First-tier Tribunal
(General Regulatory Chamber)
Information Rights

Appeal Reference: EA/2019/0025

Heard at Kings Court, Leicester
On 26 September 2019

Before:

JUDGE HOLMES
DAVE SIVERS
MIKE JONES

Between:

DAVID AGNEW

Appellant

and

THE INFORMATION COMMISSIONER

First Respondent

and

NORTH HERTFORDSHIRE DISTRICT COUNCIL

Second Respondent

DECISION AND REASONS

Appearances: -

Appellant: In Person
First Respondent: Ben Mitchell of Counsel
Second Respondent: James Ellis, Solicitor

DECISION

The Tribunal dismisses the appeal.

REASONS

1. In this appeal the Appellant, David Agnew, appeals against a Decision Notice issued by the Information Commissioner on 17 December 2018, in which she determined that the public authority, North Hertfordshire District Council ("NHDC"), had correctly applied s. 40(2) of the FOIA, on the grounds that the information requested was exempt by reason of the information requested being personal data, the processing of which breach a Data Protection Principle.

2. The appellant appealed the Decision Notice by a Notice of Appeal dated 30 January 2019. The Appellant indicated that he required a decision after a hearing.

3. The Commissioner filed her response to the appeal on 25 March 2019. The Appellant filed a response to the Commissioner's response dated 21 June 2018.

4. Whilst initially NHDC was not a party to the appeal, by order of the Registrar on 2 May 2019 it was joined as a party to the appeal, and provided its own responses to the Grounds of Appeal on 6 June 2019, in which it sought to rely, in the alternative, upon a different exemption, namely s.31(1)(a) of FOIA, that disclosure of the information would be likely to prejudice the prevention or detection of crime.

5. The Registrar issued case management directions on 27 March 2019, 2 April 2019, 9 April 2019 and 2 May 2019. Consideration was given to joining this appeal with another proceeding under reference *EA/2019/0083 Automotive Software Solution Limited v Information Commissioner,* but it was decided not to do so. As will be apparent, however, that parallel appeal has had some bearing on this Decision, as one member of this Panel sat on it, and given the proximity of the likely Decision in that appeal, this Panel considered it prudent to await the outcome, as the issues to be determined were likely to similar, if not identical.

6. It is partly for that reason, the Tribunal's Decision in that appeal being promulgated on 21 October 2019, that this Decision has been delayed, for which the Tribunal apologises.

7. There was an open bundle, and a closed bundle. References to page numbers are to pages in the open bundle.

The Background and the Facts.

8. The Appellant runs a business which offers the service of provision of information about used motor cars to prospective buyers. He makes the point that there is, these days, quite of lot of information that a buyer can obtain about the history of a used motor car, such as its MOT history, its finance history, whether it has been written off in a collision, and so on. Whether a vehicle has been used as a taxi or private hire vehicle, however, is something that is not easy to discover, but can have a very large effect upon the true value of a used car. Whilst there can be physical

clues or signs that an experienced or professional car buyer may be able to detect, that will betray the fact that a vehicle has been used for such purposes, many members of the car buying public will not be so well informed, and even "experts" can be fooled. It is information that is rarely volunteered, and sometimes deliberated concealed, by used car vendors. The crucial identifying mark of a vehicle is its Vehicle Registration Mark ("VRM"), otherwise known as its registration number, and as displayed on a vehicle's number plates.

9. The Town Police Clauses Act 1847 sections 37-68 provides the statutory basis for the regulation of Hackney Carriages (taxis). S42 requires Councils to keep records of such licences: -

"42 Licences to be registered.

Every licence shall be made out by the clerk of the commissioners, and duly entered in a book to be provided by him for that purpose, and in such book, shall be contained columns or places for entries to be made of every offence committed by any proprietor or drive or person attending such carriage; and any person may at any reasonable time inspect such book without fee or reward."

10. Part 2 of the Local Government (Miscellaneous Provisions) Act 1976 makes provision for Hackney Carriages and Private Hire Vehicles by ss. 45-80. S.48 requires the Council to satisfy itself that the vehicle is suitable and the provisions relating to the keeping of a public register are contained in s.51(3): -

"*(3) It shall be the duty of a council by which licences are granted in pursuance of this section to enter, in a register maintained by the council for the purpose, the following particulars of each such licence, namely— (a)the name of the person to whom it is granted; (b)the date on which and the period for which it is granted; and (c)if the licence has a serial number, that number, and to keep the register available at its principal offices for inspection by members of the public during office hours free of charge."*

11. While neither of these provisions explicitly requires the publication of VRMs, the effect of the requirements of the licensing system to ensure that a vehicle displaying its licence number is taxed insured and roadworthy means that issuing a licence to the operator links a specific VRM to a licence. Information with respect to vehicles used for private hire, or as taxis, is kept by the hundreds of councils who are responsible for the licensing of such vehicles in their area.

12. Being aware of this licensing regime, and noticing its potential for linking a VRM to use of a vehicle as a taxi or private hire vehicle, the Appellant decided to collect information of this nature, and has approached most, if not all, of the licensing authorities to collect this information. Most, some 97%, he says, and it is not disputed, local authorities, have provided it to him, others have published the information on their websites. He has some 2.5 million licensing records, some of which are duplication, but most local authorities have provided the information he has

requested. He operates a business which, for a search fee of £2.99, will provide all the information it can on a particular vehicle, using its VRM.

13. On 4 April 2018 the Appellant made this request (set out on page 68 of the bundle) for this information from NHDC:-

"Please can I have the following information:

Registration number:
Make:
Model:
Licence to:
Licence from:
Of all vehicles registered as a hackney carriage or for private hire from 20/02/2017 to 21/11/2017."

14. NHDC on 2 May 2018 responded to the request (pages 66 to 67 of the bundle), and refused it on two grounds (pages 68 to 69 of the bundle). The first, in relation to Hackney Carriage Licences, was that the information, at least in relation to currently licensed vehicles, was available by inspection of the "book" in which such records were maintained, which the Appellant was invited to make an appointment to inspect. That information, however, did not include the VRM. The second, in relation to this type of licence, was that the names and addresses of individuals constituted personal information, which was exempt under s.40(2) of FOIA, and would be removed. In relation to private hire vehicles, however, NHDC was subject to no legal requirement to maintain such a "book" available for inspection, and the provision of such information was refused under s.40(2) of FOIA.

15. The Appellant sought a review, by email of 3 May 2018 (pages 70 and 71 of the bundle). He pointed out that the response in relation to the licensing of vehicles under the 1847 Act did not include VRMs, and that the response of NHDC breached several of the guidelines issued by the ICO, central government and others as to the need for transparency and accessibility to publicly held information. He pointed out that over 70 local authorities had provided such information, some 97% of councils in England, Wales and Scotland, some 1.3 million records had been released, including 6 years of such records which had been provided by Transport for London. He considered that he could satisfy one of the conditions for release under s.40, namely to help prevent and detect crime, or the public interest.

16. The review was carried out by NHDC, and the outcome was sent to the Appellant by letter dates 5 June 2018 (pages 72 to 74 of the bundle). NHDC maintained its position that, aside from that information in relation to Hackney Carriage Licences which was publicly available for inspection, in respect of which the exemption under s.21 was maintained, the names addresses, VRM, make and model were deemed to be personal information, and exempt under s.40(2) of FOIA. Reference was made to the ICO's guidance on what constitutes personal data, and the fact that the individuals to whom the data related had not given their consent to its

release to third parties. In relation to private hire vehicles, the same response was given, and the request was rejected.

17. On 13 April 2018 the Appellant contacted the ICO (pages 78 to 80 of the bundle) seeking the Commissioner's assistance by making rulings that it was lawful for councils to supply the information he was requesting, and that its provision would be in accordance with an Open Government Licence.

18. The ICO responded on 16 May 2018 (pages 83 to 87 of the bundle), explaining the role of the ICO in these circumstances. The ICO did then investigate the issue, and informed the Appellant that it was doing so by letter of 10 July 2018 (pages 96 to 97 of the bundle). NHDC responded by letter of 31 July 2018 (pages 104 to 109 of the bundle). That response explained the authority's position, and provided more details of the information held by the authority, what was held, how it was held, and the authority's position in relation to its release. In particular it made the assertion that the VRM did constitute personal data, and cited previous Decision Notices if the Commissioner. NHDC did, in conclusion, agree to amend its publication scheme so that there was no need for a requester to have to attend council offices to view the information that could be released. It also agreed that it would disclose some data to the Appellant, but not the VRMs, which were considered to be personal data.

19. The Commissioner was provided with copies of the withheld information. There continued to be dialogue between the ICO, NHDC and the Appellant up until November 2018, culminating in a Decision Notice dated 17 December 2018 (pages 1 to 6 of the bundle) in which the Commissioner upheld the authority's refusal to release the VRMs. She did so on the basis that the VRM constituted personal data, and that to release the information would breach the Data Protection Principles, in terms of the rights of the registered keepers.

20. The Appellant appealed by a Notice of Appeal dated 31 January 2019 (pages 7 to 12 of the bundle), and also sought permission to appeal out of time, if necessary. In his grounds (page 10 of the bundle) the Appellant set out 8 points, together with supporting documentation, of his appeal. They are:

"1.97% of councils supply licensing information to me which includes registration numbers.
2.There are inconsistencys (sic) *in the guidance the ICO offers councils.*
3.There are public considerations as to why this information should be released.
4.Information managers, solicitors and Barristers believe that this information is not personal data.
5.There are legal issues associated with the release of this information.
6.The information requested is already in the public domain.
7.The government actively suggest re using public gathered information.
8.Reuse of this information is inline with others gov.uk/check-mot-history – HPI etc"

21. The response of the ICO (pages 40 to 50 of the bundle) reiterates and expands upon the position taken in the Decision Notice, with reliance upon the exemption under s.40(2) of FOIA being maintained.

22. Following the institution of the appeal, the Tribunal sought information from NHDC directly, and it was directed to provide this information by Directions made on 2 April 2019, and amended on 9 April 2019 (page 62 of the bundle).

23. Following joinder of NHDC by the Tribunal's Case Management Directions of 2 May 2019 (pages 63 to 65 of the bundle) as second respondent, that authority filed its response on 6 June 2019 (pages 51 to 53 of the bundle) in which it provided responses to the questions previously posed to it about VRMs being in the names of companies as well as individuals, and whether the VRMs held related to licences only granted to living individuals. Further, NHDC in this response document raised an alternative exemption, namely under s.31(1)(a) of FOIA, i.e. that the withholding of the information was necessary for the prevention of, or the detection of, crime.

24. In addition to its response, NHDC has also submitted two witness statements from Toby Le Sage, dated 5 June 2019, and Steve Cobb, dated 6 June 2019, which are at pages 124 to 130 of the bundle. These witnesses did not give live evidence to the Tribunal.

The Submissions.

25. It was agreed that the Commissioner's submissions would be heard first. For the Commissioner Mr Mitchell has prepared a Skeleton Argument which he spoke to. Whilst the s.31(1)(a) exemption had not been relied upon by the Commissioner, she also now wished to do so.

26. His first submission was that VRMs do constitute personal data within the meaning of s.40(2) of FOIA. He cited ***TS v IC and Chief Constable of Essex Police 2016] UKUT 0455*** as authority for that proposition, where the Upper Tribunal had so ruled in the context of the processing of VRMs through an ANPR system. ***Dundas v IC and City of Bradford Metropolitan DC EA/2007/0084*** was a first-tier decision which similarly held that postcodes were personal data. Finally, he cited ***Breyer v Bundesrepublik Deutschland C582/14***, a judgment of the European Court of Justice, which held that IP addresses were personal data. If there was a risk of identification that was more than insignificant, by a "motivated intruder", the data was personal data. That was, he submitted, the case here. There was a risk, as in ***Breyer***, that despite safeguards at the DVLA, the identities of the registered keepers could be obtained. Further, personal knowledge, or the keeper putting the vehicles up for sale, could also lead to identification.

27. In relation to the s.31(1)(a) exemption, Mr Mitchell submitted that the relevant crime was vehicle cloning. The availability of VRMs would make this much easier, and such crimes would be far more likely to go undetected if, instead of what could e termed "random" cloning, the criminals involved had the advantage of being able to match vehicle details such as make, model and colour with a genuine VRM obtained through publicly available channels. It would, in effect, provide a "catalogue" for

would – be cloners. In support of this argument he cited the decision in ***Voyias v IC and London Borough of Camden EA/2011/0007*** in which disclosure of a list of unoccupied properties was found to fall within this exemption, as it would have provided a similar catalogue for potential burglars, squatters or vandals. Whilst they too could locate such vulnerable properties simply by observation, the provision of such a list was considered to be likely to increase the risk of crime.

28. Mr Mitchell then went on to consider the public interest tests applicable to both exemptions. In respect of s.40(2), the issue was of lawful processing of personal data. The question to be asked was would disclosure be processing "fairly and lawfully"? He submitted that the processing would have to be reasonably necessary to justify the interference with the rights of the data subjects who had not been informed that their data may be used in this manner. The (accepted) public interest in ensuring that potential purchasers were more fully aware of a vehicle's history did not outweigh the interest of the data subjects.

29. In relation to the public interest test under s.31(1)(a), Mr Mitchell submitted that the public interest in making this type of information more widely available, was outweighed by the public interest in not facilitating the crime of vehicle cloning. Overall, the Commissioner accepted that this was a borderline case, and could appreciate the arguments each way, but on balance considered that the public interest in not disclosing this information outweighed that in doing so.

30. For NHDC, Mr Ellis in his oral submissions, adopted and relied upon the Commissioner's arguments on s.40(2), and whether the data in question was "personal data", which he agreed it was. In relation to the public interest test, he also adopted the arguments advanced by the Commissioner. He referred to the witness statements filed by NHDC.

31. It would be very burdensome and difficult for the authority to have to try to find out if a licence holder was still, at any given time, a living person. Licences are for finite periods of time, and the reasons why they are not renewed are not known. Licence holders can die, move away, or simply cease to operate the vehicle. Some 279 vehicles were licensed within the area for which the authority was responsible, and that changed daily. The information requested was not need by the authority to discharge its functions.

32. In relation to s.31(1)(a), he submitted that there was evidence from cases in the Magistrates Courts that cloning was an increasing problem.

33. The Appellant, in courteous and well – researched submissions, amplified his grounds of appeal. He explained, in some detail, the public interest in greater accessibility to the history of a vehicle on the used market, and how important it was to know whether it had ever been licensed as a taxi or private hire vehicle. He took the Tribunal to examples of the information being provided by other authorities (e.g. pages 146 and 147 which are pages from Northampton Borough Council's online

database), where not only are VRMs available, but the names of the licensee, and to the decision on review of Dacroum Borough Council (pages 26 to 29 of the bundle), where its Deputy Monitoring Officer, a Barrister, decided that the information did not constitute personal data.

34. His position was that the VRM was not personal data, as it related to a vehicle and not a person, and other authorities had accepted this, and had released the information. The VRM attaches to the vehicle, not a person, and is not personal data. He did not want personal data. In terms of the risk of personal data being revealed, the Appellant argued that the VRM did not enable any third party to identify the registered keeper of a vehicle. That information was held by DVLA. The DVLA only permitted access to this information in exceptional circumstances (e.g. to local authorities for parking violations and to the police in the course of criminal investigations) the effect of this was that any application for disclosure by DVLA would not be granted to anybody, without reasonable grounds.

35. In essence he disagreed with the Commissioner's view, even if VRMs did constitute personal data, that the public interest test favoured non – disclosure. He argued that the registered keepers could have no expectation of privacy, and when these vehicles were licensed that fact would be clearly apparent, including the vehicle's VRM, from their daily use on the roads.

36. In response to the further ground relied upon by NHDC in its response, and not previously relied upon by the Commissioner, the s.31(1)(a) exemption, he contended that this was fanciful, and had not been a consideration which had prevented 97% of the other authorities from disclosing this information. They clearly did not consider that its release would be assisting any criminals who wished to clone motor vehicles. He pointed out that not only had Transport for London, which covers 32 London Boroughs, provided this information on a very wide scale (some 87,000 VRMs), but also a Police Authority had done so. If this was a problem, it was a very small one, which releasing this information would have little effect upon. He was aware of only 12 such cases in the West Midlands area. Rather, it would be likely to prevent other offences, such as Trades Descriptions offences, where a vehicle's true history was concealed by a vendor. The Appellant submitted that the argument with respect to cloning lacked merit, and had not previously been relied upon. The information requested related to VRM, make, model and licence period. In cloning a vehicle, the criminal would be looking to identify a vehicle that is similar to the vehicle that they wish to clone in all respects including, make model and colour. This information is widely accessible through classified used vehicles sales publications, and websites such as Autotrader, or simply by looking at a used car sales forecourt, or walking round a car park.

37. In closing, the Appellant referred the Tribunal to an exchange that he had with the ICO during the investigation (pages 122 to 123 of the bundle), in which reference was made to a Decision Notice FS50085922, relating to Sefton MBC, in 2006, in which the although the ICO had decided that this was personal data, and that it should not

be disclosed without the data subjects being made aware that it would be, Sefton MBC had in any event, actually released 22,000 VRMs.

The Closed material.

38. The Tribunal has viewed the closed material. It contains nothing that the Appellant would not expect, in that it does contain the VRMs of vehicles licensed as taxis or private hire vehicles by NHDC. Nothing turns on the nature of the closed material.

Discussion and Findings.

39. The three issues before the tribunal, as identified in Mr Mitchell's Skeleton were;

a) Whether the requested information constitutes personal data within (s.40(2) FOIA)

b) Whether disclosure would be likely to prejudice the prevention or detection of crime (s31 FOIA)

c) Whether the public interest favours disclosure (in relation to s.31) or whether there is a basis for processing the personal data because the legitimate interest in it is not overridden by the interests of the data subjects (in relation to s.40(2)).

40. With respect to him, the Tribunal considers that the issues in (c) are in the wrong order, and will deal with them in reverse order. The first issue for the Tribunal with respect to personal data is whether, in the context of the information as to the make and model of the car and its use for private hire, the requested information is personal data.

41. In ***Breyer v Bundesrepublik Deutschland***, the European Court of Justice in considering whether dynamic IP addresses were personal data within the then Data Protection Directive 95/46 said this, in finding that they were: -

"45 However, it must be determined whether the possibility to combine a dynamic IP address with the additional data held by the internet service provider constitutes a means likely reasonably to be used to identify the data subject.

46 Thus, as the Advocate General stated essentially in point 68 of his Opinion, that would not be the case if the identification of the data subject was prohibited by law or practically impossible on account of the fact that it requires a disproportionate effort in terms of time, cost and man-power, so that the risk of identification appears in reality to be insignificant.

47 Although the referring court states in its order for reference that German law does not allow the internet service provider to transmit directly to the online media services provider the additional data necessary for the identification of the data subject, it seems however, subject to verifications to be made in that regard by the referring court that, in particular, in

the event of cyber attacks legal channels exist so that the online media services provider is able to contact the competent authority, so that the latter can take the steps necessary to obtain that information from the internet service provider and to bring criminal proceedings.

48 Thus, it appears that the online media services provider has the means which may likely reasonably be used in order to identify the data subject, with the assistance of other persons, namely the competent authority and the internet service provider, on the basis of the IP addresses stored.

49 Having regard to all the foregoing considerations, the answer to the first question is that Article 2(a) of Directive 95/46 must be interpreted as meaning that a dynamic IP address registered by an online media services provider when a person accesses a website that the provider makes accessible to the public constitutes personal data within the meaning of that provision, in relation to that provider, where the latter has the legal means which enable it to identify the data subject with additional data which the internet service provider has about that person. "

42. Applying this approach to the current case, the issue to determine is whether the identification of an individual from the VRM would be practically impossible, and the likelihood of it occurring insignificant. The Commissioner argued that the DVLA holds the information and has the power to disclose it for reasonable cause. The Appellant's response to this, that it had attempted to obtain driver information for the explicit reason which matches its commercial intent, does not fully answer the Commissioner's point. It would be open to DVLA to disclose the information for reasonable cause, and, if so, the likelihood of identification is not insignificant. Furthermore, the Commissioner gave the example of where a neighbour could by observation link a neighbour to the ownership of a car which was currently or had previously been used for hire. In addition, an individual who placed a car for sale on a website would be identifiable by anyone using this data as the owner of a vehicle which was or had been a taxi.

43. Finally, we are persuaded too by decisions in ***TS v IC and Chief Constable of Essex Police 2016] UKUT 0455*** and ***Dundas v IC and City of Bradford Metropolitan DC EA/2007/0084*** cited by Mr Michell. We conclude therefore that the VRM is personal data, and as such falls within the protection from disclosure of s40(2).

44. We must now therefore consider whether, although this is personal data, its disclosure would not be in breach of data protection principles. The first consideration is Article 5 which provides at 1(a): -

"Personal data shall be: processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency');"

45. Article 6 sets out grounds which may be relied on to process data lawfully. It provides (so far as is relevant to the proposed disclosure): -

"1 Processing shall be lawful only if and to the extent that at least one of the following applies: ….. (f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, …"

46. The balance of public interest in respect of s40(2) FOIA raises some conflicting principles concerning the disclosure of the VRMs of vehicles that are or have been licensed for use as public hire vehicles. On the one hand, in favour of disclosure, there is the fair-trading issue. Given the unchallenged submission of the Appellant that it was almost unknown for dealers to volunteer the information that a vehicle for sale had previously been used as a taxi, and the common ground that a period of such use, if known to the purchaser, will generally reduce the price of a vehicle, making it easier for purchasers to establish the facts would clearly be in the interests of purchasers.

47. On the other hand, there are privacy considerations relating to the vehicle's current keeper. If the national legal framework authorised or required the disclosure of the VRMs of licensed vehicles, the relevant obligation under s5(1)(a) of the GDPR could be satisfied, because the requirement that fair processing of personal data must be lawful would be met, as well as the requirement of fairness and transparency. Both vendor and purchaser would know where they stood. Both would have a diminished expectation of privacy because the law provided for disclosure. Any residual expectation that the fact of licensing would be private would be suspended, subject to any provisions on commencement or limits to retrospection. A dominant public interest in fair disclosure and fair trading would be recognised. If access to VRMs within any defined limits was recognised, it would no longer be necessary to rely on the purchasers asking the vendor, case by case, whether there had been a period of use as a taxi or private hire vehicle.

48. The Commissioner relies on such transparency by request as "an alternative source of information . . . that does not involve disclosure to the whole world" and is therefore a factor which leads her to conclude that disclosure of VRMs on request is not reasonably necessary to outweigh what she concedes is a relatively strong interest in the requested information being available. However, in the absence of more formal disclosure rules, purchasers relying on assurances of the vendor would still face a problem of verification as to truthfulness, as would any court.

49. The question we have to determine is whether the Information Commissioner's Decision Notice is lawful in respect of the requirements of s40(2) as the law stands. While the Appellant has a legitimate interest in the disclosure of the information, his intention is to augment a considerable database used by the automobile trade, or private purchasers. Disclosure under FOIA would be disclosure to the world, so others would be free to set up competing data bases using the same information. An individual setting out to establish whether a vehicle he or she was considering, or had purchased had been used as a taxi would have to approach some

280 licensing authorities to be sure of establishing the facts. A comprehensive public data base would provide a more convenient solution. It is not clear that is what the Appellant would intend to provide, and no obligation could be placed on him to do so. The Commissioner's position is that taking account of the purchaser's ability to make direct inquiries of the vendor, it is not reasonably necessary to the Appellant's interest to disclose the disputed information. The private interests of the existing, or indeed, and probably more relevantly, any previous keeper outweigh, in the Commissioner's view, any more general interest in disclosure. We follow this line of reasoning with some hesitation, because of the limitations that the Appellant has highlighted on relying on the vendor's knowledge and, as the case may be, honesty. For as long as licensing law does not require the disclosure of VRMs, there may be some difficulty in demonstrating that disclosure is lawful, although it would certainly contribute to fairness and transparency for the purchasers of vehicles once used as taxis or private hire vehicles.

50. In these circumstances the tests laid down by the Upper Tribunal and superior courts as to disclosure of personal data under s40 FOIA apply, and we accept that protection of personal data, albeit narrowly, has the edge over the Appellant's private interests and intentions. So far as a public interest in greater transparency is concerned, if there is a public interest relating to fair trading, specific statutory change requiring publication of VRMs by licensing authorities would satisfy the requirement that processing should be lawful in GDPR Article 5(1)(a) and leave less to rest on the balancing considerations under Article 6. In short, the solution to this problem is legislative.

51. The Tribunal is not satisfied that disclosure is necessary, furthermore even if it were necessary, the Tribunal is satisfied that such a hypothetical necessity would not outweigh the interests of the data subjects, the vendors of the vehicles, who, if individuals, would either be drivers of, or keepers of a car which had been a taxi or private hire vehicle. The Tribunal is therefore satisfied that disclosure is not permitted, because the balance of interests engaged by this exemption weighs in favour of non-disclosure.

52 We now turn to the s.31 FOIA exemption. Information is exempt from disclosure where: -

"…. disclosure under this Act would, or would be likely to, prejudice – (a)the prevention or detection of crime..."

53. In support of this claim the Commissioner has adopted the position taken, albeit after the event, by NHDC. The council, and Mr Mitchell set out how and why cloning is carried out, and how in the view of the respondents disclosure of this information would engage the s.31 exemption, namely how the set of vehicle data requested in this case would, if fully released be more likely than not to prove useful for unlawful or criminal purposes. Specifically, the release of the full dataset requested in this case would have the effect of creating a ready-made resource that

would be of use to those engaged (or thinking of becoming engaged) in VRM and/or vehicle cloning, namely a set of data linking valid VRMs to specific makes and models of vehicle. As such, release of requested VRM data would, or would be likely to prejudice the prevention or detection of those particular crimes.

54. The Tribunal also recognises that there are alternative sources, such as used car websites where similar information is available, and which may include colour photographs of cars which would increase the resemblance between the original car and its clone. The provision of a structured list, however, would facilitate the finding of an existing registration number suitable for cloning. Just because it is already possible to commit a crime by using other sources of information and enquiry does not mean that the public interest is served by making commission of such crimes even easier. It must be common sense that the easier a crime is to commit, the more likely it is to be committed. The Tribunal is therefore satisfied that such disclosure as is requested would make such crimes easier to commit, and thereby be likely to prejudice the prevention of crime.

55. Whilst there is some value in the disclosure sought to enable individuals to have more information relevant to the value of a car, such information can be obtained by other means. Where it cannot, however, the Tribunal is satisfied that non-disclosure is justified by s.31(1)(a).

56. Finally, we should address a major feature of the Appellant's case, namely that there has been extensive disclosure of this type of information by the vast majority of licensing authorities in England and Wales, and Scotland, and similar (though it will not be identical, for the use would not have been as a private hire vehicle or taxi) information as to VRMs has been provided by at least one Police Authority. This latter case may not involve personal data at all, in fact, but assuming it does, these facts, and the opinions, for example, such as that of the reviewing officer of Dacorum Borough Council (pages 26 to 29 of the bundle) of others that this does not constitute personal data, are only that, opinion. This Tribunal has found that this data is personal data for the reasons given above. Whether it has been processed in circumstances which may give the relevant data subjects any grounds for complaint or action is a matter beyond the scope of this Decision, but may be something which the relevant data controllers may wish to reflect upon.

57. Further, to the extent that no other authority appears to have been concerned about the risk of cloning, and none has relied upon s.31(1)(a), the Tribunal finds this irrelevant. Whilst these factors may be relevant to the balancing exercise, in terms of both the processing of personal data, and in relation to the public interest test under s.31(1)(a), they are no more than factors of some potential weight, which have been taken into account in reaching our decision.

58. As indicated, the same issues have been considered by another first tier Tribunal in ***Automotive Software Solution Limited v The Information Commissioner EA/2019/0083***. The Decision in that appeal was made available to us before we

determined this appeal. Whilst other decisions of first tier Tribunals are not binding authority, we note that that Tribunal too upheld the decision not to release the requested information on the same grounds. Having ourselves come to the same view upon what are essentially the same issues, we concur with its findings.

Signed:

Paul Holmes
Judge of the First-tier Tribunal
Dated: 29 November 2019
Promulgation Date: 10 December 2019