

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 November 2018

Public Authority: Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant has requested information about use of a mobile telephone which he had reported to the Metropolitan Police Service (the "MPS"). The MPS refused to confirm or deny whether any information was held citing the exemption at section 40(5) (personal information) of the FOIA. The Commissioner's decision is that it was entitled to do so. No steps are required.

Background

2. The following information has previously been cited by the Commissioner in an earlier decision notice and is of direct relevance to this request¹.
 3. The Vehicle Registration Mark number (VRM) is the number on the number plate of a car.
 4. The VRM number is a distinguishing number through which the registered keeper can be located if the car is involved in an accident or violates the law.
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¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2009/494046/FS_50186040.pdf

5. The VRM number also acts as the pivot to enable access to further information through the Drivers and Vehicle Licensing Agency (DVLA). The DVLA provides information about registered keepers, under Regulation 27 of the Road Vehicles (Registration and Licensing) Regulations 2002. This requires it to release the information from the vehicle register to the Police, to Local Authorities who require it for purposes connected with the investigation of an offence and to anyone else who can demonstrate 'reasonable cause' to have it. VRM details are therefore accessible to a large number and wide ranging group of organisations and individuals.
6. There are also a number of private companies who provide access for the public to information about cars through VRM numbers. Available information includes:
 - a. the make and model of the car;
 - b. the number of former keepers;
 - c. the Vehicle Identity Number [VIN];
 - d. the car's engine number and its size;
 - e. whether the car is subject to outstanding finance;
 - f. whether the car is a stolen vehicle;
 - g. whether the car has previously been stolen and recovered;
 - h. whether the car has previously been an insurance write off;
 - i. whether the car has previously been reported to be scrapped by the DVLA;
 - j. whether the car has been subject to plate transfers; and
 - k. whether the car has been subject to changes in its colour.

Request and response

7. On 22 May 2018 the complainant wrote to the MPS and requested information in the following terms:

"On 01 April 2018, I made the following report of mobile telephone use: [reference redacted], the VRM of the vehicle being: [number redacted].

The reference for the MPS investigation is: [reference redacted].

On 18 May 2018, I was informed that no further action would be taken against the driver of the vehicle in question.

Within the constraints of Data Protection legislation, please provide information as follows:

1. *is the driver a serving member of the Metropolitan Police?*

2. is the driver the friend of a serving member of the Metropolitan Police

If the answer to 1. and 2. is 'no', please indicate the reason why no further action is being taken".

8. On 24 May 2018 the MPS responded. It refused to confirm or deny that it held the requested information, citing the exemption at section 40(5) of the FOIA.
9. Following an internal review, the MPS wrote to the complainant on 9 June 2018. It maintained its position.

Scope of the case

10. The complainant initially contacted the Commissioner on 26 June 2018 to complain about the way his request for information had been handled. The Commissioner required further information from him which was provided on 12 July 2018.
11. The complainant asked the Commissioner to consider the application of an exemption to his request. He also stated his reasons for wanting the information, as follows:

"My reasons are:

- *institutional corruption and cronyism at the heart of the MPS means that drivers are escaping justice because they are either serving or past officers, or friends or family of serving or past officers.*
- *As such, I believe that there is a compelling public interest justification for providing the information.*
- *Please note that I do not request that the identity of the driver be revealed".*

12. The Commissioner will consider the application of section 40(5) below.

Reasons for decision

Section 40 – personal information

13. The analysis below considers section 40(5)(b)(i) of the FOIA. The consequence of section 40(5)(b)(i) is that if a public authority receives a request for information which, if it were held, would be the personal data of a third party (or parties), then it can rely on section 40(5)(b)(i),

to refuse to confirm or deny whether or not it holds the requested information.

14. Consideration of section 40(5) involves two steps: first, whether providing the confirmation or denial would involve the disclosure of personal data, and secondly, whether disclosure of that personal data would be in breach of any of the data protection principles.
15. The first step for the Commissioner to determine is whether the requested information, if held, constitutes personal data, as defined by the Data Protection Act 1998 (the DPA), which was the legislation in force at the time of dealing with this request. If it is not personal data, then section 40 cannot apply.
16. The DPA defines personal data as:

*"...data which relate to a living individual who can be identified
a) from those data, or
b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the 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. 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 or has them as its main focus.
18. In this case, the complainant has requested details about a specified VRM. Whilst the complainant has not asked for the owner to be named, the Commissioner considers a VRM to be the personal data of an owner if there is a particular registered keeper, as evidenced in "Background" above. The MPS has confirmed to the Commissioner that the vehicle is privately registered and is not one of its own vehicles, a point which it confirms it is happy for the Commissioner to include in this notice. The Commissioner is therefore satisfied that any information which may be held in respect of the alleged "report" made by the complainant would be the personal data of the owner of the identified vehicle.
19. It is also apparent that the complainant is trying to ascertain why something he reported to the police did not warrant further action. As this would therefore relate to the commission, or alleged commission, of an offence under section 2(g) of the DPA, any information held would also be considered to be 'sensitive' personal data.

20. Having accepted that the request is for the personal data, including the sensitive personal data, of living individuals other than the applicant, the Commissioner must go on to consider whether confirming or denying if the information is held would contravene any of the data protection principles.
21. The MPS has advised that it considers that the first data protection principle is relevant in the circumstances of this case.

Would confirmation or denial breach the first data protection principle?

22. The first data protection principle states -

*"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –
(a) at least one of the conditions in Schedule 2 is met, and
(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."*

23. 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 fair, lawful and would meet one of the DPA Schedule 2 conditions and, in this case, one of the Schedule 3 conditions. If confirmation or denial would fail to satisfy any one of these criteria, then it is not required.
24. The Commissioner has first considered whether confirmation or denial would be fair. In consideration of this the Commissioner takes into account the following factors:
 - the individual's reasonable expectations of what would happen to their information;
 - the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual concerned);
 - any legitimate interests in the public having access to the information; and,
 - the balance between these and the rights and freedoms of the individuals who are the data subjects.
25. The Commissioner recognises that people have an instinctive expectation that the MPS, in its role as a responsible data controller, will not disclose certain information about them and that it will respect their confidentiality.
26. Furthermore, the Commissioner considers that, in most cases, the very nature of sensitive personal data means it is more likely that confirmation or denial regarding of its existence will be unfair. The

reasonable expectation of the data subject is that such information would not be disclosed and that the consequences of any disclosure could be damaging or distressing to them.

27. In light of the above, the Commissioner considers that allegations of a criminal offence having been committed will carry a strong general expectation of privacy for the party concerned.
28. As to the consequences of a confirmation or denial upon a data subject, the question – in respect of fairness - is whether that confirmation or denial would be likely to result in unwarranted damage or distress to that individual.
29. When considering the consequences of disclosure on a data subject, the Commissioner will take into account the nature of the withheld information. She will also take into account the fact that disclosure under FOIA is effectively an unlimited disclosure to the public at large, without conditions.
30. The MPS has explained:

“The owner of the vehicle would have no reasonable expectation that information relating to their vehicle would be disclosed via a freedom of information request. The MPS have further concerns regarding the potential distress, which could be caused to the individual if they were to discover information relating to their vehicle were to be made public especially when it may be linked to an alleged offence. The MPS have not made contact with the owner of the vehicle to ask whether they would be willing to consent to the disclosure of their personal information, as the MPS do not believe it would be appropriate.

Sensitive personal data includes but is not limited to, information relating to the commission or alleged commission of any offence. The nature of the information requested is likely to fall into this category and/or enable such inferences to be made in relation to the owner of the vehicle in question. Therefore, any public FOI disclosure that would release sensitive personal data, which allows individuals to be identified either in isolation or when combined with other information held by the MPS, would be harmful”.

31. Given the nature of the request, and the sensitivity of the subject matter, the Commissioner considers that disclosure in this case could lead to an intrusion into the private life of the individual concerned and the consequences of any disclosure could cause damage and distress to any party concerned.
32. Notwithstanding a data subject’s reasonable expectations or any damage or distress caused, it may still be fair to disclose information, or

in this case confirm or deny if information is held, if there is a more compelling public interest in doing so. Therefore the Commissioner will carry out a balancing exercise, balancing the rights and freedoms of the data subject against the public interest in confirming or denying if the information is held.

33. The Commissioner would stress that this is a different balancing exercise than the normal public interest test carried out in relation to exemptions listed under section 2(3) of the FOIA. Given the importance of protecting an individual's personal data, the Commissioner's 'default position' is in favour of protecting the privacy of the individual. The public interest in confirming if information is held must outweigh the public interest in protecting the rights and freedoms of the data subject if providing confirmation or denial is to be considered fair.
34. The interest in disclosure must be a public interest, not the private interest of the individual requester. The requester's interests are only relevant in so far as they reflect a wider public interest.
35. The Commissioner acknowledges that the complainant has a personal interest in the case as he wants to find out what happened with a matter he personally reported to the police. He is concerned that there is corruption within the force and that the vehicle he reported belonged to the MPS or a friend of an MPS officer.
36. As explained above, the MPS have advised that the VRM concerned is owned by a private individual and it is not therefore an MPS vehicle. Whether or not any of the 30,000+ staff employed by the MPS may know the keeper is not known, and would be unlikely to be recorded information held by the MPS. However, if the complainant suspects corruption in the force, the Commissioner notes that there is a mechanism by which he can report concerns about how he was dealt with by the MPS. If he is dissatisfied with the actions taken by the MPS in respect of the alleged crime which he reported then he is able to raise it with them directly by making a complaint to the Directorate of Professional Standards (DPS) – something which he has already been advised that he can do.
37. The Commissioner recognises that the complainant in this case is concerned about possible corruption within the MPS. Whilst she accepts that any such corruption would be a matter of public interest the complainant has provided no such evidence and her own enquiries indicate that the car in question is privately owned. She also notes that he is able to raise any further concerns through the appropriate channels.
38. In light of the nature of the information and the reasonable expectations of the individual concerned, the Commissioner is satisfied that

confirming or denying if the requested information is held would not only be an intrusion of privacy but could also potentially cause unnecessary and unjustified distress to the data subject. She considers these arguments outweigh any legitimate interest in disclosure and she has therefore concluded that confirmation or denial in this case would breach the first data protection principle. She therefore finds that the exemption at section 40(5) is engaged and the duty to confirm or deny did not arise.

39. As the Commissioner has determined that it would be unfair to confirm or deny if the information is held, it has not been necessary to go on to consider whether this is lawful or whether one of the schedule 2 or schedule 3 DPA conditions is met.

Right of appeal

40. 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

41. 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.
42. 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
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