

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 November 2023

Public Authority: Chief Constable of Kent Police
Address: Sutton Road
Maidstone
ME15 9BZ

Decision (including any steps ordered)

1. The complainant has requested vehicle registration information on decommissioned vehicles disposed at auction in both 2021 and 2022. Kent Police provided some information within the scope of the request but withheld the remainder citing section 31(1)(a) of FOIA – law enforcement
2. The Commissioner's decision is that section 31(1)(a) is engaged and that the public interest favours maintaining the exemption.
3. The Commissioner does not require further steps

Request and response

4. On 18 May 2023, the complainant wrote to Kent Police and requested information in the following terms:

“Please supply details of decommissioned vehicles in 2021 and 2022 Age

Registration number

Mileage

Broad description (ie BMW X5)

Price obtained.”

5. Kent Police responded on 16 June 2023. It provided some information within the scope of the request in the form of a spreadsheet listing the make, model, mileage and age of the vehicles but withheld vehicle registration numbers citing section 31(1) - law enforcement. This was upheld at internal review.

Scope of the case

6. The complainant contacted the Commissioner on 20 July 2023 to complain about the way their request for information had been handled.
7. The Commissioner considers that the scope of his investigation is to consider whether Kent Police is entitled to withhold the information requested in relation to the vehicle registration numbers under section 31(1)(a) of FOIA¹.

Reasons for decision

Section 31 – Law enforcement

8. Section 31 of FOIA provides an exemption if disclosing the information would, or would be likely to, prejudice one or more of a range of law enforcement activities. In this case, Kent Police is relying on section 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.
9. In order for a prejudice based exemption such as section 31(1)(a) to be engaged, the Commissioner considers that three criteria must be met:
 - 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

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-31-law-enforcement/>

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. 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.

Kent Police's submissions

10. Kent Police in its responses to the complainant stated:

"The Police Service has a duty to deliver effective law enforcement ensuring that the prevention and detection of crime, apprehension or prosecution of offenders and administration of justice is carried out appropriately."

11. Kent Police explained that all of its vehicles are sourced for their build, quality and performance and are routinely serviced and maintained to high specifications by in house mechanics and therefore have full service histories.

12. The vehicles may also have had upgrades and modifications which make them attractive for theft to those who wish to use these vehicles for nefarious purposes or obtain information on covert capability and identification of force officers involved in this area of work.

13. Kent Police explained that disclosure of the requested information could make members of the public more vulnerable to crime, as well as potential mosaic effects which would undermine the prevention and detection of crime stating:

"Decommissioned police vehicles are sold at public auction and will re-appear in domestic use, usually driven by members of the public. Lists of Vehicle Registration Marks (VRMs) accessible by criminals, such as Organised Crime Gangs (even if out of date), may potentially expose unaware members of public to direct challenge and/or risk of harm. This is doubly true where those members of the public may also be police officers, police force workers, or their families.

It is the case that decommissioned police vehicles, especially pursuit vehicles, are serviced religiously by teams of in-house

mechanics to schedules often more stringent than the manufacturers demand and as such have a full service history. They have been driven by trained professional drivers with lots of mechanical sympathy, and are generally considered to be in a much better condition than most second hand vehicles. Ex-police cars are also generally more powerful and are sourced for build quality and performance, and are generally considered safer due to their build quality. They may also be modified to provide more power for electronics due to the required capability for lights, sirens, radios, laptops etc."

14. Kent Police also considered that

"All these elements could be a strong motivator for vehicle theft by those who wish to use these vehicles for nefarious purposes. There is the further risk to individuals who may now own these vehicles in that Organised Crime Groups (OCGs) may consider that owners of such vehicles may come from the police 'family' and are therefore appropriate targets."

15. Kent Police further explained that under FOI, they routinely provide details of its current overt vehicle fleet including VRMs, however:

"The mosaic effect of releasing the same in respect of decommissioned vehicles could result in the identification of all vehicles which may reveal what resources are available for a given role. 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."

The Commissioner's position

16. With regards to the first criterion, the Commissioner is satisfied that the harm envisaged relates to the interest that section 31(1)(a) seeks to protect against, specifically the prevention of crime.

17. The Commissioner next considered whether the prejudice being claimed is "real, actual or of substance", not trivial and whether there is a causal link between disclosure and the prejudice claimed. He is satisfied that the prejudice being claimed is not trivial or insignificant and he accepts that it is plausible to argue that there is a causal link between disclosure of the disputed information and the prejudice occurring.

18. The prejudice in this case would be to Kent Police's ability to prevent crime as disclosure would aid those with criminal intent with a way of targeting which high performance vehicles are suitable for a steal to order basis and gain access and intelligence to the details and types of

unmarked vehicles used in Covert policing; resulting in steps being taken to evade detection and the disposal of evidence if they believe that their activities are being monitored.

19. Whilst the disclosure of the VRM may seem innocuous, this information, coupled with a determined individual's interest and other information gained from comparison of previous disclosures, could lead to the potential identification of officers involved in this type of work and equally the misidentification of the public who may be exposed to direct challenge. There is a clear causal link between the disclosure of the withheld information and an increased risk of harm to the public.
20. The Commissioner accepts that disclosure of the VRM of decommissioned vehicles would provide a ready-made list of suitable vehicles which can be targeted, and an easy way to identify them. As disclosure is into the public domain, Kent Police would not be able to restrict access to this list.
21. The Commissioner notes that Kent Police is arguing that the disclosure of the withheld information would be likely to prejudice the prevention of crime. In the case of *John Connor Press Associates Limited v The Information Commissioner (EA/2005/0005)* the Tribunal confirmed that, when determining whether prejudice would be likely, the test to apply is that "the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk". (paragraph 15). In other words, the risk of prejudice need not be more likely than not, but must be substantially more than remote. The Commissioner accepts that disclosure of the withheld information would be likely to prejudice the prevention of crime.
22. Having considered all the circumstances in this case, the Commissioner has therefore decided that section 31(1)(a) is engaged.
23. Section 31 is a qualified exemption. By virtue of section 2(2)(b) of FOIA, Kent Police can only rely on section 31 as a basis for withholding the information in question if the public interest in doing so outweighs the public interest in disclosure.

Public interest test

24. Sections 31(1)(a) is a qualified exemption and is subject to the public interest test set out in section 2(2)(b) of FOIA. The Commissioner has considered whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure.

25. The complainant stated that Disclosure of the Vehicle registration marker ("VRM") on decommissioned vehicles, would enable the purchaser to check at MOT that the vehicle mileage was genuine and had not been "clocked" at some point in the onward sales chain. The Complainant believed that as Kent Police did not routinely MOT its vehicles, the mileage was not recorded on a yearly basis, aiding criminal activity in the illegal practice of winding back the odometers or mileage counter on cars to increase their value and sales price, otherwise known as "clocking"².
26. The complainant also argued that although Kent Police possibly benefited from a slightly higher sales value at auction without documented mileage, the losers in these transactions would be the public who ultimately paid a higher price from the inflated sales prices of unscrupulous sellers. Disclosure of the withheld information would be in the public interest as identification of the crime and criminals involved could lead to changes in the law.
27. Kent Police acknowledged that the disclosure of the requested information would satisfy the public interest in understanding the force's fleet, increasing openness and awareness, and justify the use of public funds.
28. Kent Police argued that the disclosure of the withheld information would not increase transparency, but would work against the delivery of effective enforcement as it is likely that decommissioned vehicles may include covert vehicles whose VRMs had not previously been disclosed stating:

"Disclosing VRM's would allow the identification of all vehicles and may reveal what resources are available for a given role, enabling police strength to be determined and circumvented by those intent on committing crime. The release of this information could therefore provide tactical advantage to offenders which would negatively impact on public safety and undermine the policing process."
29. Kent Police also argued disclosure would enable those with criminal intent the ability to build up a mosaic picture of force capabilities, its assets and resources which could be used to undermine law enforcement. This could lead to vehicles and officers involved in covert roles to be identified, which in turn may place both them and the public at unnecessary risk of harm from individuals who may consider they are

² <https://www.theaa.com/car-buying/clocking>

appropriate targets; impacting on police resources which would need to be put in place to counter any harm. Kent Police stated:

"It is not in the public interest for law enforcement tactics and operational capability to be compromised with the disclosure of fleet vehicle registration numbers, as those who wish to commit criminal acts will be more aware of the vehicles in operation to assist with preventing and detecting crime.

Such a disclosure that would allow those with criminal intent the ability to build up a mosaic picture of force capabilities and resources which could be used to undermine law enforcement. This would not be in the public interest.

Disclosure is also not in the public interest as it places the community at increased unnecessary risk of harm and impacts on police resources. This is especially the case if additional tactics / resources need to be out in place to counter harm caused by an adverse FOIA request regarding police vehicles."

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 in avoiding the likely prejudice to law enforcement matters.
31. The Commissioner recognises the need to ensure transparency and accountability on the part of the police and the Commissioner notes that Kent Police have provided the complainant with all information within scope of the request except for the VRM of decommissioned vehicles. This goes some way to satisfying the public interest.
32. Additionally, the Commissioner understands that appropriate online due diligence checks³ using a VRM can be completed by interested parties before purchase (when the VRM is publicly available) from auctions or other sellers to check MOT, ownership and service history where its

³ <https://www.gov.uk/checks-when-buying-a-used-car> <https://www.gov.uk/check-mot-history>
<https://www.theaa.com/vehicle-inspection/>
https://www.carvertical.com/gb/landing/fts?a=gpa&b=ca5f8bea&camopaign=%5BS%5D%20VIN%20check%20%5BUK%5D&mssclid=af561eb2292e1ca81c737bec1b7b3096&utm_source=bing&utm_medium=cpc&utm_campaign=%5BS%5D%20VIN%20check%20%5BUK%5D&utm_term=car%20service%20history&utm_content=Car%20history%20check

available, enabling the identification of potential mileage discrepancies, and whether the sales price appears commensurate with the age, make, specifications and condition of the vehicle and potentially not inflated from criminal activity.

33. The Commissioner recognises that information relating to the specific VRMs is of particular interest to the complainant and wider public, as it could help with checking if a vehicle had been cloned, modified, ringed or used in another criminal way and also indicate the scale of the issue of criminal activity.
34. Whilst the complainant may not consider the information requested to be sensitive, the Commissioner understands Kent Police's concerns about the full disclosure of the VRMs and the possible risk to both policing and the general public. He accepts that:

"It is not in the public interest for law enforcement tactics and operational capability to be compromised with the disclosure of Fleet and covert VRNs, as those who wish to commit criminal acts will be more aware of the vehicles in operation to assist with preventing and detecting crime and could also lead to vehicles and officers being identified."
35. He also acknowledges there is a clear public interest in protecting society from the impact of crime, as this helps prevent criminal acts which adversely impact on both the police and public's wellbeing, and also on the public purse.
36. The Commissioner accepts that disclosure could undermine the Police's ability to be properly effective when elements of their operational policing capabilities are publicly known as those seeking to evade the law may be able to ascertain how best to do so.
37. The Commissioner also agrees that the provision of a readymade list makes it easier to commit crime and therefore prejudices the prevention of crime: it enables criminals to avoid the significant effort of researching and compiling the information in relation to each potential target and would highlight the de-commissioned vehicles and Kent Polices' assets suitable for the criminal activity of clocking or theft.

38. The Commissioner has also taken into consideration several recent decision notices issued on similar cases⁴ where the VRN of vehicles were withheld under section 31(1)(a) of FOIA.
39. In the circumstances of this case, the Commissioner considers that the public interest in maintaining the exemption outweighs the public interest in disclosing the information and therefore it follows that Kent Police was entitled to rely on section 31(1)(a) of FOIA to refuse to disclose the requested information.

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4023701/ic-205556-s1m0.pdf>
<https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4025167/ic-222791-p1l9.pdf>

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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

Michael Lea
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF