

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 30 August 2022

**Public Authority:** Rossendale Borough Council  
**Address:** The Business Centre  
Futures Park  
Bacup  
OL13 0BB

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from Rossendale Borough Council regarding public health funerals.
2. The council providing some information, but withheld the remainder on the basis of section 31(1)(a)(prejudice to prevention or detection of crime), and section 40(2) (personal information) of the FOIA.
3. The Commissioner's decision is that Rossendale Borough Council was entitled to rely on section 31(1)(a) of the FOIA to withhold the requested information.
4. The Commissioner does not require any steps.

## Request and response

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5. On 7 April 2021, the complainant requested information from Rossendale Borough Council ("the council") in the following terms:

"Under the Freedom of Information Act, please could you provide me with

[1] the number of council arranged funerals (also known as paupers funerals, public health funerals, welfare funerals or national assistance funerals) carried out for people who died in each of the following five calendar years (not financial years), 2016, 2017, 2018, 2019, and 2020.

[2] Please provide the cost to the council in each of the following five calendar years (not financial years), 2016, 2017, 2018, 2019, and 2020.

[3] If possible, please provide information on each person a funeral was carried out between January 1 2016 and December 31 2020, including name, date of birth, date of death, age, cost to the authority, whether next of kin are known, and value of estate."

6. The council responded on 13 April 2021. It provided some information in scope of [1] and [2]. It refused to provide information in scope of [3] and cited the following exemptions as its basis for doing so: section 31(1)(a) (the prevention or detection of crime); and section 40(2) (personal information).
7. The complainant requested an internal review on 28 May 2021 on the following grounds:
- Information in scope of [1] and [2] had not been provided because the request was specifically for information in calendar years, however the response is given in financial years.
  - Disputing the application of section 31(1)(a) to withhold information in scope of [3].
8. The council wrote to the complainant with the outcome of its internal review on 28 June 2021. It upheld its original position, and stated that the information in scope of [1] and [2] is not held in calendar years.
9. During the course of the investigation, on 20 July 2022, the council updated it's response to the complainant:

- It carried out a manual check of each funeral over the years requested. It provided the complainant with a table showing number of funerals in each calendar year, the cost to the council as a total for the year, whether the next of kin were known by funeral, and the value of the estate by funeral (which was known for only one case).
- The council stated: "Finance are unable to get the cost to the authority of each funeral because historically there have been issues with the internal codings which has resulted in the Council not being able to segregate public funeral income and expenditure to actual cases. The Council therefore does not hold this information."
- The council maintained it's position to withhold the remaining information in [3], on the basis of section 31(1)(a) and section 40(2). This being data for funerals by person: name; date of birth; date of death; age; and cost to the authority.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 4 August 2021 to complain about the way their request for information had been handled. Specifically that the council holds the data requested in calendar years for [1] and [2], and to dispute the application of the exemptions 31(1)(a) and section 40(2) to [3].
11. The Commissioner considers that the following aspects of the complaint were addressed in the updated response from the council, of 20 July 2022:
  - [1] – Information provided.
  - [2] – Information provided.
  - [3] – Next of kin known/not known by funeral; and value of the estate being over £25k for one funeral provided.
12. The Commissioner has no reason to dispute the council's stated position that it does not hold the cost to the council by funeral information because of the way the accounting has been done previously. The council also advised the Commissioner that it had put measures in place to ensure that the data is being recorded, should further requests be submitted. The Commissioner therefore considers that on the balance of probabilities this information is not held.

13. The scope of this case is therefore to consider whether the exemptions at section 31(1)(a) and section 40(2) of the FOIA were cited correctly to withhold the remaining information.

## **Reasons for decision**

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### **Section 31(1) - the prevention and detection of crime**

14. Section 31(1)(a) states:

“(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

(a) the prevention or detection of crime.”

### **Is the exemption engaged?**

15. In order for a prejudice-based exemption such as that contained within section 31(1)(a) to be engaged, the Commissioner considers that three criteria must be met.

- Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information were disclosed has to relate to the applicable interests within the relevant exemption.
  - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice, which is alleged must be real, actual or of substance; and
  - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, disclosure “would be likely” to result in prejudice or disclosure “would” result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With relation to the higher threshold, in the Commissioner’s view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.
16. Consideration of section 31(1)(a) of the FOIA is a two-stage process; even if the exemption is engaged, the information must be disclosed

unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

### **The withheld information**

17. The withheld information is: name of the deceased; date of birth; date of death; age; and value of their estate, for each funeral between the specified dates.

### **Applicable interest within the exemption**

18. The first criterion in considering whether this exemption is engaged is to address whether the prejudice predicted by the public authority is relevant to "the prevention or detection of crime".
19. The council stated that the disclosure of information concerning assets of deceased persons would be likely to make the estates more vulnerable to crimes including fraud or the targeting of empty properties.
20. The Commissioner accepts that the arguments made by the council directly address a prejudice which is relevant to the "prevention or detection of crime".

### **The nature of the prejudice**

21. When considering the second step as set out in the Hogan case, the Commissioner must be persuaded that the nature of the prejudice is "real, actual or of substance" and not trivial or insignificant. He must also be satisfied that some causal relationship exists between the potential disclosure and the stated prejudice.
22. The council states that:
  - It would be possible to determine the last known address of the deceased person, using the withheld information and combining it with details that are either already in the public domain or accessible by other means, and by a process of elimination and cross referencing.
  - The details could be used to obtain further data, for example from the Land Registry or the Electoral Roll which could then lead to obtaining documents such as birth certificates, driving licences and credit cards. It cited practices such as tax evasion and money laundering as being of concern.
  - There are concerns about enabling the identification of the last known address of the deceased, as in some cases the property

could be unoccupied and may also still contain the deceased person's personal papers and assets.

- Empty properties can be a target for vandalism, theft, arson and squatting. Although squatting is not of itself a criminal act, criminal activity and anti-social behaviour is closely associated with it. Disclosure could enable those properties to be identified by criminals. Disclosure of the details of the value an estate, could also assist or incentivise criminals in locating assets.
- Criminal activity at an empty property would impact upon property owners, occupiers, neighbours and the neighbourhood in general. It would be likely to cause distress and have a detrimental effect upon property value.
- If the data was given, it would give a more usable platform to obtain other information and reduce considerably the time and effort to collate from what is already in the public domain. This would make matters far easier for those intent of using the data for no good and fail to act as a deterrent.

### **Likelihood of prejudice**

23. The council considers disclosure of the withheld information "would be likely" to have a prejudicial effect. In order for the Commissioner to accept that the prejudicial effect of disclosure would be likely to result, there must be a real and significant likelihood of this prejudice occurring, rather than this outcome being of remote likelihood.

24. The complainant raises the following arguments:

- Not every property of a deceased person will be empty. Furthermore, in some cases the last known address of a deceased person could be a care home. Therefore it can not be argued that for every deceased person, the disclosure of information would be likely to prejudice the prevention of crime by identifying an empty home. The exemptions should only be applied where relevant, not to the whole of the information.
- In relation to the claims that releasing the information would lead to an increased risk of crime, including fraud, the complainant states that recent crime figures suggest this is not the case.
- Some councils publish some or all of the requested information. the complainant surmises that they have come to the conclusion that the risk from disclosing the information is low.

- The complainant provided a spreadsheet comparing councils that publish full address, often alongside name, date of birth, date of death, to similar councils (in terms of overall crime levels between April 2015 and December 2020) which withhold the information. The spreadsheet shows little difference in rates of residential burglary, criminal damage to dwellings, and fraud and forgery between council's that withhold and those that disclose. Therefore the complainant proposes that this would at least suggest that routinely publishing the information does not lead to an increased risk of crime.
- That decision notice FS50454267<sup>1</sup> is often quoted as a reference to demonstrate the prejudicial effect. It quotes figures from 2008 published by the Deceased Preference Service website. The complainant states that these figures are out of date, and have not been refreshed for the UK. The complainant suggests that other forms of threat may now be greater than deceased person's identity fraud.

### **Is the exemption engaged?**

25. It is not sufficient for the information to relate to an interest protected by section 31(1)(a) of the FOIA. Its disclosure must also be at least likely to prejudice that interest.
26. The Commissioner considers that the prejudice test is not limited to the harm that could be caused by the requested information on its own. Account can be taken of any harm likely to arise if the requested information were put together with other information. This is commonly known as the 'mosaic effect'. The mosaic effect considers the prejudice that would be caused if the requested information was combined with information already in the public domain.
27. The Commissioner considers there are numerous ways of determining a persons last known address, such as internet searches or telephone directory searches. The Commissioner therefore accepts that it could be possible to determine the last known address of the deceased person by using a combination of the withheld information, with details that are either already in the public domain or are accessible by other means.
28. Regarding the identification of empty properties, and the risk of criminal activities. The Commissioner and the Information Tribunal have

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<sup>1</sup> [Freedom of Information Act 2000 \(Section 50\) \(ico.org.uk\)](https://ico.org.uk)

considered requests for similar information before. The Commissioner has considered the complainant's argument that previous decisions are based on old cases. However the Commissioner has no reason to negate the outcome of an appeal decision which he believes is still appropriate to consider as part of this decision.

29. The Commissioner has had particular regard to the case of the London Borough of Bexley v Mr Colin P England and the Information Commissioner<sup>2</sup>. In that case, the requester had asked for the addresses of vacant, empty or abandoned properties that had been listed as "long term empty" and "uninhabitable properties". The information had been withheld using the exemption under section 31(1)(a). In summary, the Tribunal accepted that the second and third tests set out in paragraph 16 of this decision notice were satisfied based on the following facts:

- The Tribunal accepted evidence that empty properties are associated with criminal activity from organised local gangs. In particular, the Tribunal in paragraph 41 identified occasions of organised "stripping" of empty properties. This was the removal of all things of value (such as pipes and floor boards) leaving an empty and uninhabitable shell property.
- The Tribunal also accepted evidence that while squatting is not a crime in itself, it is associated with criminal activity. The Tribunal identified a number of instances in the evidence it heard between paragraphs 48 and 57.
- The Tribunal accepted that the disclosure of the list of properties would be of use to squatters and would be likely to lead to significant harm in the form of criminal activity (paragraph 63).
- Based on the evidence it heard, the Tribunal considered that disclosure of the information would be likely to have a significant negative impact on the prevention of crime (paragraph 63).

30. Although the Commissioner appreciates the difference in the information requested in the Bexley case and the information in this case, he believes that the prejudice arguments in the Bexley case demonstrate that there would be prejudice to the prevention of crime in those circumstances where disclosure of the information may help towards identifying a deceased persons empty residential property.

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<sup>2</sup> Appeal numbers EA/2006/0060 and 0066

31. The Commissioner accepts the complainants point that not every address of a deceased person will be an empty property, therefore in some instances the preceding arguments are negated. However the council has also argued the case for other harms such as: identify theft; fraud; and tax evasion. These are all crimes which are not reliant upon the existence of an empty property.
32. The Commissioner has considered the complainants case that crime figures are no higher in authorities where the requested information is provided. He surmises that there must be many potential causes for the crime rates in different locations, and these causes may be present to varying higher or lesser degrees within them. Therefore he concludes that it would be too simplistic to assume the causal effect of withholding or releasing the requested information is a single factor that can be measured by the rates of crime.
33. The Commissioner also considered the complainants case that previously referenced figures for identity fraud from the Deceased Preference Service website are out of date, as they relate to 2008, where it quotes that an estimated 80,000 instances of fraud occurred that year.
34. The Commissioner notes that the Deceased Preference Service website, still provides advice on preventing identity theft<sup>3</sup>. The site also provides links to advice on the protection from identify fraud.<sup>4</sup>
35. The Commissioner notes that the website for Action Fraud (the national fraud and cyber crime reporting centre), references that criminals sometimes use the identities of deceased persons to commit fraud<sup>5</sup>.
36. Considering all of the above the Commissioner believes that the risk of an adverse effect to the prevention of crime is real and significant. He believes that the chance of prejudice being suffered from disclosure of the requested information is more than a hypothetical possibility; it is a real and significant risk.
37. For the reasons set out above, the Commissioner considers that the council has satisfied all three stages of the prejudice test set out on Hogan and therefore accepts that the exemption at section 31(1)(a) is

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<sup>3</sup> [Preventing Identity Theft - Deceased Preference Service](#)

<sup>4</sup> [In partnership with Deceased Preference Service \(coop.co.uk\)](#)

<sup>5</sup> [Identity fraud and identity theft | Action Fraud](#)

engaged. He has therefore gone on to consider the application of the public interest test associated with this exemption.

### **The public interest test**

30. As the exemption under section 31(1)(a) is a qualified exemption, it is subject to a public interest test. In accordance with that test, as set out in section 2(2)(b), the Commissioner must consider whether in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information.

### **Public interest considerations favouring disclosure**

38. The complainant argues that:

- the factors in favour of maintaining the exemption, referenced in earlier decisions, are almost entirely dependent on the benefits of preventing fraud. It is their position that release of the information is unlikely to have any impact on fraud levels therefore these benefits do not exist.
- Factors favouring disclosure, such as for the sake of transparency, now outweigh the factors for withholding the information.

39. The Commissioner considers that the default setting of the FOIA is in favour of disclosure. This is based on the underlying assumption that disclosure of information held by public authorities is in itself of value because it promotes better government through transparency, accountability, public debate, better public understanding of decisions and informed and meaningful participation of the public in the democratic process.

### **Public interest arguments in favour of maintaining the exemption**

40. The council considers that much of the public interest arguments are similar to the prejudice arguments and has argued that the public interest in avoiding prejudice to the prevention of crime far outweighs the public interest in disclosure in this particular case.

41. The Commissioner considers that there is a strong public interest inherent in section 31(1)(a), which in this case is avoiding prejudice to crime prevention.

42. He also considers that there is a strong public interest in preventing the impact of crime on individuals, for example, relatives of a deceased person who are financially affected if an estate which has been stolen

from or who would suffer damage and distress as a result of fraud being committed using the deceased's details.

43. In addition to the above, the Commissioner recognises that there is public interest in reducing the impact of crime on the public purse and in protecting the availability of public resources, such as the police, which would otherwise be utilised in the handling of burglary and identify fraud cases

### **Balance of the public interest arguments**

44. As stated above, the Commissioner recognises that there is always some public interest in the disclosure of information. He also recognises that there is interest to certain members of the public who may have an entitlement to the estate of a particular deceased person's estate, and/or organisations enabling individuals to exercise that entitlement. However, he has not given this argument significant weight as there are other mechanisms in place for the administration of estates of persons who die intestate and without a known kin, such as the Bona Vacantia Division of the Government Legal Department.
45. In favour of maintaining the exemption, the Commissioner recognises that there is an inherently strong public interest in avoiding likely prejudice to the prevention of crime. The crime in this case would be likely to include a diverse range from anti-social behaviour, criminal damage, arson, organised groups stripping empty properties to identity fraud and the crimes that can be committed using false documents. The Commissioner accepts that tackling issues like these would involve significant public expense and considers it is in the public interest to protect property and to ensure that public resources are used efficiently. He also accepts that there is a strong public interest in avoiding personal distress to the direct victims of the crime and, in the case of crime related to empty properties, to those in the wider neighbourhood who may be affected.
46. Taking all of the above into consideration, the Commissioner decision is that the public interest in avoiding prejudice to the prevention of crime outweighs the public interest in disclosure in all the circumstances of this case.
47. As the Commissioner has decided that section 31(1)(a) is engaged for all of the withheld information, he hasn't needed to go on to consider section 40(2) of the FOIA.

## Right of appeal

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48. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

49. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
50. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Janet Wyles**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**