

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 23 May 2011

Public Authority: Vehicle Operator Services Agency
Address: Second Floor
Berkeley House
Croydon Street
Bristol
BS5 0DA

Summary

The complainant requested information about Vehicle & Operator Services Agency (VOSA) fleet vehicles. VOSA relied on sections 31(1)(g), 31(2)(a)-(d) and 38(1) in respect of the withheld information. The Commissioner finds that VOSA was correct to rely on sections 31(1)(g) and 31(2)(a)-(d) for some of the information and that the public interest favoured withholding it. The Commissioner also finds that VOSA was incorrect to rely on the cited exemptions for the remainder of the information, in breach of its procedural obligations. The Commissioner requires VOSA to disclose the identified information.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 9 March 2010 the complainant requested the following information from the Vehicle & Operator Services Agency (VOSA):

"...

- 1) *Please could you provide me with a current and up to date fleet list containing all vehicles owned and used by the Vehicle Operator Services Agency.*

If possible could you provide the make, model, age, function and the station/location where the vehicle is based? If possible could I have this in electronic format e.g. word document or spreadsheet?

- 2) *Could you please advise me of the name and contact details of your current fleet manager".*

3. On 8 April 2010 VOSA responded to the request. It disclosed some of the information in respect of the first part of the request but withheld the make, model, function and exact location of each vehicle. It told the complainant that it was withholding all information under section 31(1)(g) (which refers to subsection (2), the relevant paragraphs of which it identified as being (a)-(d)) and additionally section 38(1) of the Act. In respect of the second part of the request it gave the complainant the details of the Government Car and Despatch Agency (GCDA) which is the department responsible for managing its fleet vehicles.
4. On 16 April 2010 the complainant requested an internal review of the decision and in so doing revised his request to exclude unmarked vehicles from the scope of his request.
5. On 28 April 2010 VOSA completed its internal review and upheld its initial decision to rely on both section 31(1)(g) by virtue of 31(2)(a-d), and section 38(1) of the Act.

The Investigation

Scope of the case

6. On 29 April 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

"VOSA have failed to take in to account that their staff drive fully marked vehicles disclosing the information about them will not make the driver or user of these vehicles any more at risk than without the details of these vehicles being disclosed.

Also they say the function and location would affect their ability to carry out their 'investigative or regulatory activities' again this has not been made clear as to how. Maybe if all their vehicles were covert but they use high visibility vehicles and they are well and truly in the public domain.

VOSA conduct their operations on the highway and in pre planned operations with other agencies so therefore knowing the locations where their vehicles are based would not affect their ability to do their role.

In regards to health and safety I understand that their staff may be at risk by the nature of the role that they carry out but not disclosing information about their vehicles will not protect them from this nor will it put them in harm's way to disclose it. As mentioned these vehicles are marked and in the public eye.

As for the fleet manager contact I have taken note that the GCDA manage the VOSA fleet but there must be someone employed by VOSA that deals with the GCDA in regards to fleet matters".

7. The Commissioner's investigation considered the application of the stated exemptions to the first part of the request and considered whether VOSA had satisfactorily answered the second part of the request.

Disclosed information

8. The Commissioner notes that the complainant was provided with information regarding:
 - the type of vehicle (car, motorbike etc);
 - the fuel type;
 - the date registered;
 - the general regional area in which the vehicle was located; and
 - the fact that the responsibility for the fleet management sits with the GCDA, not one individual, together with contact details of that department.

Withheld information

9. The Commissioner notes that VOSA withheld:
 - the make and model of the vehicles;
 - the function of the vehicles; and
 - the exact geographical location of the vehicles.
10. The Commissioner also notes that the complainant confirmed that he was not seeking the vehicle registration marks of the vehicles.
11. The Commissioner has inspected a copy of the withheld information and he is satisfied that this is the entirety of the information held by VOSA within the scope of the request.
12. In respect of the information about the fleet management the Commissioner is satisfied that VOSA have complied with the request in informing the complainant that GCDA are responsible for its fleet management and so he has not included it in the scope of his investigation.
13. The scope of the investigation is therefore to determine whether VOSA correctly relied on sections 31(1)(g) and 31(2)(a-d) and additionally section 38(1) in respect of the following information relating to its vehicles:
 - make;
 - model;
 - function;
 - location.

Chronology

14. On 23 June 2010 the Commissioner received a copy of the withheld information from VOSA together with further information about how it handled the request.
15. On 27 September 2010 the Commissioner commenced his investigation and asked for additional information from VOSA about how it had handled the request.
16. On 25 October 2010 the Commissioner received the additional information he had requested.

17. During the course of his investigation the Commissioner also sought and received clarification on a number of points.

Analysis

Exemptions

Section 31 – Law enforcement

18. Section 31 provides an exemption where disclosure of the requested information would, or would be likely to, prejudice various functions relating to law enforcement. The full text of section 31 is set out at the legal annex at the end of this Notice.
19. Consideration of this exemption is a two stage process. First, the exemption must be engaged through it being at least likely that prejudice would occur to the process specified in the relevant subsection(s). Secondly, the exemption is subject to the public interest test. The effect of this is that the information should be disclosed if the public interest favours this, regardless of the fact that the exemption is engaged.
20. In this case VOSA is citing section 31(1)(g) by virtue of section 31(2)(a), (b), (c) and (d) of the Act in respect of the make, model, function and more specific geographical location of its marked fleet vehicles.

Engagement of the exemption

21. The Vehicle and Operator Services Agency (VOSA) undertakes a large number of activities and schemes, more detailed information on which can be found on its website¹. Activities range from supervising the MOT scheme, supporting the Traffic Commissioners with licensing matters, testing and inspection of lorries and buses, enforcement and compliance with road traffic legislation, accident investigation and technical research.
22. VOSA supervises the MOT scheme to ensure that the 20,000 garages authorised to carry out MOTs are doing so to the correct standards. This is done by documenting all test methods and standards, approving and training Authorised Examiners and Nominated Testers to carry out MOT tests where necessary, taking disciplinary action to improve testing standards and raising levels of compliance. It also carries out some

¹ <http://www.dft.gov.uk/vosa/aboutvosa/whatwedo/whatwedo.htm>

covert work under the Regulation of Investigatory Powers Act 2000 (RIPA).

23. In order to carry out its functions as described above, VOSA has a large number of vehicles to conduct visits, investigations and roadside stops of other vehicles suspected of having breached relevant legislation.
24. In view of this the Commissioner is satisfied that the applicable interests are relevant to sections 31(1)(g) by virtue of 31(2)(a), (b), (c) and (d).
25. In order for the exemption to be engaged, VOSA must show that disclosure would, or would be likely to, prejudice the stated applicable interest. Accordingly, the Commissioner has only considered as relevant those arguments about whether or not disclosure of the withheld information could be prejudicial to the exercise by VOSA of its functions for the stated purposes as detailed below.

26. VOSA applied the following subsection of section 31(1):

“(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)”.

27. In relation to section 31(1)(g), the Commissioner considers that in order for a public authority to have a ‘function’ for one of the purposes listed under section 31(2), that public authority must have sufficient legal basis for the specified purpose it wishes to cite. In this case VOSA cited the following paragraphs of 31(2):

“(a) the purpose of ascertaining whether any person has failed to comply with the law,

(b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,

(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,

(d) the purpose of ascertaining a persons fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become authorised to carry on”.

28. In considering prejudice-based exemptions, the Commissioner is mindful of the decision of the Information Tribunal (now known as First-tier Tribunal) (Information Rights)) in *Hogan v the ICO and Oxford City Council* (EA/2005/0005 and EA/2005/0030). In this case the Tribunal set out a three-stage test. In considering the test:

"The application of the 'prejudice' test should be considered as involving a numbers of steps. First, there is a need to identify the applicable interest(s) within the relevant exemption....Second, the nature of 'prejudice' being claimed must be considered.....A third step for the decision-maker concerns the likelihood of occurrence of prejudice." (para 28 to 34).

29. An evidential burden exists with the decision maker to be able to show that some causal relationship exists between the potential disclosure and the prejudice, i.e. that the arguments advanced by VOSA are relevant to the exemptions cited. This effect must be detrimental or damaging in some way, and the detriment must be more than insignificant or trivial.
30. VOSA told the Commissioner that its resources are located geographically where they are most likely to ensure legislative compliance of operators and drivers to improve road safety.
31. VOSA told the Commissioner that, for the purposes of section 31(2)(a)-(d), disclosure of the information would or would be likely to prejudice its investigative and regulatory activities. It argued that releasing the make and model, location and function details of its vehicles would compromise its enforcement activities as this would disclose the stopping capabilities in a given geographical area and could influence the route an operator may take to avoid detection at the roadside. It also argued that, as some of its vehicles contain detection equipment to support its enforcement activities, disclosing the function and exact location of the vehicles could lead to thefts from those vehicles or vandalism or even the cloning of vehicles which could then impede its ability to carry out its functions.
32. In considering the prejudice claimed the Commissioner has also considered the comments made in the *Hogan* Tribunal case at paragraph 30:

"An evidential burden rests with the decision maker to be able to show that some causal relationship exists between the potential disclosure and the prejudice and that the prejudice is, as Lord Falconer of Thoroton has stated, "real, actual or of substance" (Hansard HL, Vol. 162, April 20, 2000, col. 827). If the public authority is unable to discharge this burden satisfactorily, reliance on 'prejudice' should be rejected. There is therefore effectively a de minimis threshold which must be met."

33. When making his assessment regarding the prejudice test, the Commissioner must consider not only whether the prejudice identified can be said to have a real, detrimental or prejudicial effect but also

whether or not the nature of the prejudice can be adequately linked back to the disclosure of the information in question

34. VOSA told the Commissioner in this case that disclosure of the information could affect its law enforcement in several ways. Release of vehicle make and model, and the location and function of its vehicles, could allow offenders to use the information to change their route and avoid detection. It also told the Commissioner that disclosure of the information could lead to theft or vandalism of or from the vehicles which could impact on the ability of VOSA to carry out its functions.
35. VOSA told the Commissioner that some of its enforcement work is covert and as such disclosure of the make and model and location of vehicles could compromise its investigative work and negatively affect its enforcement capabilities.
36. VOSA told the Commissioner that a number of its vehicles are used to monitor and supervise the MOT Scheme, which included carrying out incognito checks on the testing standards and procedures used by MOT garages. It said that disclosure of the information would impact its enforcement activities in this regard.
37. The Commissioner notes that the request was for the make and model of VOSA 'marked' vehicles. The Commissioner understands that a marked VOSA vehicle would be clearly visible to the public irrespective of its make or model. The Commissioner is therefore not convinced that disclosure of the make and model of VOSA vehicles would have the prejudicial effect that VOSA claim.
38. In considering the arguments put forward by VOSA in respect of the location of the vehicles the Commissioner has a different view. The Commissioner notes that VOSA have already disclosed a general regional location for the marked vehicles and has also considered the more specific location details provided within the withheld information he has inspected. In this case the Commissioner is satisfied that disclosing a more specific location of the vehicles could cause the stated prejudice in that it would highlight those areas where larger numbers of vehicles could be operating and potentially have the prejudicial effect on its regulatory function.
39. In considering the arguments put forward by VOSA regarding the function of its vehicles the Commissioner understands that, whilst marked vehicles would be considered to be operational vehicles, and as already stated at paragraph 35 above are clearly marked and visible to the public as VOSA vehicles, it may impact on VOSA's regulatory function if it were disclosed exactly which type of vehicles were used for which function (for example as a stopping vehicle or as mobile road

check vehicle). The Commissioner accepts that the disclosure of the function of the vehicles could have the prejudicial effect stated.

40. Having considered that the prejudice test is not met in relation to the make and model the Commissioner considers that section 31 is not engaged. In relation to the location and function the Commissioner is satisfied that prejudice to the standard of 'would be likely' is met and that the exemption is engaged.
41. The Commissioner has therefore gone on to consider the public interest test in respect of the location and function of the vehicles only.
42. The Commissioner has considered the arguments put forward by VOSA and has determined that in this case the lower threshold of 'would be likely to prejudice' applies. Accordingly, the Commissioner has carried this through to the public interest test.

Public interest

43. Sections 31(1)(g) and 31(2)(a), (b), (c) and (d) are qualified exemptions and are therefore subject to the public interest test under section 2(2)(b) of the Act.
44. Section 2(2)(b) provides that exempt information must still be disclosed unless:

"in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information".

Public interest arguments in favour of disclosing the requested information

45. VOSA considered that there is a public interest in the public knowing that through its fleet vehicles it has the capabilities to carry out its statutory function effectively, ultimately ensuring road safety for the public. In this regard, the disclosure of the locations and functions of its fleet vehicles may reassure the public that VOSA has the capabilities and resources to carry out its functions.
46. The Commissioner accepts that there is a public interest in knowing that a regulatory body is adequately resourced locally and nationally to carry out its functions and that public money is used effectively. He also accepts that there is a public interest in increased road safety.

Public interest arguments in favour of maintaining the exemption

47. VOSA told the Commissioner that the disclosure of the vehicle location and function may prejudice regulatory action if that information were to

be used by a third party. It advised that it would not be in the public interest if it were unable to carry out its legitimate business and functions, for example to regulate MOT garages, as this could impact on road safety if unsafe vehicles were on the road.

48. The Commissioner understands that there may be some members of the public who will attempt to avoid compliance with road safety laws and it would be likely that having knowledge of a function of a particular type of vehicle or a specific location where such a vehicle may be located could assist in a person avoiding or attempting to avoid detection.
49. The Commissioner, having inspected the information on the specific geographical locations of the vehicles is satisfied that it is sufficiently detailed that it could be used to assist third parties to avoid certain areas and subsequently to avoid detection.

Balance of the public interest arguments

50. The Commissioner has considered the role and function of VOSA and has taken into account that should its function be compromised by the disclosure of vehicle functions and locations that it would be likely that this information could be used by third parties to avoid being detected for offences. The Commissioner considers that maintaining road safety is in the public interest.
51. Having weighed up the public interest factors for and against disclosure, the Commissioner has determined that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
52. As the Commissioner has found section 31(1)(g) by virtue of section 30(2)(a)-(d) to be engaged in respect of the function and location of VOSA fleet vehicles he has not considered the application of section 38(1) to the same information; however, having found that section 31(1)(g) is not engaged in respect of the make and model of VOSA fleet vehicles he has gone on to consider section 38(1) in respect of this aspect of the request.

Section 38 – Health and safety

53. Section 38(1) provides that -

“Information is exempt information if its disclosure under this Act would, or would be likely to –

(a) endanger the physical or mental health of any individual, or

(b) endanger the safety of any individual.”

54. In this case the Commissioner considers that the term 'endanger' can be interpreted in the same way as 'prejudice' in other exemptions in the Act. The Tribunal in the case of *Hogan v Information Commissioner* explained that the application of the prejudice test involved a number of steps:

*"first, there is a need to identify the applicable interests(s) within the relevant exemption...second, the nature of the 'prejudice' being claimed must be considered...a third step for the decision maker concerns the likelihood of occurrence of prejudice"*².

Would the release of this information endanger, or be likely to endanger, the health and safety of any individual?

55. The first step in considering this exemption is to establish that the arguments put forward by the public authority are relevant to the exemption.
56. The Commissioner has considered the likelihood, if any, of the endangerment occurring should the information be disclosed. As explained in paragraphs 30 and 31 of this Notice, the prejudice/ endangerment must be real and significant.
57. VOSA told the Commissioner that the health and safety of its employees could be at risk if the information on make and model of its vehicles were to be disclosed. It told the Commissioner that there have been occasions where members of its staff have been subject to arson attacks and actual bodily harm. It also told the Commissioner that it had suffered thefts and attempted thefts from its vehicles
58. As already stated in this Notice the information requested relates to 'marked' VOSA vehicles. The Commissioner understands that a VOSA marked vehicle would be highly visible and therefore obvious to a member of the public. The Commissioner has therefore considered whether disclosing the make and model of a vehicle already distinguishable as a VOSA vehicle potentially being operated by a member of VOSA staff could be seen to be more likely to endanger that member of staff. Whilst the Commissioner does not disregard the fact that some VOSA staff have been subject to the attacks stated in the above paragraph, he must be mindful of whether this could be likely to occur as a result of the disclosure of the make and model of those vehicles.

² *Hogan v Information Commissioner and Oxford City Council* [EA/2005/26] and [EA/2005/0030], paras 28 – 34.

59. The Commissioner, having inspected the withheld information of make and model of VOSA marked vehicles and having considered the arguments presented by VOSA, is not persuaded that the disclosure of this information 'would be likely' to have the prejudicial effect argued by VOSA.
60. The Commissioner has not gone on to look at the balance of the public interest test with regard to the application of section 38(1) because he does not accept that it is engaged.

The Decision

61. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act.
62. In respect of the make and model information the Commissioner finds that VOSA incorrectly relied on sections 31(1)(g) and 31(2)(a)-(d), and 38(1), and that the information should be disclosed. In failing to disclose this information VOSA breached section 1(1)(b) of the Act, and in failing to disclose it within the statutory timescale it breached section 10(1).
63. The Commissioner finds that VOSA correctly applied sections 31(1)(g) and 31(2)(a)-(d) to the location and function of the vehicles and that the public interest in maintaining the exemption outweighed the public interest in disclosing it.

Steps Required

64. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
 - disclose the make and model of the fleet vehicles.
65. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

66. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

67. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

68. 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.

69. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 23rd day of May 2011

Signed

**Jon Manners
Group Manager
Information Commissioner's Office
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Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 31 - Law enforcement

- (1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—
- (a) the prevention or detection of crime,
 - (b) the apprehension or prosecution of offenders,
 - (c) the administration of justice,
 - (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
 - (e) the operation of the immigration controls,
 - (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
 - (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2).
 - (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
 - (i) any inquiry held under the [1976 c. 14.] Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.
- (2) The purposes referred to in subsection (1)(g) to (i) are—
- (a) the purpose of ascertaining whether any person has failed to comply with the law,
 - (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
 - (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,

- (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
 - (e) the purpose of ascertaining the cause of an accident,
 - (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
 - (g) the purpose of protecting the property of charities from loss or misapplication,
 - (h) the purpose of recovering the property of charities,
 - (i) the purpose of securing the health, safety and welfare of persons at work, and
 - (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.
- (3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).

Section 38 - Health and safety

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to –
- (a) endanger the physical or mental health of any individual, or
 - (b) endanger the safety of any individual.