



**Information Commissioner's Office**  
Promoting public access to official information  
and protecting your personal information

## **Release of Vehicle Keeper Data from the UK Vehicle Registers: Department for Transport Consultation**

### **Introduction**

1. The Information Commissioner is responding to this consultation as the independent regulator for the Data Protection Act 1998, the Freedom of Information Act 2000 and associated legislation.
2. He does not require this response to be kept confidential.

### **Summary**

3. The Information Commissioner welcomes the Department for Transport's decision to review the release of vehicle keeper information by the Driver and Vehicle Licensing Agency (DVLA) and by Driver and Vehicle Licensing Northern Ireland (DVLNI).
4. Any collection of information containing personal details relating to many millions of individuals with access available to third parties engages data protection concerns. This is particularly the case where the collection in question contains personal details that are collected under legal compulsion, with individuals having little choice over the provision of their information or to who it may be disclosed. It is important that their details are only processed in a manner consistent with the public policy objectives that underpin the need to maintain a central collection of information populated with personal details obtained through legal compulsion. The Information Commissioner has been concerned for sometime that the circumstances where some disclosures occur are beyond the original core public policy objectives underpinning the collection and use of vehicle keeper details maintained by the DVLA/DVLNI. This review is a welcome opportunity to take stock of the current situation and reappraise the propriety of disclosure arrangements based upon experience of how vehicle keeper information has come to be used in practice and anticipating where future pressure for wider use may arise.
5. The Commissioner has previously expressed his concern at the increasing black market in personal information. Details of vehicle keepers are often the target of those seeking to find out more information about individuals via use of a motor vehicle. It is essential that stringent safeguards are in place to ensure that access to vehicle keeper details is restricted to authorised, clearly defined and well regulated circumstances.

6. In future, with the increase of surveillance techniques such as automatic number plate recognition systems (ANPR) used by organisations ranging from local authorities to service stations to record vehicle movements, the need to safeguard the information on vehicle keepers associated with the vehicle's registration mark and to restrict these details to well defined legitimate uses will become increasingly important. The Commissioner has warned against the dangers of sleepwalking into a surveillance society and ensuring that the substantial collections of personal information held by or on behalf of the Government are not misused in a way that represents an inappropriate threat to legitimate expectations of privacy is a challenging objective.
7. The register of vehicle keepers held by the DVLA/DVLNI is founded on statutory requirements and vehicle keepers are liable for legal sanctions if their vehicle is not correctly registered. There are a number of significant public policy reasons on which this legal compulsion is based. However, it is inappropriate to allow the details to be used in a variety of other circumstances well removed from those founding public policy objectives such as by organisations solely to protect their own commercial interests where there are other less intrusive ways of protecting them. For example, with car parking, the operating company could make the decision to use a barrier system to ensure proper use of the car park, rather than relying on gaining access to the DVLA/DVLNI register to trace the keepers of vehicles who have not paid the correct parking fee. Access to vehicle keeper details should be restricted where there is a justifiable and pressing need and where alternative arrangements are not possible.
8. The Information Commissioner believes that a modified version of the current practice of using a mixed approach should be adopted, with certain bodies being specified in the regulations and others having to demonstrate a particular need to see the information on a case-by-case basis. However, unlike the current system, he believes that the test for granting access should not be based on 'reasonable cause' but on a more stringent and narrower test more allied to considerations of proportionality and necessity used when considering whether any interference with the private and family life of an individual is legitimate (Article 8 of the European Convention on Human Rights as given effect by the Human Rights Act 1998).
9. Although specification of those bodies where there is an identified pressing and justified need for them to have access to vehicle keeper details may still be appropriate, there should be a tightening of the legal framework which permits access. Those bodies should in future be specified in the regulations as being authorised recipients of vehicle keeper data but in future should not only be specified by reference to their name or nature but also by reference to the purposes for which they are permitted to use that information. The purposes should be narrow and be restricted to matters relating to vehicle use on the road. The only exception to this would be

access given to the police which may justifiably involve the wider use for crime prevention and detection purposes.

10. Any revision of the current system should also include using more privacy friendly ways of dealing with requests for access to vehicle keeper information. For example, during a vehicle safety recall exercise, rather than a car manufacturer or dealership requesting and being supplied with information from the DVLA/DVLNI on the registered keepers of certain models and makes of car, the DVLA/DVLNI should consider contacting those affected on behalf of the manufacturer.
11. There should also be an option for the DVLA/DVLNI to contact a vehicle keeper to inform them that their details have been passed on to a third party by virtue of 'reasonable cause/ proportionality' disclosure. This would be appropriate as it is in this area where the level of oversight may be weakest and putting individuals on notice may help ensure that inappropriate accesses come to light and can be investigated.
12. The Information Commissioner also feels it is important that any specified recipients of vehicle keeper information sign an agreement with the DVLA/DVLNI which includes reference to the fact that they will be committing an offence under Section 55 of the Data Protection Act 1998 (DPA98) should they misuse the information they receive.
13. Allied to this, the Commissioner is currently proposing the strengthening Section 55 of the DPA98. This deals with unauthorised access to information but at present the penalties are limited and do not include the option of a custodial sentence. An effective offence provision would be an important additional safeguard in ensuring that individuals/organisations are deterred from trying to gain improper access to vehicle keeper details and also misusing information passed on to them by the DVLA/DVLNI. It is also important that the Commissioner has effective auditing powers to be able to audit not only the DVLA/DVLNI but also to have the possibility of auditing those companies to whom they grant access to vehicle keeper information. At present the Commissioner can only audit and inspect with the consent of the data controller concerned and these current audit powers fall short of those enjoyed by other European Union data protection authorities. The existence of an effective framework for independent oversight would provide additional reassurance to the vehicle keepers that their details are being processed in accordance with the Data Protection Act 1998.

## **Response to Consultation Questions**

### **Section One: Granting Access to the Register**

***Should we retain the reasonable cause provision – but with detailed guidance on what it means in practice and how those whose requests are granted should act in using the data?***

*or*

***Should we have a specified list (in the legislation) of who should have access to data and for what reason? Who should be on the list and what should the reasons for access be?***

*or*

***Should we extend the mixed approach? If so, which persons or bodies should be specified and their requests granted automatically? Which should be expected to demonstrate reasonable cause on a case by case basis?***

14. The Information Commissioner believes that the third option, i.e. continuing with the mixed approach is preferable, though with more safeguards in place. Whilst in an ideal world it is preferable to have a tight and well defined list, with no disclosure taking place beyond the organisations specified, there may be pressing exceptional circumstances that merit limited case by case disclosures where it is more difficult to define the details in advance. There is clearly a case based upon some of the well justified examples of current disclosure where inclusion on a specified list of authorised recipients is appropriate, based upon the nature of their activities and pressing ongoing need to ascertain vehicle keeper details. Continuing with the mixed approach does not mean that there should not be detailed guidance on the test to apply when determining whether or not to release information to those bodies not specified in the regulations and this element of the first option should be incorporated.

15. If the mixed approach is to be continued with, the Commissioner feels that certain changes should be made:

- Firstly, any organisation specified, by name or type, as having access in the regulations should also have the purposes for which they are to have access specified and they should only request information on vehicle keepers for these specified limited purposes. This could be achieved by having a table set out in regulations which would show who the specified organisations are and for what purposes they are granted access. Having a table that could be amended by further regulation would mean that new classes of regular recipients showing a pressing need for access can be added to the list rather than relying on an exceptional case basis. It

would also ensure proper Parliamentary scrutiny of any such additions.

- Organisations should be required to sign an agreement in advance of being given ongoing access setting out the basis of the disclosure and any monitoring arrangements. The agreement should include reference to the fact that they will be committing an offence under Section 55 of the DPA98 should they misuse that information in any way.
- The test for granting access to information should not be based on reasonable cause but a more stringent and narrower test more allied to considerations of proportionality and necessity, used when considering whether any interference with the private and family life of an individual is legitimate (Article 8 of the European Convention on Human Rights as given effect by the Human Rights Act 1998). This test should be applied generally to those making the case to be included on the pre-defined list and should be applied on a case by case basis to those requests made on an exceptional basis.
- Finally, whether access is granted to a specified body or on a case by case basis, there must be an effective auditing process in place, both internally by the DVLA/DVLNI itself and externally by the Information Commissioner.

16. It is inappropriate for the Information Commissioner to judge the strength of particular cases made out for access as part of this response. However, there are certain considerations he feels should be taken into account when deciding on the list.

- With the possible exception of the needs of the police service, access should be restricted to circumstances that directly involve the use of a motor vehicle, for example access should not be permitted as part of an exercise tracing assets of an individual. Access should also be limited to circumstances where there is no other practicable way to obtain the information in question and there is a justifiable and pressing need to gain access. It should not be because it is merely more convenient to make a request to the DVLA/DVLNI rather than rely on other arrangements. Similarly, where an organisation uses vehicle keeper information as a way of underpinning business processes where they could use other methods this should not amount to a pressing and justifiable need to have access. As an example, a private car park operator could easily install car park barriers and a ticketing system to ensure that their car parking rules are adhered to, rather than contacting the DVLA/DVLNI with the registration number of any car which violates the parking restrictions and then taking the matter up with the keeper.

- A distinction should be drawn between strictly commercial arrangements for the provision of car parking and those which may operate under statutory provisions. For example there may be a case that a local authority should have access to DVLA/DVLNI vehicle keeper data for decriminalised parking contraventions and the operation of public car parks under powers provided by legislation. This is because there is a clearer public interest as these activities form part of a legal regulatory framework.
- When a car is abandoned, contacting the DVLA/DVLNI for vehicle keeper details may be being used in place of the correct route of contacting either the local authority or the police. Consideration should be given as to whether or not it is necessary to provide the vehicle keeper information to the requester or whether these requests should be satisfied by others who have access to vehicle keeper details and also have a direct interest in the abandoned vehicle.

## **Section Two: Managing Access to the Register**

***Should we continue with the current two tier approach? If so, is there any additional information we should require as part of requests for specific information? Is there any additional information we should require before granting approved conditional access? Should we only grant approved conditional access to those companies/organisations that meet certain conditions e.g. are regulated?***

*or*

***Should we require all requests to be made and assessed on a detailed case by case basis?***

17. It is apparent that some organisations will need to make more frequent requests and have a well established justifiable and pressing need. In such circumstances having to make a detailed submission for each access may not be practicable given the volume or time constraints involved. Continuing with the current system of two tier access may have some advantages.

18. However, it is important that careful consideration is given to who should be given approved conditional access adopting an approach of considering the proportionality and necessity associated with providing access. It is also important that if any form of automated conditional access is employed then this is subject to a stringent audit and inspection regime to ensure against abuse. The DVLA/DVLNI should undertake their own auditing of access and agreements should be in place with the organisations concerned to permit this. However, as a further measure of independent scrutiny, the Information Commissioner's powers to assess

processing should be extended beyond the current limitations requiring the consent of the data controller concerned.

### **Section Three: Auditing Access to the Register**

***How can we improve awareness and involvement of the vehicle keeper?***

***Which of the proposals (i) to (v) should we introduce?***

19. In terms of the DPA98 the First Principle requires that personal data should be fairly and lawfully processed. This includes ensuring that an individual has an understanding of the personal information that will be processed, for what purposes it may be used and to whom it may be disclosed. This requirement is modified where information has to be provided by law. Currently information is provided with the V5C vehicle registration certificate and the guidance notes accompanying it. Information is also available on the DVLA/DVLNI websites. The inclusion of such notifications came about in part as a result of the Commissioners concerns about current vehicle keeper disclosure arrangements. Despite these efforts there still appears to be a lack of knowledge on the part of vehicle keepers that their details may be passed on to third parties. Option (iii) would ensure that people are reminded on a yearly or half-yearly basis so providing for a greater opportunity for individuals to read and understand the notification and this would have the benefit of ensuring full coverage of all vehicle keepers throughout the UK. Using a layered approach to notifying individuals could mean that certain high level information is provided on such forms but with reference to the availability of further information about which organisations information may be passed on to and the reasons for doing this, as well as an explanation of reasonable cause (or proportionality/necessity) provisions. The layered approach would be achieved by providing the basic information as currently happens on the V5C (and in future the V11) but giving the opportunity for an individual to request further information if desired. The guidance notes document may be a good place to include further details and reference could also be made to the website where individuals could access relevant information and have the option to click through to another page for further detailed information including the regulations themselves.
20. Option (v) mentions writing to individuals to tell them when a third party has requested their details. Where the release of information has been decided subject to the reasonable cause/proportionality test, this would be appropriate as it is in this area where the level of oversight may be weakest and putting individuals on notice may help ensure that inappropriate accesses come to light and can be investigated. However some care does need to be taken as in some cases it may be necessary to balance the needs of two private individuals before deciding whether or not it is appropriate to inform the individual vehicle keeper concerned with full details of the person making the request.

***Is a probationary period for those seeking approved conditional access the right approach?***

***Is a probationary period of 20 requests the right one?***

21. It is important that in providing any form of conditional access that robust measures are in place to ensure that organisations do not abuse the facility being provided to them. This should involve applying stringent criteria at the point of deciding whether or not to grant access. Whilst a probationary period for those seeking approved conditional access, whereby they initially have to request data on a case by case basis could be helpful in ensuring the correct use of the system, it is important to recognise that an organisation could soon alter how it uses the data it receives once the probationary period has ended. For any system of control to be truly effective there needs to be some ongoing auditing function implemented as suggested paragraph 18 above.

***Are there other penalties that could be used?***

22. It is important that the DVLA/DVLNI has a process in place to deal with organisations which are discovered to be non-compliant with the conditions imposed. Where that organisation currently enjoys approved conditional access this should be stopped whilst consideration could be given as to whether access on a case by case basis should be allowed, it is important that the sanction for misuse of the facility is an effective deterrent and any sanctions should include the prospect of complete withdrawal of access by whatever means. As mentioned previously, the Information Commissioner considers it advisable to include reference in any agreement between the DVLA/DVLNI and third parties to the fact that misuse of any information received from the DVLA/DVLNI may constitute an offence under Section 55 of the DPA98. Where this is the case the matter should be referred to the Information Commissioner who can then investigate further.

***What should the level of spot checks be?***

***Which groups should be targeted?***

23. Auditing of any form access is particularly important in this context especially for organisations given approved conditional access as, although they will have been subject to an initial check on requesting access, there is subsequently less control over the flow of data they receive once this check has been carried out. Implementing spot checks is a good way of ensuring that data is not being misused in particular cases and to gain a more general picture of compliance. There are well established audit methodologies, including the Commissioner's own published Data Protection Audit Manual which give guidance on the correct number of records to check in order to gain a fair picture of compliance.

24. In terms of targeted auditing, it makes sense for this to take a risk-based approach, concentrating on those representing the highest risk in terms of compliance, past failures, etc. As previously stated, it is important for the Information Commissioner's auditing powers to allow him to independently audit the DVLA/DVLNI activities and the organisations to which the DVLA/DVLNI release information. At present s.51 (7) of the DPA98 requires that any assessment of processing has to be with consent. This clearly has its limitations and is a weaker power than enjoyed by other EU data protection authorities. Providing stronger audit powers to the Commissioner in line with his European counterparts, would enable him to undertake proactive independent inspections and would help inspire public confidence in the operation of the new arrangements.

### **General Comments**

25. In Section 47 (c) (iii) reference is made to the 'Data Protection Registrar'. This title has been superseded and the office is now known as the 'Information Commissioner'.

26. In certain circumstances where currently the DVLA/DVLNI may pass information on to third parties about vehicle keepers, the Information Commissioner would suggest that they consider more privacy friendly ways of dealing with such requests. An obvious example is with vehicle safety recalls, rather than a car manufacturer or dealership requesting and being directly supplied with information from the DVLA/DVLNI on the registered keepers of certain models and makes of car, the DVLA/DVLNI should consider contacting those affected on behalf of the manufacturer. Taking into account comments in the consultation paper on the additional cost of various different ways of working, this could be charged for by the DVLA/DVLNI, as is the case when information on different vehicle keepers is released. If the DVLA/DVLNI are not able to take this on internally because of concerns about increase in staffing numbers, they should consider contracting this out to a data processor, to carry out the work on their behalf. There are well established safeguards within the DPA 1998 where such arrangements operate. There would be no cost to the DVLA/DVLNI in terms of extra resource or expenditure as they or their contractors would be charging for this service but there would be a gain for individuals in terms of a more privacy friendly method of handling their personal information.

27. The consultation paper implies in places that the reasons some organisations request access to the register would be to establish who the legal owner of a vehicle is, (for example finance companies checking in relation to hire purchase agreements). Information from the DVLA/DVLNI register can only confirm who the registered keeper is and this is not always the same individual as the legal owner. Where an organisation/individual actually needs to establish legal ownership of a

vehicle the DVLA/DVLENI should consider carefully whether or not it is appropriate to release information to that body.

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