

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 January 2023

**Public Authority:** Commissioner of Police of the Metropolis  
**Address:** New Scotland Yard  
Broadway  
London  
SW1H 0BG

### Decision (including any steps ordered)

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1. The complainant has requested information about 'written off' police cars from the Metropolitan Police Service (the "MPS"). The MPS provided some information, but refused to provide the remainder citing section 31(1)(a) of FOIA (Law enforcement) of FOIA.
2. The Commissioner's decision is that section 31(1)(a) is engaged and that the public interest favours maintaining the exemption. No steps are required.

### Request and response

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3. Following an earlier request which was refused on cost grounds, on 20 August 2022, the complainant wrote to the MPS and requested information in the following terms:
  - "1. the VRM [Vehicle Registration Mark] of MPS vehicles written-off / damaged such that they were considered salvage ...
  2. the date of loss – See response to Q1".
4. On 26 October 2022, the MPS responded. It provided some information but refused to provide the remainder, citing section 31(1)(a) of FOIA.
5. The complainant requested an internal review on 27 October 2022.

6. The MPS provided an internal review on 28 November 2022 in which it maintained its position.

## Scope of the case

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7. The complainant contacted the Commissioner on 1 December 2022, to complain about the way his request for information had been handled.
8. The complainant asked the Commissioner to consider the application of the exemption to his request. The Commissioner will consider this below.
9. The complainant's request can be found online<sup>1</sup>. The Commissioner has referred to it in his notice below to save repetition, as some of the arguments relied on can be found there.

## Background

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10. The MPS has explained to the Commissioner:

"All MPS vehicles sent to auction must be sold through a free to access public auction (subject to any registration). Our contractor, Synetiq provides a dedicated police only auction sale via its website. Synetiq will mark police vehicle auction adverts with either 'sold on behalf of police, one of their own fleet of vehicle, warranted mileage, HPI clear. V5 & service history available' for police ex-fleet vehicles and for non-fleet vehicles 'Police Disposal'. However, this is not a mandatory part of the disposal contract and as such is not something the MPS can enforce or confirm is completed for every police vehicle auction advert.

It would be quite clear to any bidder that they would be buying a vehicle sold on behalf of the police, as a consequence of the dedicated auction facility for police vehicles. However the MPS would not want to confirm or make clear whether a particular vehicle was ex-fleet or a seized vehicle".

11. The Commissioner notes that the Synetiq website<sup>2</sup> clearly shows that it is: "... home to thousands of damage-repairable vehicles from a range of

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<sup>1</sup> [https://www.whatdotheyknow.com/request/total\\_loss\\_vehicles](https://www.whatdotheyknow.com/request/total_loss_vehicles)

<sup>2</sup> <https://auctions.synetiq.co.uk/>

suppliers nationwide”, evidencing that anyone buying such a vehicle is aware that it has been previously ‘damaged’ in some way. It has a section listed as ‘police’ sales.

## **Reasons for decision**

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### **Section 31 – Law enforcement**

12. Section 31 of FOIA creates an exemption from the right to know if disclosing the information would, or would be likely to, prejudice one or more of a range of law enforcement activities.
13. In this case, the MPS is relying on sections 31(1)(a) of FOIA in relation to all the withheld information. This subsection states that information is exempt if its disclosure would, or would be likely to, prejudice the prevention or detection of crime.
14. In order to engage a prejudice based exemption such as section 31 there must be likelihood that disclosure would, or would be likely to, cause prejudice to the interests that the exemption protects. In the Commissioner’s view, three criteria must be met in order to engage a prejudice based exemption:
  - 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 – ie disclosure ‘would be likely’ to result in prejudice or disclosure ‘would’ result in prejudice.
15. Consideration of the exemption at section 31 is a two-stage process: even if the exemption is engaged, the information should be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

### **The applicable interest and nature of the prejudice**

16. The first step in considering whether this exemption is engaged is to address whether the prejudice predicted by the public authority is

relevant to the law enforcement activities mentioned in section 31(1)(a) - the prevention or detection of crime. With respect to law enforcement activities, the Commissioner recognises in his published guidance<sup>3</sup> that section 31(1)(a) will cover all aspects of the prevention and detection of crime.

17. The MPS has explained to the Commissioner that:

“Disclosure would ... reveal what vehicles the MPS use, as marked and unmarked, for example our covert vehicles are not public knowledge. By disclosing the full VRM a determined individual would be likely to identify the vehicles make and model. This in turn could potentially place not only our undercover officers at risk if they were identifiable but more importantly could place innocent members of the public in unnecessary danger due to misidentification, basically a criminal believing a vehicle to be unmarked officers when in fact they are genuine members of the public.

If the MPS confirmed the full VRM's any determined individual with an interest could hypothetically work out that the MPS for example, use Ford Fiesta's as their unmarked vehicles and White Mercedes-Benz Vito vans for covert or sensitive roles this would in effect compromise our law enforcement tactics and more importantly allow those who intend on evading detection intelligence regarding our covert resources, which would provide those intent on evading possible detection with an operational advantage over the MPS. Individuals may use this information to ascertain whether there [sic] actions may have been or may in the future be detected, through an in-depth awareness of the make, model and colour of unmarked police vehicles.

Full disclosure would allow the identification of all vehicles and may reveal what resources are available for a given role and this information could enable police strength to be determined and circumvented by those intent on committing crime. The release of this information could therefore provide a tactical advantage to offenders which would negatively impact on public safety and undermine the policing purpose.

Disclosure of covert vehicles VRMs would provide sufficient information to those involved in criminal activity of the capabilities

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<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf>

available to the MPS when carrying out covert activities in certain areas which would result in them taking steps to evade detection and to destroy evidence if the [sic] believe that their movements are being monitored.

Full disclosure of the VRMs would also be announcing to the world the type of covert vehicles the MPS use which could also lead to vehicles and officers being identified and render their covert capabilities useless, this would not be in the public interest.

... As decommissioned police vehicles are sold at public auction and will therefore re-appear in domestic use and driven by members of the public. Making the full list of VRM's accessible to organised crime groups even if the information is out of date may potentially expose unaware member of the public to direct challenge and or risk of harm.

Organised crime groups would also be able to understand the MPS's capabilities through the volumes and types of vehicles being operated for example numbers of armed response vehicles comparative to their models.

... The MPS also believes that there could be a possibility of full disclosure impacting or compromising any ongoing investigations especially when some of these vehicles could have been written off due to serious incident(s)/investigations ...

... Marked police vehicles are exempt from congestion charges which are facilitated by automatic recognition of VRMs, cloned vehicles would therefore avoid these charges. This would extend to even Category A vehicles which are sent for immediate destruction cloning would still present risks particularly when gaining access to any police estate via a VRM more so if the security systems are not updated frequently".

18. The MPS also provided further arguments which it has asked the Commissioner not to disclose. These arguments have been taken into account but are not included in this notice.

### **Likelihood of prejudice**

19. With regard to the likelihood of prejudice in this case, the MPS is relying on the lower threshold of prejudice in this case, "would be likely" to prejudice its law enforcement functions.

### **Is the exemption engaged?**

20. In a case such as this, it is not enough for the information to relate to an interest protected by section 31(1)(a), its disclosure must also at

least be likely to prejudice those interests. The onus is on the public authority to explain how that prejudice would arise and why it would occur.

21. The Commissioner recognises the importance of protecting information which, if disclosed, would undermine law enforcement activity or make someone more vulnerable to crime.
22. Having considered the arguments put forward by the MPS, the Commissioner accepts that disclosure would be likely to be useful to someone intent on establishing details about ex-fleet cars, for example, revealing patterns regarding its use of covert vehicles. Consequently, the Commissioner is satisfied that disclosure would be likely to represent a real and significant risk to law enforcement matters.
23. As the Commissioner accepts that the outcome of disclosure predicted by the MPS would be likely to occur, he is therefore satisfied that the exemption provided by section 31(1)(a) is engaged.

### **Public interest test**

24. Section 31 is a qualified exemption. The Commissioner must now consider whether, in all the circumstances of the case, the public interest in maintaining the exemption at section 31(1)(a) of FOIA outweighs the public interest in disclosing the information requested by the complainant.

### **Public interest considerations favouring disclosure**

25. The complainant has argued:

“The release would prevent harm to the public / finance companies & insurers and, perversely, the police”.

26. Further arguments are also presented by the complainant in his request which can be found online via the link at paragraph 9 above; these have been taken into account by the Commissioner.
27. The MPS argued that disclosure would enable the public to obtain a better understanding of its fleet thereby increasing openness and justification of the use of public funds. It said this would also reinforce its commitment to transparency.
28. It added that disclosure would benefit the public by enabling it to understand which vehicles are used, such as makes and models, and which have been involved in serious accidents that have resulted in them being written off.

### **Public interest arguments in favour of maintaining the exemption**

29. The MPS' arguments can also be found in the correspondence within the request trail at paragraph 9 above; these have been taken into account by the Commissioner.

### **Commissioner's conclusion**

30. In carrying out the statutory balancing exercise in this case, the Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption - that is, the public interest in avoiding likely prejudice to law enforcement matters. Clearly, it is not in the public interest to disclose information that may compromise the police's ability to accomplish its core function of law enforcement.
31. In that respect, he recognises that there is a very strong public interest in protecting the law enforcement capabilities of a police force and he considers that appropriate weight must be afforded to the public interest inherent in the exemption - that is, the public interest in avoiding prejudice to the prevention or detection of crime.
32. The Commissioner also recognises the need to ensure transparency and accountability on the part of the police.
33. The Commissioner notes that the MPS has already provided partial VRMs of the vehicles which have been written off, including the collision date (from 2017 to 2021), and included the write off categories for each vehicle. It considers that this disclosure satisfied the public interest without compromising law enforcement tactics.
34. The Commissioner is further advised that the MPS is pro-active in publishing Vehicle Fleet lists, with the first half of the VRM only, on its publication scheme<sup>4</sup>. The MPS again considers this to meet the public interest without compromising law enforcement tactics and operational capabilities.
35. Whilst the complainant does not consider the data requested to be sensitive, the Commissioner understands the MPS' concerns about the full disclosure of the VRMs and the possible risk to both policing and the general public. He agrees with the MPS that:

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<sup>4</sup> <https://www.met.police.uk/foi-ai/af/accessing-information/published-items/?q=Fleet>

“Those with the necessary criminal intent, inclination and capacity could use the information to gain an operational advantage over the MPS as the information can be classed as operational 'intelligence' and operationally sensitive”.

36. Policing techniques can only be properly effective when full policing capabilities are not publicly known; disclosure of the data requested would be to the detriment of the wider public, as those seeking to evade the law may be able to ascertain how best to do so. Members of the public, and covert officers, may also be put at unnecessary risk.
37. In the circumstances of this case, the Commissioner considers that the public interest in maintaining the exemption significantly outweighs the public interest in disclosing the information. It follows that the MPS was entitled to rely on section 31(1)(a) of FOIA to refuse to disclose the requested information.



## Right of appeal

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38. 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)

39. 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.

40. 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 .....**

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**