions.
14. Notwithstanding this explanation, the Commissioner has reviewed her published guidance¹ and has doubts that the request as it is phrased can be considered to be a valid request. The complainant has phrased the request on a conditional basis ie that any redaction still preserves all existing relations between records. DVLA has now told the Commissioner that it cannot do this, which would effectively mean that the information requested on this basis does not actually exist.
15. However, the Commissioner has taken a pragmatic approach and is of the view that, whichever way the request is phrased, the information in the three data sets is exempt from release under the FOIA. She has proceeded with the investigation on this basis.
16. The Commissioner's investigation has considered whether any of the new exemptions that DVLA has applied to the requested information – namely section 31(1)(a), section 40(2), section 43(2) and section 44(1)(a) – are engaged. If necessary she has been prepared to consider whether the request can be categorised as vexatious under section 14(1).

Reasons for decision

Section 31 – law enforcement

17. In submissions to the Commissioner dated 22 September 2017 and 1 December 2017 DVLA provided arguments as to why section 31(1)(a) could be applied to the requested information.
 18. Section 31(1)(a) of the FOIA says that information is exempt information if its disclosure under the Act would, or would be likely to
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¹ <https://ico.org.uk/media/for-organisations/documents/1164/recognising-a-request-made-under-the-foia.pdf>

prejudice, the prevention or detection of crime. Section 31 is subject to the public interest test.

19. By way of background, Bulk data is primarily used for vehicle buyers to check if a vehicle is genuine. The data includes vehicle identifying information such as the vehicle registration mark (VRM), vehicle identification number (VIN), make and model. Mileage data is primarily used for vehicle buyers to check a vehicle's mileage. Anonymised data is primarily used for marketing purposes and consists of vehicle identifying information which gives make, model and a partial postcode etc.
20. A VRM is the mark that is assigned to a vehicle to identify it on the road. It is found on the number plate displayed on the front and back of the vehicle. DVLA has told the Commissioner that a VIN is a vehicle's unique marker. It is given to a vehicle (usually at the time of manufacture) and would be etched or stamped indelibly into the vehicle, typically in more than one area and usually on a dedicated place or on the vehicle's chassis.
21. DVLA has told the Commissioner that the requested information is provided under contract to those who have satisfied DVLA of the purposes for which it is intended to be used, and their ability to meet the appropriate conditions in that contract.
22. According to DVLA, disclosing Bulk, Anonymised and Mileage data needs to be appropriately controlled because it discloses a considerable amount of data regarding all the vehicles registered in the UK (some 39 million vehicles are actively registered).
23. DVLA says that disclosing Bulk data into the public domain under the FOIA would disclose the make and model of a vehicle together with its VRM and VIN. DVLA said that disclosing Anonymised data would also provide the make and model of a vehicle and, in addition, would disclose the partial postcode of the current keeper. With that information in the public domain, it is possible that a criminal wishing to conduct criminal activity against a high value, sought after or unique vehicle could easily identify that vehicle and locate it.
24. Also, those wishing to clone a stolen vehicle would be provided with all the information needed to do that, before selling the vehicle to an unsuspecting buyer. Cloning is a technique used to make stolen vehicles appear legitimate by giving them the appearance of a vehicle of the same make/model and colour. Furthermore, DVLA says disclosing all the requested information into the public domain would help people to avoid being traced through its records where the vehicle is used in a crime, by allowing the number plate of a similar vehicle to be identified and displayed on that vehicle.

25. With regards to the Mileage data, this data also discloses a vehicle's VRM and, disclosed with other sets of data, would give criminals further data to legitimise a cloned vehicle. Knowing the precise details of a vehicle (eg its VRM, make, model, colour and VIN) would assist those wishing to obtain the details of the vehicle's keeper when they do not have reasonable cause to do so.
26. DVLA has explained that regulation 27 and regulation 28 of the Regulations prevent it from releasing the requested information in an uncontrolled way. Regulations 27 and 28 give discretion to DVLA to sell the information or not to sell the information but to satisfy the Secretary of State's associated requirement that the requested information is only sold to a person that he or she would think fit, DVLA puts criteria in place that those applying for the information need to meet in order to receive the information. This controls who has access to the information, which is necessary for the reasons given above. DVLA argues that uncontrolled access to the information under the FOIA would lead to some people accessing the information for nefarious purposes.
27. It is for the above reasons that DVLA controls who can be provided with the requested information. On the GOV.UK website, DVLA gives brief explanations of the three data sets and provides links to booklets on each of the sets. DVLA indicates that the Bulk data (and Anonymised data) can be provided to certain companies and invites interested parties to contact its Data Sharing Strategy and Compliance Team about the Bulk and Anonymised data. DVLA indicates that, provided that applicants can show reasonable cause to access it, the Mileage data can be bought, and invites interested parties to contact its Data Release team for more information. Organisations that meet the criteria for being provided with the information (on payment of a fee) include Experian and HIP.
28. The Commissioner understands that Experian, as an example, is a commercial organisation that provides vehicle history information in the UK and internationally to help manufacturers, dealers, finance providers, insurers, auction houses, government agencies and consumers to understand the risk associated with any given vehicle. Experian's vehicle history information (which it purchases from DVLA) is used to establish whether a vehicle is currently registered as stolen, has outstanding finance or has been registered as a write-off. A vehicle history check can also help establish the market value of a vehicle, whether or not the vehicle has changed owners or been imported, and the accuracy of the odometer reading.
29. Section 31 is a prejudice based exemption. In order for it to be engaged, the Commissioner considers that three criteria must be met. Firstly, the actual harm that 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.

30. In this case, having considered DVLA's submissions, the Commissioner is satisfied that the actual harm that DVLA alleges would, or would be likely to, occur if the withheld information was disclosed do relate to the applicable interests within section 31(1)(a); that is the prevention of crime.
31. Second, 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 that is alleged must, be real, actual or of substance.
32. The Commissioner considers that DVLA has demonstrated that such a causal relationship exists and that the alleged prejudice is of substance. Disclosing the requested information would put a high volume of information into the public domain which could then permit those so inclined to undertake criminal activity against members of the public, by making use of that information.
33. Third, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – eg 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.
34. The Commissioner is satisfied that there is more than a hypothetical possibility that the above prejudice could occur. Although it may not be possible to confirm that the general public would definitely be at risk of criminal activity, the Commissioner considers that if the requested information was to be disclosed, prejudice to the prevention of crime against the public may very well occur.
35. Having considered DVLA's submissions and all the circumstances of this case, the Commissioner is satisfied that the three criteria for prejudice have been met and that section 31(1)(a) of the FOIA can be applied to the requested information in its entirety. She has gone on to consider the public interest arguments.

Public interest test

27. Other than the general public interest in public authorities being open and transparent, the Commissioner is not aware of any other public interest arguments for the release of the information in question. Individuals who have queries about a particular vehicle they own, or are interested in buying, can approach one of a number of organisations to have that query answered.
28. DVLA meanwhile considers that placing specific details of the 39 million vehicles registered in the UK into the public domain is not in the public interest. It argues that there is the expectation on DVLA that it handles such information appropriately and, while DVLA can disclose the Bulk, Anonymised and Mileage data in accordance with the Regulations, it should only disclose the information, and it should only be subsequently used, under strict contractual conditions and controls.
28. It appears to DVLA that the complainant has lost sight of the fact that to disclose information under the FOIA is to disclose it to the wider world, and not just to the applicant. DVLA argues that if the information were disclosed under the FOIA, without the necessary safeguards afforded by regulation 27 and 28 of the Regulations, it would allow the complainant to use the data as he wishes; perhaps selling it on to others who may wish to obtain the information for criminal purposes. DVLA confirmed that it cannot permit the disclosure of this level of data without control of how that data is then handled. Disclosure under FOIA would not allow that control.
29. The Commissioner has reviewed the decision of the Commissioner and Information Tribunal (IT) in EA/2005/0026, EA/2005/0030², to which DVLA has directed her. This says that VINs are exempt from release under section 31(1)(a). These decisions were made more than 10 years ago and the Commissioner notes that the IT considered at that time that the public interest in maintaining this exemption may lessen if VINs become more easily accessible and more widely available on the internet in the future.

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http://foiwiki.com/foiwiki/info_tribunal/DBFiles/Decision/i42/MrCMHoganandOxfordCityCouncilvInfoComm17Oct06.pdf

30. At this time in 2017, the Commissioner is aware that the VINs of some cars are displayed on their windshields and so are 'publicly available'. She is aware too that there are services available whereby an individual can carry out a check of their own vehicle by providing their vehicle's VIN; such as that offered by HPI and Experian. She is not aware, however, of a legitimate service that will freely, and without any controls, provide to any applicant the VIN of all 39 million vehicles registered in the UK.
31. In addition, the complainant has requested more categories of information than simply VINs. Releasing this volume of this many categories of information would seem to increase the likelihood of the vehicles of members of the public being targeted for criminal purposes. The Commissioner is therefore satisfied that the public interest in withholding the requested information, in order not to facilitate criminal activity, is a good deal stronger than any public interest in releasing it.
32. Because she has found that section 31(1)(a) is engaged and the public interest favours maintaining this exemption, the Commissioner has not found it necessary to consider the other exemptions that DVLA has applied. Nor has it been necessary to consider DVLA's application of section 14(1) to the request.

Right of appeal

33. 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

34. 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.
35. 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

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