

Information Commissioner's Opinion:

# The lawful basis for the processing of vehicle keeper data by the Driver and Vehicle Licensing Agency (DVLA)

13 June 2022

# About this Opinion

## What is the status of this Opinion?

The Data Protection Act 2018 (DPA 2018), specifically S115(3)(b), allows the Information Commissioner (the Commissioner) to issue Opinions to government, other institutions or bodies as well as the public, on any issue related to the protection of personal data.

The Commissioner can issue Opinions on his own initiative or on request.

This Opinion sets out the reasoning behind the Commissioner's decision that 'public task' is the correct lawful basis on which the DVLA should process vehicle keeper data, when sharing it with car park management companies to recover unpaid parking charges.

## Who is the Opinion for?

This Opinion is primarily for the DVLA and the Department for Transport. They are the data controllers for this processing. It may also be of interest to people who complained to the Commissioner about the DVLA disclosing their personal data to private car parking companies to recover unpaid parking charges. It may help them in understanding what his decision means for them. It may also be of interest to those relying on Schedule 4 of the Protection of Freedoms Act 2012 (POFA). This is the statutory scheme for the Recovery of Unpaid Parking Charges, who may have questions about the practical impact of his decision on the continued integrity of the scheme.

The Opinion complements the outcome of the complaints investigated under S165 of the DPA 2018. It also draws on evidence that the DVLA provided.

## What is the background to this issue?

Following the DPA 2018 coming into force, the DVLA sought advice from the Information Commissioner's Office (ICO). They wanted to know the correct lawful basis under Article 6(1) of the UK GDPR for sharing the personal data of vehicle keepers with car park management companies to recover fines. At the time, the DVLA were relying on legal obligation as their lawful basis to process this data. Regulation 27(1)(e) of the Road Vehicle (Registration and Licensing) Regulations 2002 allows the DVLA to

release keeper information to anyone who can demonstrate reasonable cause for wanting this information. The DVLA therefore thought that Regulation 27(1)(e) provided them with a legal duty to share those details with car park management companies to recover fines. They believed this satisfied the requirement under Article 6(1)(c) of the UK GDPR that the processing is necessary for compliance with a 'legal obligation'.

The Commissioner received a number of complaints from people, about both the application of Regulation 27(1)(e) and the DVLA's sharing of vehicle keeper data more generally. It is important to be clear that the Commissioner's remit is focused on the protection of personal data. It is not his role to oversee DVLA's wider role in the parking enforcement system. His role is to determine the correct lawful basis for the DVLA to share this information. Where appropriate and proportionate, his role is also to ensure people's rights are protected under data protection law.

## What is the Commissioner's finding?

Following consideration of the evidence and legal analysis, the Commissioner concluded that the DVLA's correct lawful basis is public task, not legal obligation. This is because Regulation 27(1)(e) provides the DVLA with a power, rather than a legal duty, to disclose vehicle keeper information to car park management companies in these circumstances. In order to rely on legal obligation, the DVLA would need to demonstrate that the processing was necessary for compliance with a 'legal obligation'. This would require the DVLA to have a legal duty to rely on, which in our view Regulation 27(1)(e) does not provide.

It is important to note that in coming to this conclusion, the Commissioner does not doubt that car park management companies have reasonable cause to request keeper information from the DVLA in these circumstances, and that the DVLA is generally required to provide it. However, Regulation 27(1)(e) creates a power rather than a duty as there is a discretion for the DVLA to refuse a request for keeper information in exceptional cases. For example, if the keeper was on a national security protection list. This applies even if the requestor has demonstrated reasonable cause. Public task is the correct legal basis in these circumstances, because Regulation 27(1)(e) creates a task (a power, rather than a legal duty) to be carried out in the public interest (hence the reasonable cause requirement). Disclosing vehicle keeper data is necessary for this task.

## If the DVLA breached the DPA 2018, why is the Commissioner not taking enforcement action?

The Commissioner regards this as a technical infringement of the law. The situation apparently arose because of an unintended change to the interaction between the Parking Regulations and data protection law, following the 2018 data protection law reforms. The Commissioner does not doubt the DVLA's policy of reasonable cause. He also does not dispute that the DVLA has a power to disclose this information to car park management companies to recover fines. The Commissioner's role was to determine the correct lawful basis for doing this.

Having done this, the Commissioner is not under any obligation to take formal enforcement action, even where an organisation's conduct may infringe data protection legislation. He can choose how best to enforce the laws he oversees. The relevant factors for exercising his discretion are based on:

- whether it is in the public interest to do so;
- the degree of harm to UK people caused by the processing of personal data; and
- the economic impact of any regulatory interventions.

Taking these factors into account, the Commissioner concluded that using the ICO's resources to pursue enforcement action in this case would not be in the public interest. This is because the risk of harm to vehicle keepers from the DVLA disclosing their information under the legal obligation lawful basis rather than public task is very low.

The Commissioner considers that the most appropriate way forward is for the government to review the relevant legislation. They should look to address the interaction between different pieces of legislation to provide legal certainty on the correct approach. If the Department for Transport and the DVLA believe that Regulation 27(1) gives the DVLA a legal duty rather than a power to share keeper information, the government might choose to consider a legislative remedy that puts this issue beyond doubt. This would provide certainty to both the DVLA and to vehicle keepers.

Can people who are, or are potentially, subject to unpaid parking charges exercise their right to object under the UK GDPR when their data is being processed under the public task lawful basis?

The right to object under the UK GDPR has a built-in exception, where the organisation is processing the information 'for the establishment, exercise or defence of legal claims'.

Paragraph 11 of Schedule 4 of POFA contains an enforceable legal right of the car park management company to claim the charges from the vehicle keeper. It is not for the DVLA to determine the validity of claims against the vehicle keeper. Car park management companies can use the exception. It would be for a court or parking tribunal to determine the validity of any claim. It is the Commissioner's view is that the DVLA could refuse an Article 21(1) objection by the vehicle keeper in these circumstances.

Does the Commissioner's decision mean the DVLA should not have shared vehicle keeper information with car park management companies?

No. Regulation 27(1)(e) provides the DVLA with a power to disclose vehicle keeper information with car park management companies to recover fines. In addition, Paragraph 11 of Schedule 4 provides car park management companies with an enforceable legal right to claim charges from vehicle keepers. The question under consideration, therefore, was not whether the DVLA **had** a lawful basis to disclose vehicle keeper information; they did. Rather, the Commissioner's decision was about whether 'legal obligation' was the correct lawful basis for doing this.

Does the Commissioner's decision mean existing parking fines issued after the DVLA shared vehicle keeper information are invalid?

No. The Commissioner determined that the DVLA was not using the correct lawful basis to disclose vehicle keeper information. This does not mean that no lawful basis existed. Regulation 27(1)(e) provides the DVLA with the power to do this, using the public task lawful basis. In addition,

paragraph 11 of Schedule 4 of POFA provides car park management companies with an enforceable legal right to claim charges from vehicle keepers. It is not for either the DVLA or the Commissioner to determine the validity of past parking fines. This is a matter for the courts or parking tribunal.

## Are the DVLA required to inform vehicle keepers of their intention to disclose their information to car park management companies to recover unpaid parking charges?

No. There is no provision in either the UK GDPR or Regulation 27(1)(e) that requires the DVLA to inform vehicle keepers of this. However, Schedule 4 of POFA tells vehicle keepers that their information may be requested to recover unpaid charges.