

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 June 2022

Public Authority: Westminster City Council
Address: Westminster City Hall
64 Victoria Street
London
SW1E 6QP

Decision (including any steps ordered)

1. The complainant has requested information on business (non-residential) property rates data held by Westminster City Council ("the Council"). The Council cited section 31(1)(a) (the prevention and detection of crime), and section 41(1) (information provided in confidence) of FOIA to withhold the information.
2. The Commissioner's decision is that the Council was entitled to refuse to disclose the withheld information in accordance with section 31(1)(a) of FOIA and the public interest lies in maintaining the exemption.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 13 August 2021, the complainant contacted the Council and requested information in the following terms:

“Under the Freedom of Information Act, I would like you to disclose a list of all companies that pay business rates in City of Westminster and which hereditament(s) they are liable for (including Local Authority References).”

5. The Council responded on 6 September 2021, and cited section 31(1) and section 41(1) of FOIA to withhold the requested information.
6. At internal review on 6 October 2021, the Council upheld its reliance on section 31(1) and section 41(1) of FOIA to withhold the requested information.

Scope of the case

7. The complainant contacted the Commissioner on 1 November 2021 to complain about the Council’s reliance on and application of section 31(1) and section 41(1) of FOIA to their request for information.
8. The Commissioner considers the scope of this case to be to determine if the Council was entitled to rely on section 31(1) and section 41(1) of FOIA to withhold the requested information.

Reasons for decision

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

9. 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?

10. 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 – i.e., 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.

11. 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.

Applicable interest within the exemption

12. The Council has argued that disclosure of the information withheld under section 31(1)(a) would prejudice the prevention of crime. It explained that releasing the requested information would have a prejudicial effect on the prevention of crime and argues that by disclosing the information to the world at large the Council would in effect be providing information that would enable potential fraudsters a significantly greater opportunity to defraud the Council (and taxpayers) of significant sums of money. It also said that the Metropolitan Police have supported its view on this. Based on this argument, the Commissioner accepts that the prejudice claimed by the Council relates to the prevention of crime.

The nature of the prejudice

13. The Commissioner went on to consider whether the prejudice being claimed is “real, actual or of substance,” that it is not trivial, and whether there is a causal link between disclosure and the prejudice claimed. With a significant amount of money involved, he is satisfied that the prejudice being claimed is not trivial or insignificant. He is also satisfied that if the information is disclosed this would provide information which could further help facilitate attempts of fraudulent activity being made, and therefore there is a relevant causal link between the disclosure of the information and the exemption being claimed.

The likelihood of prejudice

14. The Council argued that the disclosure of the withheld information would prejudice the prevention of crime. In the Commissioner’s view, “would” means ‘more probable than not,’ in other words, there is a more than fifty per cent chance of the disclosure causing the prejudice claimed, even though it is not absolutely certain that it would do so.

The Council’s view

15. The Council explained that the refusal notice was issued in line with the FTT case EA/2018/0033 which upheld the Councils application of section 31(1)(a) of FOIA, and that due to the number and value being significantly more than other local authorities, makes the Council a target for fraudsters.
16. They further argued that it has established disclosing any information that is asked for during the verification process into the public domain would prejudice the efficacy and success of their security process.
17. The Council have explained that refunds are issued for a number of reasons, usually due to moving premises or if there has been a decrease in rateable value issued by the valuation office (VOA), which can go back over a number of years and amendments made on a daily basis.
18. And, as a direct result, accounts, refunds, and financial information would be at an increased risk, which was backed up when guidance was sort from the Met Police who had said that placing the information in the public domain would significantly increase the risk of fraud being committed.
19. They also state the findings specifically around fraud from the Tribunal hearing which says:

"In relation to fraud, we accept that the release of this information would make it much easier for a fraudster to pose as a ratepayer and bypass the Council's security systems, and that changing those systems would entail significant time and expense. Further that it would facilitate a fraudster posing as the Council to obtain confidential information from a ratepayer. There is evidence that rates fraud is a real and current problem. The consequences to the Council of a loss of a significant sum of public money are serious. We therefore give this prejudice very significant weight in the balance."

20. The Council has previously informed the Commissioner that it had experienced first-hand attempts by individuals to obtain significant funds using information already in the public domain. The Council had received a notice from one of its suppliers that it was changing its bank account. The letter was on company headed paper and was signed by a director of the company. The Council duly updated its records. On investigation it was discovered that the letter was a hoax and that the bank account had been set up specifically for the purpose of committing the fraud. Fortunately, before the funds were obtained from the Council, the fraud was identified.
21. The Council had noted that this fraud was attempted with only the knowledge that the Council made payments to a particular company. The individuals that had instigated the fraud had made several other successful attempts across a number of other local authorities and had fled abroad before the police could apprehend them. Therefore, the Council believed that the disclosure of the withheld information would further enable the commission of such fraudulent activity, thereby prejudicing the prevention and detection of crime.
22. The Commissioner recognises that since the letter fraud, fraudsters have become much more sophisticated in the methods they adopt to commit fraud, and therefore there is a real and significant risk to Councils of attempts of this nature.

The Complainant's view

23. The complainant has addressed the Council's concerns by reviewing what information is already in the public domain (via Land Registry, Companies House, Google etc) and considering how that information might increase the potential and the likelihood for fraudulent activity as described by the Council. They say, 'Although it is not conclusive, the latter presents a 'ready-made list' that is available to the 'world at large.'

24. They go on to say that the Council has only had one fraudulent attempt relating to NNDR in the past five years, which proved unsuccessful, and that the Met Police have confirmed no attempts of this type had been reported in the past five years.
25. And, that most public authorities use revenue administration platforms which have checks and balances to protect against this type of fraud.
26. They also say that the FTT case EA/2018/0033 focused on the risk to vacant properties rather than the specific company based at an address.
27. Their argument is therefore that the Council's arguments do not stand up to scrutiny as the information it says needs to be withheld is already available for some properties and gives fraudsters the opportunity to identify that information and use it for fraudulent activities.

Is the exemption engaged?

28. It is not sufficient for the information to relate to an interest protected by section 31(1)(a) of FOIA. Its disclosure must also be at least likely to prejudice that interest. The onus is on the public authority to explain how that prejudice would arise and why it would be likely to occur.
29. The Commissioner has considered the previous submissions of the Council in case EA/2018/0033 together with its arguments for withholding the information in the current case. For the most part the Council sought to rely upon the previous arguments provided by case EA/2018/0033 but the complainant has pointed out that there are potentially differences between the information requested in the cases.
30. The complainant has pointed out that the Council's arguments are flawed in that information can already be obtained by any individual for many of the properties within the area. They argue fraudsters can obtain that information about a number of properties and make fraudulent claims worth significant amounts of money already if the information he has requested encompasses the entirety of the checks described by the Council before refunds are paid. Their argument is therefore that a disclosure of the information they have requested would not change the potential for fraudulent claims to occur and would not therefore prejudice the prevention and detection of crime.
31. The Commissioner therefore recognises that the Council's arguments have been weakened since the decision notice on case EA/2018/0033, which was based upon the information received from both parties at that time. As stated, the complainant has also pointed out that his request is

different to the one made in that case as they have not asked the Council to disclose details of any refunds due to particular companies.

32. The central argument which the Council could argue is that the requested information is not already publicly available for all properties. For instance, it may argue that it will not always be possible to identify which companies are owed refunds from the information which is publicly available. The Council argues therefore a disclosure of the information in response to an FOIA request would effectively provide that for all properties, and increase the potential for fraudulent claims, or at the least, increase the number of properties which a potential fraudster might be able to use for his or her purposes and make it quicker and simpler and therefore making it more attractive for those who wish to attempt to commit fraud.
33. The Commissioner has taken this into account. The Act does not stipulate the level of prejudice which must occur in order for the exemption to be engaged. He can however take into account the likelihood, frequency, and level of harm which might be caused when considering the public interest test which is required if the exemption is engaged.
34. The Commissioner therefore considers that the larger list of properties suitable for potential claims to be made would become publicly available should the information be disclosed. He considers that this is a 'prejudice likely to affect the prevention and detection of crime,' and therefore he considers that the exemption is engaged.
35. The Commissioner has therefore gone on to consider the public interest. The test is whether, in all of the circumstances of the case, the public interest in the exemption being maintained outweighs that in the information being disclosed.

The public interest

The public interest in the exemption being maintained

36. The central public interest in the exemption being maintained relates to the potential for substantial amounts of money to be lost to the public purse through fraud. The Council has outlined the levels of money which is involved in its business rates which are clearly significant. Any danger of increasing the likelihood of successful fraud risks significant damage to the public purse.
37. The Council argues that it would be more difficult to prevent fraud occurring if the requested information were to be disclosed; it uses part

of the requested information in its verification process prior to making payments to property owners. They also say that the request is not in the wider public interest but in the interests of those organisations who are eligible for such reimbursements, and the Council takes steps to ensure organisations are aware of how to claim a refund. The complainant argues that they have not asked for information which would raise the prospect of fraud, and that most of the information they have asked for is already available in any event (as outlined in paragraph 23 above).

38. Effectively the complainant's argument is that the Council must use other information as well, as its arguments do not stand up to scrutiny bearing in mind that the information they have requested can be obtained from publicly available sources for a number of properties.

The public interest in the information being disclosed

39. The central public interest in the information being disclosed relates to the benefits which would derive from a disclosure of the information. This includes the use of the information for which the complainant has explained they would use it.
40. Effectively the information could be used to provide research and statistical data and advice on the revaluation of premises since the Covid-19 pandemic, which may affect certain types of businesses in particular properties within particular areas.
41. The Commissioner is not able to take into account any private interests of an applicant in a decision. However, he is able to take into account the wider consequences of a disclosure of the information and allowing access to the data for purposes such as those outlined by the complainant, could have wider benefits to businesses and communities.
42. Clearly such information will be of use to business owners and would aid in the economic development (and redevelopment) of an area. The Council itself recognises the public interest in the information being made available to business users but is concerned that disclosing the information will ultimately leave open the potential for it to be defrauded, and maintains it has its own internal procedures for contacting relevant business owners directly regarding any refunds due.
43. The Commissioner therefore recognises a public interest in the disclosure of the information due to the effects which the use of the disclosed data could be put to. Outside of the direct intentions of the complainant there is a public interest in this information being available.

44. The Commissioner also notes that some authorities provide this type of information to potential businesses who are looking to move into an area as part of the services they provide. A disclosure of this sort of information to facilitate companies moving into an area is generally going to be beneficial to the economic health of the area.

Balance of the public interest arguments

45. When considering the public interest arguments in support of an exemption applying, the Commissioner can take into account the severity and likelihood of prejudice identified, and this in turn will affect the weight attached to the public interest arguments for the exemption being maintained. The complainant has outlined how the information withheld by the Council can be established for many properties already from information in the public domain. The Commissioner and the complainant accept however that this would be a very time consuming process and require much more effort and resources from anyone attempting to commit fraud, for example it has been estimated that a wrongdoer could obtain most of the necessary information within 10 to 25 minutes, if this were to be multiplied by the number of potential hereditaments this would equate to many hundreds of hours to establish the information the complainant has requested from the Council.
46. The Commissioner considers that the public interest arguments in favour of disclosure are strong, particularly when combined with the fact that a number of other local authorities have provided this type of information in response to requests. He considers that the fact other authorities disclose this data is also a good indicator that the impact and the prejudice which the Council considers will occur is not so great as to cause concern amongst other authorities to the extent that they withhold the requested data.
47. However, the Council counters this argument with their consideration that the public interest in enabling public authorities to carry out their business without opening themselves up to unnecessary risk through disclosure of information. This could reveal vulnerabilities or weaknesses in their systems and ultimately encourage fraudulent activities by making it much easier to obtain the required information to attempt to commit a crime.
48. The Commissioner considers that there is always some public interest in the disclosure of information. This is because it promotes the aims of transparency and accountability, which in turn promotes greater public engagement and understanding of the decisions taken by public authorities. He accepts there will be a public interest in information which shows how the Council is dealing with potential fraud issues.

49. The Commissioner has taken account of the complainant's argument that the VOA publishes its own version of information as do other organisations in the UK. However, it should be noted that this is subject to an assessment of risk. Furthermore, the withheld information in this case is different to that disclosed by the VOA.
50. In addition, the Commissioner noted that the Council's measures to counter fraud could be undermined.
51. The Commissioner understands that the information is of possible interest to individual traders and companies, particularly those that were not aware of the reduction in rateable values. However, disclosure under the FOIA is disclosure to the world at large. The Commissioner must therefore consider whether the information is suitable for disclosure to everyone.
52. In view of this, the Commissioner is mindful that the Council expressed concerns that disclosure of the information would be likely to impact on local businesses. He has taken into account the argument that release of the information would be likely to encourage criminal activities, which would have an adverse effect on the community. Having found that the exemption is engaged as disclosure would be likely to result in prejudice to the prevention or detection of crime, the Commissioner has taken into account here that this outcome would be counter to the public interest.
53. Having considered all the arguments in this case, the Commissioner's decision is that the public interest in maintaining the exemption outweighs the public interest in disclosure. Therefore, section 31(1)(a) of FOIA was correctly applied to the withheld information and the Council was not obliged to disclose this information.
54. As the Commissioner considers that the exemption at section 31(1)(a) is engaged to all the requested information, he has therefore not gone on to consider the exemption at section 41(1).

Right of appeal

55. 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: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

56. 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.
57. 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

Phillip Angell
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