

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 October 2017

Public Authority: Driver & Vehicle Licensing Agency (An executive agency of the Department for Transport)

Address: Longview Road
Morrison
Swansea
SA6 7JL

Decision (including any steps ordered)

1. The complainant has requested information relating to vehicle registration numbers. The Driver & Vehicle Licensing Agency (DVLA) refused to provide the requested information citing the exemption under section 40(2) of the FOIA (third party personal data) as its basis for doing so.
2. The Commissioner's decision is that DVLA has correctly applied section 40(2) of FOIA to the withheld information.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 8 May 2017 the complainant made the following request for information under FOIA:

'My car was damaged by a driver on the 28 04 2017 who did not stop.

The vehicle number that I thought was driven did not turn out to be correct. I am confident that the number began "WA64".

Could you please provide me with a data file – ideally in Excel- of the Registrations beginning WA64 plus data fields of Manufacturer, Model and colour. This information would enable me to sort through the

information, eliminating much of it and possibly tracking down the potential vehicle that hit me.

I realise this could be a file of 17000 plus records but I would appreciate your assistance in the matter.'

5. On 31 May 2017 DVLA refused to provide the requested information citing the exemption section 40(2) of the FOIA.
6. On 12 June 2017 the complainant requested an internal review as *'the data requested does not directly link to a person or persons either in name or address. Persons only with special access to the DVLA database could do so. My use is only to establish potential vehicles that caused damage to my car and thus made me liable for loss of my insurance no claims bonus and damage excess.'*
7. On 28 June 2017 DVLA provided the outcome of the internal review upholding the decision. DVLA referred the complainant to a previous decision notice FS50127657. (https://ico.org.uk/media/action-weve-taken/decision-notices/2007/409080/FS_50127657.pdf) in which the Commissioner accepted that car registration numbers combined with additional geographical and car information would be personal information.

Scope of the case

8. The complainant contacted the Commissioner on 6 July 2017 to complain about the way his request for information had been handled.
9. The Commissioner invited the complainant to withdraw his case on 31 August 2017 as it was her opinion that the requested information was personal data and DVLA was correct in its refusal to disclose this information.
10. However, the complainant declined to withdraw his case and wrote to the Commissioner on 6 September 2017 to state that his case was different:

'There was a risk of injury to people by the actions of the driver of the vehicle that damaged my car. His actions to drive on the wrong side of the highway and cut across me significantly damaging my car were not accidental but deliberate. He also drove away from the incident without stopping which is also a serious offence. These actions are more serious than parking infringements.'

The data I seek will enable me to identify the vehicle and this information will be forwarded to the Lincolnshire Police Constabulary who have a record of the matter. I have no intention of using the data to pursue the motorist concerned which would prove challenging for me anyway.'

11. The Commissioner considers the scope of this case to be to determine if DVLA has correctly applied section 40(2) FOIA to the withheld information.

Reasons for decision

Section 40(2) – Third party personal data

12. This exemption provides that any third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act (DPA).

Is the withheld information personal data?

13. Personal data is defined by the DPA as any information relating to a living and identifiable individual.
14. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
15. In previous decision notices, the Commissioner has considered that vehicle registration marks (VRMs) are personal data (especially when combined with other information such as geographical, manufacturer, model and colour information) and relate to the relevant vehicle keeper's private life.
16. DVLA provided the complainant with a copy of the decision notice, FS50127657, in which the Commissioner concluded that *'the information in question does constitute the personal data of third parties, i.e. the registered keepers of the vehicles in question'* and that section 40 had been correctly applied.
17. The Commissioner is satisfied that the information withheld under section 40(2) is information from which living data subjects would be identifiable.

Would disclosure breach the Data Protection Principles?

18. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness.
19. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individuals, the potential consequences of the disclosure and whether there is legitimate public interest in the disclosure of the information in question.
20. In previous decision notices, the Commissioner has considered the application of reasonable expectations and the potential consequences of the disclosure of VRMs:
 - The decision notice https://ico.org.uk/media/action-weve-taken/decision-notices/2009/494046/FS_50186040.pdf considered the request for VRM numbers of all VW Golfs and VW Golf R32s that were stolen and recovered in the Metropolitan Police district in the calendar year 2006.
 - The decision notice https://ico.org.uk/media/action-weve-taken/decision-notices/2013/876874/fs_50497812.pdf considered the request for automatic number plate recognition (ANPR) activations from Essex Police for a particular vehicle on a particular date.
 - The decision notice https://ico.org.uk/media/action-weve-taken/decision-notices/2014/959474/fs_50520970.pdf considered the request for information about a vehicle for which the complainant was the registered keeper.
21. In all cases, the Commissioner concluded that VRMs were personal data and that disclosure would be unfair and breach the Data Protection Principles. The Commissioner considers that similar arguments apply here.

Balancing the rights and freedoms of the individuals with the legitimate interests in disclosure

22. Given the importance of protecting an individual's personal data, the Commissioner's 'default' position in cases where section 40(2) has been cited is in favour of protecting the privacy of the individuals. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure which would make it fair to do so.

23. In this case, the complainant has argued that his case involved a serious offence and therefore the information should be disclosed. He did not personally intend to pursue the motorist in relation to his car damage but would search the data and forward the relevant VRMs to the police.
24. However, the Commissioner is not convinced that the specific information requested, while of significant interest to the complainant, is of sufficient wider public interest to warrant overriding the protection of the third party personal data.
25. Having considered DVLA's submission, previous decision notices and the views of the complainant the Commissioner is satisfied that the complainant's arguments for disclosing the information in this case are not as compelling as those that DVLA has put forward for protecting the individuals' personal data, namely:
 - the individuals' likely expectation about how their personal data will be managed
 - the individuals' lack of consent to its release; and
 - the possible negative consequences to the individuals of releasing the information.
26. The Commissioner is satisfied that on balance, the legitimate public interest would not outweigh the interests of the data subjects and that it would not be fair to disclose the requested information in this case.

Conclusions

27. The Commissioner is satisfied that the withheld information is personal data and that disclosure would breach the first data protection principle as it would be unfair to the individuals concerned. The Commissioner upholds DVLA's application of the exemption provided at section 40(2) of the FOIA.

Right of appeal

28. 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

29. 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.
30. 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

Pamela Clements
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