Information Tribunal

Appeal Numbers: EA/2005/0026, EA/2005/0030

Freedom of Information Act 2000 (FOIA)

Heard at Procession House London
On 2 June and 5 October 2006

Decision Promulgated

17th October 2006

Before

JOHN ANGEL
Chairman
ANNE CHAFER and JENNI THOMSON
Lay Members

Between

CHRISTOPHER MARTIN HOGAN
OXFORD CITY COUNCIL

First Appellant
Second Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Representation:

For the Appellant; in person
Oxford City Council: Mr John Evans
For the Respondent: Mr T. Pitt-Payne

Decision

The Tribunal upholds the Information Commissioner's decision notices and dismisses the appeals.

Reasons for Decision

Consolidated appeals

1 This is a consolidated appeal. There are two appellants, Christopher Martin Hogan (Mr Hogan) and Oxford City Council (Oxford).

2 The Information Commissioner (IC) in his Decision Notice dated 29 November 2005 made the following findings against the second appellant:

1. Oxford had failed to provide advice and assistance under s.16 FOIA;
2. Oxford had failed to provide a valid refusal notice under s.17 FOIA;
3. Oxford had incorrectly applied the exemption regarding law enforcement under s.31 FOIA

3 In relation to the last finding the IC found that the exemption had been applied correctly in relation to what are known as VINs (vehicle information numbers), but not in relation to the other vehicle information requested by Mr Hogan, including VRMs (vehicle registration marks).

4 Oxford appeals against these findings. However during the course of the appeal hearing Mr John Evans, on behalf of Oxford, withdrew his appeal in relation to the third finding (2.3 above) so far as it related to the information requested other than VINs.

5 The IC in his decision notice dated 24 November 2005 found that Oxford was correct in withholding information relating to VINs and had applied the s.31 FOIA exemption correctly in relation to this information. Mr Hogan, the first appellant, appeals against this decision.

The background

6 On the 18 January 2005, Mr Hogan sent two FOIA requests by email to Oxford (the Request). The first was for "a list of motor vehicles currently licensed with the Driver & Vehicle Licensing Authority ("the DVLA") where the Registered Keeper of the vehicle is that of the Local Authority." He then provided a list of specific information he wanted for each vehicle:

a. Registration mark of each motor vehicle;
b. Fleet number allocated (if any);
c. Department of the local authority to which the motor vehicle is allocated;
d. Make and model/type;
e. VIN;
f. Type of body fitted;
g. Date new or date of acquisition.

7 The second request was for "historical information it holds on motor vehicles that have been sold and are otherwise not listed in" the first request.

8 Following advice from the DVLA, Oxford refused Mr Hogan's request on 21 January 2005 (erroneously dated 24 January 2005) relying on the exemption in s.31(1)(a) FOIA (the Refusal Notice) .

9 Mr Hogan replied on 22 January 2005 offering, in effect, to limit his requests "to exclude all vehicles not in the livery of or with the external markings of" Oxford.

10 Oxford replied on 24 January 2005 stating that while the law did not specifically prevent the disclosure of VINs, Oxford's concern was that if VINs were released with other details of the vehicle, then the information could be used for cloning.

11 On 27 January 2005 by letter Mr Hogan requested Oxford to carry out an internal review of their refusal of the Request.

12 On 24 February 2005, Oxford replied by letter stating that following the internal review the Refusal Notice would stand.

13 On 7 March 2005 by letter Mr Hogan applied to the IC for a decision under s.50 FOIA in relation to the Refusal Notice on the following grounds:

- *Procedural failings by Oxford including failing to respond to his modified request dated 22 January 2005 and failing to provide the information not being sought for exemption*
- *Invalid use of s31 of the Act and not taking into account that the information requested is in the public domain*
- *Prejudice test in s31 not being met*
- *Incorrect application of the Public Interest Test*

14 Following the intervention of the IC's office Oxford sent Mr Hogan by letter dated 29 June 2005 all the information requested, except for the VINs, in two datasets in Microsoft Excel format as requested by him in the Request.

15 On 24 November 2005, the IC issued a decision notice, the main findings being:

- The IC accepted that the disclosure of VINs to the public at large would be likely to increase the risk of the information being used for vehicle cloning and that the s.31(1)(a) exemption was therefore engaged.
- The public interest in maintaining the exemption outweighed the public interest in disclosure of VINs.
- The exemption in s.31(1)(a) was not engaged in respect of the remainder of the information sought.
- The Refusal Notice did not comply with the requirements s.17 of FOIA in that the notice failed to state Oxford's reasons for claiming why in this particular case the public interest in maintaining the exemption outweighed the public interest in disclosing the information.
- Oxford had failed to provide Mr Hogan with reasonable advice and assistance as required by s.16 of FOIA in respect of the modified request of 22 January 2005 (when Mr Hogan excluded from his request information about unmarked Oxford vehicles).

16 The IC's decision notice of 29 November 2005 was in identical terms.

Oxford's appeal

Failure to provide advice and assistance

17 The first issue is whether the Commissioner was correct in his finding that Oxford had failed to provide advice and assistance under s.16 FOIA. The IC's finding related to the failure of Oxford to respond to Mr. Hogan's letter of 22 January 2005 requesting "more limited disclosure" than that contained in the Request so that "all vehicles not in livery or with external markings of Oxford City Council" be excluded from the Request. Oxford argued that Mr. Hogan's letter of 22 January 2005 was, in effect, a new request. As he did not raise a request for an internal review of this request, he was not entitled to complain to the IC about Oxford's failure to deal with it.

18 The IC found that the letter of 22 January amounted to a modified request by Mr. Hogan and that the limiting of the Request was helpful in that it intended to narrow the area of dispute between himself and Oxford. The IC also found that it was a matter that Oxford ought to have specifically addressed. There should have been a specific reply to the letter of 22 January 2005, and Oxford's internal review ought to have addressed this letter. Furthermore if Oxford was unclear in carrying out its internal review as to whether Mr. Hogan was excluding unmarked vehicles, then it ought to have asked him this question. Instead, Oxford appeared to have disregarded Mr. Hogan's modified request. The IC found that this was a breach of Oxford's duty to give advice and assistance under s.16 of FOIA

19 Oxford suggests that the IC ought not to have reached any finding on this issue, because Mr. Hogan had not gone through Oxford's internal review procedure in respect of the request of 22 January 2005. This argument assumes that the letter of 22 January ought to have been treated as a completely fresh request

and that therefore Mr. Hogan ought to have made a separate review application in respect of that request.

20 The letter of 22 January 2005 asked Oxford to "consider the above request for more limited disclosure". The request to which he was referring was that contained in his letter of 18 January 2005, the Request. The Tribunal finds that this was, in effect, a modified request, which narrowed down the extent of the original request, which Mr Evans on behalf of Oxford appeared to accept in evidence before the Tribunal. This, in effect, gave Oxford the opportunity to reconsider their Refusal Notice on the basis of this modified request as well as the other grounds referred to by Mr Hogan in his letter of 27 January 2005 requesting the internal review, which we note was made after the modified request. Therefore we find that Mr. Hogan's letter of 27 January 2005 sought an internal review in relation to both the original and modified requests; and this was sufficient to satisfy any obligation for him to exhaust the internal review procedure before complaining to the IC - see s.50(2)(a) FOIA.

21 The Tribunal finds that the modified request fell to be dealt with as part of any review of the Refusal Notice and that Oxford failed to assist Mr Hogan by considering the modified request when dealing with Mr Hogan's complaint about the Refusal Notice. Even if Oxford had been correct that the letter of 22 January 2005 was a new request, then Oxford should have advised him of this fact. The Tribunal finds that Oxford was in breach of its duty to advise and assist under s.16 of FOIA. Therefore we uphold the IC's decision in this respect.

Failure to provide a valid refusal notice

22 The second issue is whether the IC was correct to conclude that the Refusal Notice did not comply with s.17 of FOIA. Under s.17 a public authority is required to "give the applicant a notice which – (c) states (if that would not otherwise be apparent) why the exemption applies." Oxford's Refusal Notice did not explain in what way the disclosure of the information sought would be likely to prejudice the prevention or detection of crime under the s.31(1)(a) exemption claimed. Nor did it address, at all, the balance of competing public interests. It

did not explain why Oxford considered that the public interest in maintaining the exemption outweighed the public interest in disclosure.

23 Although Oxford's letter of 24 January 2005 explained Oxford's contention that the public disclosure of VINs could lead to vehicle cloning this information ought to have been included in the Refusal Notice itself. Also, the letter of 24 January 2005 gave no explanation at all as to why information other than VINs fell within s.31(1)(a). Finally this letter still did not in any way address the balance of competing public interests.

24 We therefore uphold the IC's decision that Oxford was in breach of s.17 FOIA. We note that the Commissioner did not "specify the steps which must be taken by the authority for complying with that requirement and the period within which they must be taken" as required by s.50(4) FOIA. However as Oxford subsequently disclosed most of the information requested and the IC subsequently provided Oxford with advice as to what information should be included in refusal notices in order to comply with the requirements of s.17 FOIA, we do not intend to make a further order in this respect.

Law enforcement exemption

25 Oxford sought to apply the law enforcement exemption in relation to the Request. Under s.31(1)(a) FOIA *"information …..is exempt information if its disclosure under the Act would, or would be likely to, prejudice –*

(a) the prevention or detection of crime."

26 This is a qualified exemption which requires the application of potentially two tests – the 'prejudice' and 'public interest' tests.

The 'Prejudice' Test

27 Under FOIA, disclosure of certain categories of information is exempt if such disclosure 'would, or would be likely to, prejudice' specified activities or interests. Such activities or interests can be broadly distinguished into issues of public and

private interest. Law enforcement (s. 31), is clearly a public interest that must not be prejudiced. To the extent that public interests are involved, there is an obvious overlap with any subsequent application of the 'public interest' test.

28 The application of the 'prejudice' test should be considered as involving a number of steps.

29 First, there is a need to identify the applicable interest(s) within the relevant exemption. There are only two under s31(1)(a), namely the prevention or detection of crime.

30 Second, the nature of the 'prejudice' being claimed must be considered. 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 Thoronton 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. Oxford sought the advice of the DVLA and Thames Valley Police. They advised that the disclosure of VINs together with the other information sought could be used to clone vehicles. We are satisfied that Oxford established such a causal relationship.

31 When considering the existence of 'prejudice', the public authority needs to consider the issue from the perspective that the disclosure is being effectively made to the general public as a whole, rather than simply the individual applicant, since any disclosure may not be made subject to any conditions governing subsequent use.

32 However, while the intended use or motive of the applicant is not relevant to a decision whether to grant or refuse access this Tribunal accepts that where a public authority is aware of the intended use, it may be a factor for consideration when assessing the nature of the prejudice. In this appeal there appears to have been a mistaken belief as to the possible intended purpose, which was

unsubstantiated and wrong, and therefore the Tribunal considers it is not a factor which should have been taken into account by Oxford.

33 When responding to a request for information, an authority is required to give consideration to the possibility of removing exempt information, while disclosing all non-exempt information. Clearly Oxford did not do this in relation to the Request in this appeal until the IC intervened and Oxford received further written advice from the DVLA on 9 May 2005 that "there should be no danger in providing overt vehicle details such as VRM, make/model etc". Clearly, this exercise could have been undertaken by Oxford before finally issuing a refusal notice.

34 A third step for the decision-maker concerns the likelihood of occurrence of prejudice. A differently constituted division of this Tribunal in *John Connor Press Associates Limited v Information Commissioner* (EA/2005/0005) interpreted the phrase "likely to prejudice" as meaning that the chance of prejudice being suffered should be more than a hypothetical or remote possibility; there must have been a real and significant risk. That Tribunal drew support from the decision of Mr. Justice Mundy in *R (on the application of Lord) v Secretary of State for the Home Office* [2003] EWHC 2073 (Admin), where a comparable approach was taken to the construction of similar words in Data Protection Act 1998. Mr Justice Munby stated that 'likely':

> *"connotes a degree of probability where there is a very significant and weighty chance of prejudice to the identified public interests. The degree of risk must be such that there 'may very well' be prejudice to those interests, even if the risk falls short of being more probable than not."*

35 On the basis of these decisions there are two possible limbs on which a prejudice-based exemption might be engaged. Firstly, the occurrence of prejudice to the specified interest is more probable than not, and secondly there is a real and significant risk of prejudice, even if it cannot be said that the occurrence of prejudice is more probable than not. We consider that the

difference between these two limbs may be relevant in considering the balance between competing public interests (considered later in this decision). In general terms, the greater the likelihood of prejudice, the more likely that the balance of public interest will favour maintaining whatever qualified exemption is in question.

36 The s.31(1) prejudice test is not restricted to 'would be likely to prejudice'. It provides an alternative limb of 'would prejudice'. Clearly this second limb of the test places a much stronger evidential burden on the public authority to discharge.

Application of the prejudice test

37 Oxford sought advice from the DVLA and this advice is encapsulated in an email dated 20 January 2005. The DVLA stated "there is a potential difficulty with VIN and engine numbers" and attached a policy note as follows-

> *The law does not specifically prevent the disclosure of vehicle identification numbers (VINS). Our concern is that if VINS were to be released along with other vehicle details, the information could be used to clone vehicles.*
>
> *Vehicle-check companies using DVLA registration data for consumer protection purposes will confirm a given VIN, but will not release the number to a customer along with other vehicle details. In the same way, you might consider that the release of VINs in this case is likely to prejudice the prevention or detection of crime, and is exempt information under the provisions of Section 31 of the Freedom of Information Act*

38 When Thames Valley Police were consulted they supported the DVLA's position on VINs by email dated 28 January.

39 The Tribunal called two expert witnesses. The first was Superintendent Phil Davies (Supt Davies) of South Wales Police who is ACPO's representative

liaising with the DVLA and other bodies in relation to the processing of information on motor vehicles as it relates to the prevention and detection of crime. The other witness was Mr Paul Jeffreys (Mr Jeffreys) from the Vehicle Policy Group of the DVLA who has policy responsibility for the release of information from DVLA registers.

40 Their combined view supported the above policy on VINs. They also explained in evidence the terms ‘cloning’ and ‘ringing’ of vehicles. Cloning is a way of disguising the fact that a vehicle has been stolen by providing it with the identity of a legitimate vehicle so that it can be sold or used for other criminal activity without it being easy to detect. The term ‘cloning’ seems to be used where the identity is of a vehicle currently in use, whereas the term ‘ringing’ seems to be used where the identity is of a vehicle which is no longer in use and possibly a scrapped vehicle.

41 Mr Hogan argued that in order to clone a vehicle it is necessary to replicate the complete identity of a vehicle, including engine number which was not information the subject of the Request, and that VRMs and VINs are not enough. Supt Davies disagreed and explained that cloning could take place even if only part of the identity of the legitimate vehicle was used as this could still deceive the police in their investigations because they largely relied on a combination of VRMs and VINs.

42 Mr Hogan gave evidence that VINs were now visible on the windscreens of many vehicles, particularly the type used by Oxford. He therefore argued that if VINs are visible then they are, in effect, already in the public domain.

43 Mr Hogan also established in evidence that vehicle information including VINs was readily available on the internet. Much of the information was available from companies, albeit at a cost, to whom licences had been granted by the DVLA. Mr Jeffreys in his evidence expressed surprise that such information was so readily available but maintained that this was in breach of the agreements with these companies and in any case the agreements were in the process of being considered for renegotiation. He said the information was being made available

for consumer protection reasons and with safeguards so that, for example, a VIN would not be disclosed as such but the number confirmed if being checked together with the VRM. Mr Hogan pointed out that not all of the information provided by the companies would have come from the DVLA, but from manufacturers and other sources.

44 Mr Hogan argued that cloning is not a problem with the sort of commercial vehicles used by Oxford, the main subject of the Request. Although Supt Davies was prepared to agree with this argument to the extent of buses and coaches, he disagreed in relation to the other vehicles in Oxford's fleet, particularly Ford Transits.

45 Mr Hogan gave evidence that police authorities were in favour of the ever increasing practice of vehicle manufacturers making VINs visible, often on windscreens of vehicles, in order to reduce vehicle crime. The Police are members of the 'Tackling Vehicle Crime: A Five Year Strategy Test Force group', which among its 14 point action plan states:

> *European Community Standards for Window Etching and visible VIN.*
> *A visible VIN is an aid to police officers, allowing them to carry out vehicle identification checks without the need to have cause to search the vehicle. Also deters ringers. The visible VIN needs to be in a standard format and in a common place on every vehicle to maximise the benefit*

46 Mr Hogan provided evidence that this view was supported by the Association of British Insurers, car manufacturers, the Department for Transport, Metropolitan Police, AA, Local Government Association and the DVLA.

47 Mr Hogan maintained that many of Oxford's Ford and Citroen vehicles have visible VINs,

48 Supt Davies gave evidence that the practice of providing visible VINs on the windscreen of vehicles had been established at a time when it was considered that visible VINs would help to detect crime. However criminals had become

wise to the practice and policing now required that VINs be situated on a vehicle in a position that is not so easily visible. He said that currently discussions were proceeding with manufacturers to change the practice and resite the VIN. He also made the point that the very fact of having to physically record VINs from vehicles limited the amount of cloning which could be achieved because of the effort involved and the fact suspicion would be attracted by such activity.

49 Mr Hogan finally argued that because VINs can be physically seen on the outside of many vehicles and are available on the internet from a number of sources, that complying with the Request would not be likely to prejudice the prevention or detection of crime, in particular cloning. Supt Davies disagreed and made it clear in his evidence that more widely available vehicle information including VINs would encourage further crime, particularly of professional gangs of car thieves. He pointed out that cloned vehicles were used in serious crime including acts of terrorism and that in his view complying with the Request would be likely to prejudice the prevention or detection of crime.

50 The Tribunal has considered all this evidence. On balance we find that the occurrence of prejudice to the prevention or detection of crime is more probable than not and that the s.31(1)(a) exemption is engaged. In other words we consider that there is a degree of risk may very well prejudice the prevention or detection of crime, even if that risk may fall short of being more probable than not. Therefore we consider that the disclosure of VINs in relation to the Request in this case would be likely to prejudice the prevention or detection of crime.

51 We next turn to consider the public interest test.

52 **The 'Public Interest' Test**

53 The balancing test under FOIA is clearly stated under s.2(2)(b)

> *"in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."*

We set out below how the test should be approached before applying the test to this case.

54 The test will be different depending on whether the Tribunal finds that disclosure would, or would be likely to, prejudice the prevention or detection of crime. We have found that the disclosure of VINs would be likely to prejudice the prevention or detection of crime and as a result the public interest in maintaining the exemption will be more difficult to determine than where the alternative limb of the test has been applied. It is to be noted in this appeal that neither Oxford nor the IC distinguished between the two limbs of the test. We note that in the IC's FOI Awareness Guidance No 20 on prejudice and adverse affect it states that in relation to a finding by a public authority that there 'would be likely to be prejudice', that 'the less significant the prejudice is shown to be, the higher the chance of the public interest falling in favour of disclosure'. We consider this statement must be right.

55 As with the prejudice test, the public interest test is initially applied by the public authority, both in dealing with the initial request and in dealing with any application for internal review. The test may then be applied by the IC in considering a complaint under s.50 of the Act, and by the Tribunal in an appeal from the Commissioner under s.57. The application of the public interest test involves a question of mixed law and fact, not the exercise of any discretion by the IC. The Commissioner's decision notices make clear that he is carrying out his own assessment and if necessary substituting his judgment for that of the public authority. Likewise this Tribunal will carry out its own assessment and may substitute its own judgment for that of the Commissioner – see *Hemsley v Information Commissioner* (EA/2005/0026) and *Bellamy v Information Commissioner* (EA/2005/0023). The Tribunal has the power under s.58(2) FOIA to review any finding of fact on which the notices of appeal are based.

56 FOIA does not include any general provision that there is a presumption in favour of the disclosure of information held by public authorities. However in one important respect FOIA does contain a presumption in favour of disclosure. The duty to communicate under s.1(1)(a) is displaced by a qualified exemption

under s.2(2)(b) only if the public interest in maintaining the exemption *outweighs* the public interest in disclosure of the information sought. So if the competing interests are equally balanced, then the public authority, in our view, must communicate the information sought.

57 The public interest in maintaining the exemption is to be assessed in all the circumstances of the case. This means that the public authority is not permitted to maintain a blanket refusal to disclose all information of a particular type or nature. The question to be asked is not; is the balance of public interest in favour of maintaining the exemption in relation to this type of information? The question to be asked is; is the balance of public interest in favour of maintaining the exemption in relation to *this* information, and in the circumstances of *this* case? The public authority may well have a general policy that the public interest is likely to be in favour of maintaining the exemption in respect of a specific type of information. However such a policy must not be inflexibly applied and the authority must always be willing to consider whether the circumstances of the case justify a departure from the policy.

58 The passage of time will also have an important bearing on the balancing exercise. As a general rule, the public interest in preventing disclosure diminishes over time, as reflected by the fact that a number of FOIA's exemptions cease to apply after specified periods of time (see for example s.63).

59 In considering factors that mitigate against disclosure, the focus should be upon the public interests expressed explicitly or implicitly in the particular exemption provision at issue. In this case the public interest is the prevention or detection of crime.

60 While the public interest considerations against disclosure are narrowly conceived, the public interest considerations in favour of disclosure are broad-ranging and operate at different levels of abstraction from the subject matter of the exemption. For the 'prejudice' test, an authority has to identify the relevant

interests detailed in the statute; while the 'public interest' considerations in favour of disclosure have to be elaborated and articulated by the authority itself.

61 While FOIA requires that all the circumstances of the case be considered, it is also implicitly recognised that certain factors are not relevant for weighing in the balance.

a. First, and most importantly, the identity and, or, the motive of the applicant is irrelevant except where the applicant is the subject of the information and where, as a result, the request becomes a request under the Data Protection Act 1998 (s. 40 FOIA).
b. Second, the 'public interest' test is concerned only with public interests, not private interests.
c. Third, information may not be withheld on the basis that it could be misunderstood, or is considered too technical or complex.

Application of the public interest test

Factors in favour of non-disclosure.

62 Oxford and the IC argue, in effect, that, in the light of advice from DVLA and the Police the disclosure VINs to the public at large, particularly with the other information the subject of the Request, would be likely to increase the risk of the information being used for vehicle cloning and other criminal activity. This is the same basis for the finding that the exemption is engaged. In the light of the evidence of both Mr Jeffreys and Supt Davies set out above this is a very significant and compelling public interest.

Factors in favour of disclosure.

63 From the evidence the following factors have emerged which are relevant to the public interest in disclosing the information.

64 Information about VINs is of some practical use to those involved in the vehicle trade. We were helped to understand this use by Mr Alan Walker (Mr Walker) who is employed in purchases, sales and general duties at S J Munden (Coach Sales) Ltd and trade in about 80-100 buses, coaches, minibuses and occasional cars, ambulances, tucks and other vehicles per year. Mr. Walker gave evidence that knowledge of VINs was useful in his trade to enable him to order spare parts or facilitate import and export particularly before actual vehicles were delivered.

65 Mr Hogan gave evidence that VINs were also of interest to those with an interest in road transport, which is a well established area of interest. He provided a list of organisations with members who will have such an interest including:

a. Chartered Institute of Logistics and Transport
b. The PSV Circle
c. Post Office Vehicle Club
d. Roads & Transport History Association
e. Road Transport Fleet Data Society
f. Lorry sightings.com

66 He argues that these taken together, with members of classic and vintage car clubs, amount to considerable numbers of the public with an entirely legitimate interest in VINs.

67 More generally, the vehicles in the Oxford's fleet have been purchased with and operated by public money. The public has a legitimate interest in information about what their money has paid for.

68 Finally VINs are already in the public domain. VINs are displayed visibly on many vehicles the practice of which is supported by official bodies. In addition VINs can be accessed on the internet, through organisations licensed to do so by the DVLA.

The Tribunal's finding on public interest

69 We have taken all these factors into account and the evidence is this case. It has been a very difficult case to undertake the balancing exercise required by the public interest test, hence the need to call expert witnesses. However, we find on balance that the disclosure of VINs by Oxford in this particular case would contribute to the sum of criminal knowledge to a greater extent than that already existing from currently available sources. As a result the of risk of crime would be greater if the information was disclosed than if not. The Tribunal does not consider the risks associated with the cloning of vehicles should be increased by the wider disclosure of VINs and therefore finds that the public interest in maintaining the exemption outweighs the public interest in disclosure.

70 The Tribunal upholds the Commissioner's decision that Oxford was correct in withholding information relating to VINs and had applied the s.31 FOIA exemption correctly in relation to this information. Therefore we dismiss Mr Hogan's appeal.

71 The Tribunal would observe, however, that in this case the public interest factors were finely balanced in coming to our decision mainly because of the extent to which VINs are already in the public domain. As set out earlier in this decision as a general rule, the public interest in preventing disclosure diminishes over time. Therefore we would expect that the application of the public interest test to similar requests to that of the Request may be differently balanced in the future, particularly if VINs become more easily accessible and more widely available on the internet.

Signed Date 16 October 2006

JOHN ANGEL
Chairman