First-tier Tribunal
(General Regulatory Chamber)
Information Rights

Appeal Reference: EA/2018/0055

Heard at the Sheffield Magistrates Court
On 7-10 October 2019
Representation:
Appellant: Mr Knight (Counsel)
First Respondent: Ms Kelsey (Counsel)
Second Respondent: In person

Before

JUDGE SOPHIE BUCKLEY
DAVE SIVERS
PAUL TAYLOR

Between

SHEFFIELD CITY COUNCIL

Appellant

and

THE INFORMATION COMMISSIONER

First Respondent

and

GAVIN CHAIT

Second Respondent

DECISION

1. For the reasons set out below the tribunal allows the appeal against decision notice FS50681336 and issues the following substitute decision notice.

SUBSTITUTE DECISION NOTICE

Public Authority: Sheffield City Council
Complainant: Gavin Chait

The Substitute Decision

1. For the reasons set out below the Public Authority was entitled to refuse the Complainant's requests for information made on 30 March 2017 on the grounds that the requested information was exempt from disclosure under s 31(1)(a), s 41 and, in relation to any of the disputed information relating to sole traders or partnerships, under s 40(2) FOIA. The Public Authority was not entitled to refuse the requests for information on the grounds that the requested information was exempt from disclosure under s 31(1)(d).

Action Required

2. No action is required.

REASONS

Introduction

1. This is an appeal against the Commissioner's decision notice FS50681336 of 15 February 2018 which held that Sheffield City Council ('Sheffield') was not entitled to rely on s 41 Freedom of Information Act (FOIA) to withhold the information and that s 31(1)(a) (prejudice to the prevention or detection of crime) and (d) (the assessment or collection of any tax or duty or of any imposition of a similar nature) were engaged but that the public interest in disclosure outweighed the public interest in maintaining the exemption.

2. This appeal was heard along with the appeal number EA/2018/0033, an appeal by Westminster City Council ('Westminster') arising out of an identical request by Mr Chait. The tribunal has issued separate decisions but much of the content is the same.

3. Where reference is made to 'the council' or 'the councils' this should be read as referring to both Westminster and Sheffield.

Factual background to the appeal

4. Mr Chait is an economic development researcher at an open data research, training and consulting company, Whythawk. The company is, inter alia, studying the diversity of economic development opportunities across England

and Wales, mapping the revenue potential of active commercial property for all business types.

5. Councils bill and collect national non-domestic rates (NNDR) from all occupiers of non-residential premises. Rates due from empty properties are collected from the person entitled to possession. There are a variety of exemptions and reliefs available.

6. The Council administers NNDR refunds, which arise, for example, when a business moves or because of a reduction in the rateable value of a property.

7. The request is for information related to NNDR charged to businesses in the Council's area.

8. The Valuation Office Agency ('VOA') is an executive agency of HMRC. In relation to NNDR, one of its functions is to compile and maintain lists detailing the rateable value ('RV') of each non-domestic rateable property (also known as a hereditament) in England and Wales. Rateable properties can be occupied or vacant, but have to be appropriate for occupation. The rateable value forms the basis for NNDR bills issued by local billing authorities. As part of the valuation process, each rateable property is assigned a category code, which might, for example, identify it as a warehouse.

9. The VOA is subject to statutory provisions which cover the confidentiality of information held by the VOA, when it is lawful to disclose that information and the legal sanctions for wrongful disclosure. The VOA is not permitted to disclose information except in certain limited circumstances, including, for the purposes of its functions, where there is a legislative gateway or with customer consent.

10. Within those constraints the VOA publishes certain information on its website including the billing authority reference code and the full property address.

Request and Decision Notice

11. Mr Chait made the request which is the subject of this appeal on 30 March 2017:

> In terms of the Freedom of Information Act of 2000, and subject to section 40(2) on excluding personal data, could you please provide me with a complete and up-to-date list of all business (non-residential) property rates data for your local authority, and including the following fields:
>
> - Billing Authority Reference Code (linking the property to the VOA database reference)
> - Firm's Trading Name (i.e. property occupant)
> - Full Property Address (Number, Street, Postal Code, Town)
> - Occupied/Vacant

- Date of occupation/Vacancy
- Actual annual rates charged (in pounds)

If you are unable to provide an absolute "Occupation/Vacancy" status, please provide the Exemptions and/or Reliefs that a particular property may be receiving.

12. Mr Chait had requested the same information on 11 February 2016. Sheffield had refused the 2016 request on 9 March 2016 relying on s 31(1)(a), s 40 and s 41. Mr Chait requested an internal review on 10 March 2016 and Sheffield upheld its decision on 12 April 2016.

13. Sheffield replied to the 2017 request on 2 May 2017, confirming that it held information within the scope of the request but refusing to provide the information relying on ss 21, 22, 31, and 40 FOIA. No internal review was requested or carried out.

14. Mr Chait complained to the Commissioner on 8 May 2017. He stated in his letter of that date that the referral related only to the s 31 refusal.

15. In a decision notice dated 15 February 2018 the Commissioner concluded that s 31(1)(a) was engaged. In the absence of any specific evidence on a causal link she accepted that there is a potential for the disclosure to have the claimed effect. She accepted that the potential prejudice would be likely to occur if the information was disclosed and that it related to the interests which the exemption was designed to protect. She accepted that there is a causal relationship between the disclosure of the information and the prevention of crime and that the prejudice is real and of substance. Finally she concluded that there is a real risk of harm to the prevention of crime. Weighing the factors in favour of the exemption being maintained against the public interest in disclosure, she concluded that the balance of public interest rests in the disclosure of the information.

16. Turning to s 31(1)(d) the Commissioner concluded that s31(1)(d) was engaged but that the public interest in maintaining the exemption did not outweigh the public interest in disclosure.

17. In relation to s 41 the Commissioner concluded that the information was not subject to a duty of confidence.

Grounds of Appeal

18. The Grounds of Appeal in summary are:

Ground 1**:**

18.1. The Commissioner proceeded on the basis of incorrect factual assumptions/findings of fact, namely:

(a) It will be evident whether or not a property is occupied as people can visit the property and see whether it is or not.

(b) It will be easier to identify non-residential properties as being empty than domestic properties.

(c) The requested information in respect of many properties is already in the public domain and therefore vacant property can already be identified.

(d) The majority of local authorities actively publish the information sought by the requestor.

Ground 2:

18.2. The Commissioner erred in failing to consider the six types of information individually;

Ground 3:

18.3. The Commissioner reached the wrong conclusion on the public interest balance under s 31(1)(a), in particular:

(a) The Commissioner's conclusion that disclosure of the information is unlikely to affect crime and that crime would occur in any event is inconsistent with her conclusions in relation to the engagement of s 31(1)(a).

(b) The Commissioner's conclusion that the public interest in maintaining the exemption is weakened in respect of those properties which can already be identified is illogical.

(c) The public interest in bringing to light commercial properties currently vacant for the purposes of development is limited and there are significant and compelling public interest arguments in favour of maintaining the exemption.

Ground 4:

18.4. The Commissioner reached the wrong conclusion on the public interest balance under s 31(1)(d), in particular:

(a) The tribunal is invited to conclude that previous disclosure of information relating to business rates has likely facilitated the establishment of business rate avoidance/mitigation schemes.
(b) The public interest in bringing to light commercial properties currently vacant for the purposes of development is limited and there is a substantial public interest argument in favour of maintaining the exemption.

Ground 5:

18.5. The Commissioner reached the wrong conclusion on the engagement of s 41, in particular:
(a) There was no basis for the conclusion that business rates paid by individual occupiers were not confidential.
(b) There was no basis for the assumption that the identity of the occupiers or the current state of the property (vacant or occupied) would invariably be in the public domain.

The Commissioner's response

19. The Commissioner's response states:

Ground 1 (incorrect findings of fact)

20. The Commissioner was entitled to reach the conclusions on the basis of the evidence before her and on the basis of matters of which a court would be entitled to take judicial notice.

Ground 2 (failure to consider items of information individually)

21. Only the addresses of empty properties were in the scope of the Decision Notice and therefore this appeal.

Ground 3 (public interest balance under s 31(1(a))

22. The Commissioner relies on her conclusions in the Decision Notice which were not inconsistent or illogical.

Ground 4 (public interest balance under s 31(1)(d)

23. The Commissioner repeats its submissions under ground 1 and 2 and will make further submissions in due course.

Ground 5 (s 41)

24. The Appellant has provided no evidence that it will not always be possible to identify the occupiers of premises and the status of occupancy from information in the public domain, nor to distinguish the facts of **London Borough of Ealing v Information Commissioner** EA/2016/0013 (**'London Borough of Ealing')**.

Mr Chait's response

Section 31 is not engaged

25. Evidence shows that disclosure of ratepayer and vacancy data does not prejudice the prevention of crime. There is no evidence that vacant property crime occurs at a rate substantially higher then expected in Sheffield. North Wales Police have provided data on incidents in empty commercial premises which shows that a vacant property is less likely to experience crime.

26. Data provided by Thames Valley police (a) shows that crime in vacant properties is so low as to not be a meaningful risk and (b) does not demonstrate a causal link between the publishing of data by authorities and crime in empty commercial properties.

27. More than 65% of authorities now publish periodic updates on commercial vacancy data to their open data websites and 93% overall provide vacancy data.

28. The cost of collating, cleaning and cost-referencing empty property data provided by local authorities to provide a statistical database is disproportionately large compared to the potential gains from empty property crime such as metal theft.

29. Authorities rely on hyperbole – for example Liverpool Council claimed that disclosure leads to 'use, possibly by overseas companies, to dump waste'. The data can not be used in that way. It does not include anything about a property's size, access, buildings, parking areas or unbuilt space. Properties rated by the Valuations Office Agency (VOA) are required to be ready for immediate commercial occupation and use and therefore unlikely to be the sites used for illegal dumping.

30. It is already possible within about 30 minutes to gather the requested data related to a specific commercial property, which could be used for fraudulent purposes. A sufficiently motivated individual would not be prevented by the lack of data published by the Council.

31. Squatting and fraud are low frequency events.

32. Data released by public authorities on empty properties can be and is used to assist authorities in identifying companies fraudulently claiming tax relief.

33. The empty buildings likely to be of interest to urban explorers are unlikely to be on the master ratings list, because those buildings are ready for occupation by a tenant. The VOA database already provides plenty of information which would be of greater use to potential urban explorers. There is a mass of existing public data already offering almost unlimited ability to identity explorable places. Ratepayer data would not offer anything new.

Section 41 is not engaged

34. Mr Chait relies on the tribunal decision in **London Borough of Ealing** and adopts the Commissioner's argument on this point. Company directors are already publicly listed on Companies House.

The public interest in vacancy data is overwhelming

35. Data is needed to inform action to be taken to tackle empty commercial properties. The government recognises the value of commercial vacancy data.

36. The data produced by Whythawk can be or is used to support economic development, access to housing, assessment of energy use, the investigation of money laundering and fraud and to inform the setting of business rates.

Summary

37. Sheffield have not shown a causal relationship between disclosure and any prejudice. Mr Chait's submits that his evidence shows that:
    37.1. Vacant properties are at a lower risk of crime than occupied properties and that ratepayer publication is used in the investigation of fraud.
    37.2. Any prejudice is not real and is insubstantial.
    37.3. There is no clear or causal link between disclosure and criminal activity.
    37.4. Those wishing to commit rates-related fraud against specific ratepayers can do so with data in the public domain.

Further written submissions

38. The tribunal took account of all further written submissions provided by the parties, but they will not be summarised here.

The scope of the appeal

39. At the hearing all parties proceeded on the basis that all parts of the requests were within the scope of this appeal and we also proceed on this basis.

40. During the hearing Westminster were permitted to rely on s 12 and s 41 as additional exemptions.

Legal framework

S 31 – law enforcement

41. S 31 FOIA provides a qualified exemption subject to the public interest test in respect of information relevant to specific areas of law enforcement:

> *S 31 - law enforcement*
>
> (1) Information which is not exempt information by virtue of section 30 [*investigations and proceedings conducted by public authorities*] is exempt information if its disclosure under this Act would, or would be likely to, prejudice-
> (a) the prevention and detection of crime,
> (b) the apprehension or prosecution of offenders,
> (c) the administration of justice,
> (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
> (e) The operation of the immigration controls,
> (f) The maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
> (g) The exercise by any public authority of its functions for any of the purposes specified in subsection (2),
> (h) Any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
> (i) Any inquiry held under the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.
> …

42. The exemption is prejudice based. 'Would or would be likely to' means that the prejudice is more probable than not or that there is a real and significant risk of prejudice. The public authority must show that there is some causative link between the potential disclosure and the prejudice and that the prejudice is real, actual or of substance. The harm must relate to the interests protected by the exemption.

S 41 – information provided in confidence

43. S 41 provides, so far as relevant:

> *S 41 – Information provided in confidence*
> (1) Information is exempt information if –
> (a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

44. Sections 31(a) and (d) and s 41 are qualified exemptions and therefore if either section is engaged, the tribunal must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing whether the information.

S 40 – personal Information

45. The relevant parts of s 40 of FOIA provide:

(2) Any information to which a request for information relates is also exempt information if-
(a) it constitutes personal data which do not fall within subsection (1), and
(b) either the first or the second condition below is satisfied.
(3) The first condition is-
(a) in a case where the information falls within any of paragraphs (a)-(d) of the definition of 'data' in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—
(i) any of the data protection principles...

…
(5) The duty to confirm or deny—
…
(b) does not arise in relation to other information if or to the extent that either
(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 191)(a) would (apart from this Act) contravene any of the data protection principles...

46. Personal data is defined in s1(1) Data Protection Act 1998 ('DPA') (this request predates the introduction of the General Data Protection Regulation "GDPR") as:

data which relate to a living individual who can be identified – (a) from those data, or (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

47. The first data protection principle is the one of relevance in this appeal. This provides that:

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless -
(a) at least one of the conditions in Schedule 2 is met..." (See para.1 Sch 1 DPA).

48. The only potentially relevant condition in Schedule 2 DPA is section 6(1) which provides that the disclosure is:

necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.' (See para.s 6 Sch. 2 DPA)

49. The case law on section 6(1) has established that it requires the following three questions to be answered:

1. Is the data controller or the third party or parties to whom the data are disclosed pursuing a legitimate interest or interests?
2. Is the processing involved necessary for the purposes of those interests?
3. Is the processing unwarranted in this case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject?

50. The definition of "personal data" consists of two limbs:
i) Whether the data in question "relate to" a living individual and
ii) Whether the individual is identifiable from those data.

51. The tribunal is assisted in identifying 'personal data' by the cases of Ittadieh v Cheyne Gardens Ltd [2017] EWCA Civ 121; Durant v FSA [2003] EWCA Civ 1746 and Edem v Information Commissioner [2014] EWCA Civ 92, from which the following principles are drawn.

52. In terms of 'identifiability', personal data covers, for example, the name of a person in conjunction with his telephone details or information about his working conditions or hobbies, as well as information that a person has been injured and is on half time, or his name and address.

53. In Durant, Auld LJ, giving the leading judgment said at [28]:

> Mere mention of the data subject in a document held by a data controller does not necessarily amount to his personal data. Whether it does so in any particular instance depends on where it falls in a continuum of relevance or proximity to the data subject as distinct, say, from transactions or matters in which he may have been involved to a greater or lesser degree. It seems to me that there are two notions that may be of assistance. The first is whether the information is biographical in a significant sense, that is, going beyond the recording of the putative data subject's involvement in a matter or an event that has no personal connotations, a life event in respect of which his privacy could not be said to be compromised. The second is one of focus. The information should have the putative data subject as its focus rather than some other person with whom he may have been involved or some transaction or event in which he may have figured or have had an interest, for example, as in this case, an investigation into some other person's or body's conduct that he may have instigated. In short, it is information that affects his privacy, whether in his personal or family life, business or professional capacity.

54. In Edem Moses LJ held that it was not necessary to apply the notions of biographical significance where the information was plainly concerned with or obviously about the individual, approving the following statement in the Information Commissioner's Guidance:

> It is important to remember that it is not always necessary to consider 'biographical significance' to determine whether data is personal data. In many cases data may be personal data simply because its content is such that it is 'obviously about' an individual. Alternatively, data may be personal data because it is clearly 'linked to' an individual because it is about his activities and is processed for the purpose of determining or influencing the way in which that person is treated. You need to consider 'biographical significance' only where information is not 'obviously about' an individual or clearly 'linked to' him.

The Task of the Tribunal

55. The tribunal's remit is governed by s.58 FOIA. This requires the tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner's decision involved exercising discretion, whether she should have exercised it differently. The tribunal may receive evidence that was not before the Commissioner and may make different findings of fact from the Commissioner.

Issues

56. The issues we have to determine were agreed by the parties as follows:

Section 31(1)(a)

1. If the disputed information, or any part of it, were released, would it prejudice, or be likely to prejudice, the prevention of crime?

2. If so, does the public interest in maintaining the exemption outweigh the public interest in disclosing it?

Section 31(1)(d) (Sheffield only)

3. If the disputed information, or any part of it, were released, would it be likely to prejudice the assessment or collection of any tax?

4. If so, does the public interest in maintaining the exemption outweigh the public interest in disclosing it?

Section 41

5. Is any of the disputed information confidential within the meaning of s.41(1) FOIA?

6. For any information which is confidential, would disclosure be in the public interest such that it would not amount to an actionable breach of confidence?

Personal Data

7. is any of the disputed information personal data, insofar as it relates to
a. Sole traders; and/or

b. Partnerships.

8. If so, should the Requests be construed as either:

a. Excluding any personal data, or alternatively

b. Including personal data, subject to the application of the exemption at s.40(2) FOIA?

9. To the extent that any of the information in the scope of the Requests amounts to personal data, would the release of that information breach the First Data Protection Principle, in that its release would be unfair to the data subject?

Evidence and submissions

57. We have read an open bundle of documents, which we have taken account of where relevant.

58. We read statements from and heard oral evidence from Mr Hinkley, Assistant City Treasurer – Revenues and Benefits on behalf of Westminster, and, on behalf of Sheffield, from Mr Harrow, Solicitor with responsibility for NNDR advice and recovery at Sheffield, Mr Foster, Capita team leader in the NNDR team dealing with collection of business rates on behalf of Sheffield, and Mr Exley, Group Manager in Structural and Public Safety for Sheffield.

59. All witnesses were cross-examined by the Commissioner and Mr Chait. Mr Chait did not give oral evidence but confirmed that any evidence contained in his submissions or in the bundle was true to the best of his knowledge and belief. Mr Chait was not cross-examined by the Councils or the Commissioner on the basis that this would not be taken as accepting the truth of all Mr Chait's evidence.

60. All parties submitted skeleton arguments or equivalent and made oral submissions, including a very short closed submission by Westminster, a gist of which was given to the excluded parties. The tribunal took account of the content of all submissions where relevant.

Discussion and conclusions

Section 31(1)(a): If the disputed information, or any part of it, were released, would it prejudice, or be likely to prejudice the prevention of crime and if so, does the public interest in maintaining the exemption outweigh the public interest in disclosing it?

61. As the first tier tribunal in Hogan Oxford City Council and the Information Commissioner (EA/2005/0026, EA/2005/0030) observed at para 27, where the specified activity or interest which would be likely to be prejudiced is a public interest, like the prevention of crime, there is an obvious overlap between whether or not the section is engaged and any subsequent application of the public interest test. Thus in this appeal there is significant overlap in the evidence and submissions on the first two issues. We have therefore combined our consideration of the evidence and submissions of the first two issues, but we bear in mind that although the relevant factors may overlap, the questions that we have to answer are different.

62. The applicable interest in this case is the prevention of crime. It is important to note that s 31(1)(a) is engaged where there would be likely to be prejudice to the prevention of crime. It does not require the respondent to show that disclosure *will* lead to an increase in crime.

63. The nature of the prejudice being claimed by Sheffield is to the prevention of two different types of crime: (i) fraud and (ii) a broad spectrum of crimes broadly falling under the heading of property crime.

64. When deciding if the section is engaged, we must decide if the Council has satisfied the evidential burden of showing that some causal relationship exists between the prejudice being claimed and the potential disclosure; if the prejudice is real, actual or substantial; and whether the chance of prejudice is more than a hypothetical or remote possibility i.e. is there a real and significant risk of prejudice?

Provision of 'out of date' data

65. Mr Chait submitted that much of the risk of crime could be avoided while still satisfying the public interest in the use of the data by researchers by the provision of 'out of date' data, with a time lag so it was no longer live. This is not what was requested and therefore not something we can take into account.

The relevance of the statistics on squatting, crime, fraud etc

66. We accept the Council's submissions that the statistics produced by Mr Chait do not assist us in resolving the issues before us. For example, the fraud statistics appear to show a general increase in the number of business frauds, but it is impossible to draw any relevant inferences from this. The statistics on squatting relate only to residential property and therefore are not helpful.

67. The other crime statistics are relied on by Mr Chait to demonstrate that the release of equivalent data by other public authorities has not led to an increase in crime, which would be expected if the Council's fears are justified. We do not accept that we can draw any such inference from the statistics or indeed any inferences which assist us in resolving the issues before us.

68. Mr Chait provided details of information recorded by two police authorities on crime in vacant properties. Only Thames Valley Police and North Wales Police record this information. It is a snapshot rather than a 'before and after disclosure' comparison and is therefore of limited use. Thames Valley Police provides some data for Oxford and Reading, one of which discloses the information and one which does not, but this does not take account of many other potential differences between Oxford and Reading and we do not accept that we are able to infer anything about whether disclosure has or has not made a difference.

69. Taken at their highest, the statistics show that in the Thames Valley and North Wales police authorities, crime is much more likely to occur in occupied properties than in unoccupied properties. That is unsurprising and does not assist us in resolving the issues in this appeal.

70. Mr Chait also produced a graph showing crime rates more generally over the period during which there was a dramatic increase in the number of authorities publishing the requested information. He submitted that this showed that there had not been the increase in crime which would be expected if the Councils were right.

71. The graph shows the change in recorded rates of four particular types of crime between July 2013 and March 2019: shoplifting, criminal damage and arson, robbery and burglary. Shoplifting is included as a comparator. Robbery is not likely to occur in vacant properties by definition. The statistics on burglary relate to 'business and community' which is undefined but is not limited to vacant properties. Criminal damage and arson are the most relevant crimes, but the statistics are not limited to vacant properties.

72. It is unclear to us whether any increase in crime caused by the release of the information in other authorities would show on this graph, particularly if Mr Chait is right that crime is much more likely to occur in occupied than unoccupied properties. We note that the chart shows a slight increase in

criminal damage and arson post-publication by most authorities, but we do not think this is significant given that the statistics are not limited to vacant properties and given the potentially unlimited and unknown other variables which could have caused the rise.

73. Overall we do not find these statistics helpful in determining the issues before us: the question that we have to answer is not whether the Councils have shown that the release of information would lead to an increase in crime, but whether release would be likely to prejudice the prevention of crime.

The relevance of disclosure by most other public authorities

74. Both Mr Chait and the Commissioner ask us to place weight on the fact that the majority of local authorities publish the information requested. Save for the issue of the statistical evidence or lack of it as to the effect of this publication dealt with above, what is the relevance of this factor to the issues we have to determine?

75. The Commissioner submits that we should infer that either the authorities or the Commissioner considered either that disclosure would not prejudice the prevention of crime or that the negative consequences of disclosure were outweighed by the public interest in disclosure. She submits that it is not reasonable to infer that the authorities simply failed to consider whether or not disclosure would prejudice the prevention of crime.

76. We accept that it is reasonable to infer that most authorities would have considered the issue, even if some might not have done. We accept that it is reasonable to infer that the Commissioner or most of the other local authorities concluded, on the basis of facts and reasoning that we are not aware of, that there was either no prejudice or that any negative consequences were outweighed by the public interest in disclosure.

77. How does this assist us in determining the issues before us? The Commissioner urges us to treat this as 'highly suggestive' of there not being significant prejudice arising from disclosure. We do not accept that the conclusions of other local authorities made on the basis of facts and reasoning unknown to us are of any assistance in deciding whether or not prejudice would be likely to arise from disclosure by Sheffield or Westminster.

78. For similar reasons, we place little weight on the factual conclusions of other first tier tribunals that have considered similar issues: we do not have the same evidence before us.

Information already in the public domain: property crimes and fraud.

79. Mr Chait makes two separate points under this heading. First, that a decision has been made to publish details on, for example, the planning portal which carries the same if not greater risk of misuse and second that any criminal wishing to locate a vacant property for the purposes of crime has access to plethora of other sources of information already in the public domain.

80. In relation to the publication of similar information on the planning portal, we do not accept that this is relevant to the issues we have to determine. Parliament has decided, for understandable reasons, that certain information should be made public in an arena where decisions will have a likely impact on neighbours and/or the wider community. We assume that some assessment of risks and benefits was undertaken before such a decision was made, but it does not assist us in determining the issue before us.

81. We note that the VOA database, which does publish certain information, does not contain the more specific ratepayer data which is covered by the request. Again, we assume that some assessment of risks and benefits was undertaken, but it does not assist us in determining the issue before us.

82. Finally, we note that businesses in the BID ('Business Improvement District') in the centre of Sheffield produce a list of vacant commercial properties. Here again, we presume that the owners of the properties undertook some assessment of risks and benefits before taking the decision to make these details public, but it does not help us in determining this appeal.

83. In terms of the submission that any criminal wishing to locate a vacant property/use rates data for the purposes of crime can already do so, Mr Chait produced evidence that showed that much of the requested information could be obtained by a wrongdoer in relation to a particular hereditament in approximately 10-25 minutes. We accept that evidence. We note however that not all the information was discoverable: for example, Mr Chait had to estimate the date of vacancy. We accept that an educated guess as to the properties potentially due a refund could be made with the information published on the VOA, which would give a potential fraudster a starting point, but not as much as a confirmed figure issued by the Council.

84. In relation to property crimes we accept that the planning portal, Google Street View and other sources already allow criminals to identify targets, and that the list is not likely to contribute to opportunistic crimes, but we accept the submission by Sheffield that the provision of a readymade list makes it easier to commit crime and therefore prejudices the prevention of crime: it enables criminals to avoid the significant effort of researching and compiling the information in relation to each potential target.

85. It would take a significant period of time to assemble a list equivalent to that requested: for a list of 40,000 hereditaments Mr Chait estimates that it would

take 515 days of continuous work and this list would still not contain all the requested detail.

86. We accept that disclosure of this information is not likely to prejudice the prevention of opportunistic property crime. Further we accept that it is possible to identify many vacant properties from outside and others are generally known to be vacant. However we accept that it is much easier to use a ready-made list than comb through the planning portal, or use Google Street View to assess the whole of Sheffield or Westminster or scan marketing websites. Although a potential criminal can piece something similar together with enough time, effort and motivation, that does not answer the point that the criminal's life is made easier through the provision of a ready-made list.

The claimed prejudice: fraud

87. The evidence from Mr Foster showed that rates fraud was a real problem in Sheffield. We accept that the release of information which is not readily discoverable at present such as occupation status, the dates of vacancy and information about specific reliefs would better enable a fraudster to persuade the council that they were the ratepayer. In particular the dates of vacancy and information about specific reliefs was information that Mr Chait was unable to obtain from other sources.

88. To avoid this problem Sheffield would have to alter their security protocols which would not be straightforward – it is not easy to gather further identifying information because the Council is often dealing with companies rather than individuals. The other risk is that the information could be used to pose as the Council and target the ratepayer to obtain confidential information. Fraud does take place without the release of this data, but we accept that the release of the requested information would make the commission of fraud easier.

The relevance of the fact that the Council could alter its security systems

89. The Commissioner and the Councils submitted that for the purposes of considering whether or not the section is engaged we have to take the Council as we find them and disregard the fact that the prejudice to the prevention of crime could be avoided by taking some of the steps outlined above. Mr Chait disagreed, submitting that the fact that the systems could be changed, avoiding an increased risk of fraud, meant that the section was not engaged.

90. Mr Lockley drew an analogy with the s 12 authorities where an authority's systems must be taken as they are: it is not for the tribunal to judge the adequacy of Westminster's systems: the question is, given that Westminster has the system they have, would the prejudice arise?

91. The Commissioner submitted that the potential for altering the system became relevant at the stage of considering the public interest.

92. In our view the starting point in relation to whether or not s 31 is engaged is that we should look at the circumstances as they existed at the relevant time and ask ourselves whether or not there is a significant risk of prejudice to the prevention of fraud given the Council's security systems at that time. We do not think that it is an answer to say that there would be no risk if they adopted a different system.

93. When looking at the balance of public interest we accept that the ease with which the risks of prejudice to the prevention of fraud could be mitigated are relevant to the weight to be attached to this risk. If the risk of fraud could be easily and quickly mitigated at no cost to the authority, this risk might attract relatively little weight in the balance. If it could only be mitigated at significant cost and effort, it would attract more weight. In this case we accept that it is not straightforward to simply create new questions, and that creating an entirely different security system would entail significant time and expense.

The claimed prejudice: property crimes

94. Under this heading we consider all the other crimes or issues associated with criminal behaviour in empty properties relied on by the Councils, including illegal dumping, illegal raves, urban exploring and other crimes.

Illegal dumping

95. Illegal dumping of waste is a criminal offence under s 33 of the Environmental Protection Act 1990. We accept that this crime is a genuine issue related to empty property which has occurred recently in Sheffield. The environment agency leaflet at p 1156 of the bundle states 'Teams of waste criminals are targeting empty land and property in your area. They may offer you cash to store waste on your land or inside your property, promising to come back and remove it. Or they may simply dump it illegally without your knowledge.' Both of these methods require an empty property. An article from the Sheffield Star newspaper dated February 2018 at p 1157 shows that this crime has occurred recently in Sheffield, and Mr Harrow gave further evidence of his knowledge of this happening.

96. We accept Sheffield's submission that although plenty of hereditaments on the requested list would not be suitable, the disclosure of a list of empty properties which can be cross-checked against the VOA database to identify particular categories of building such as warehouses, could easily be used to make the commission of this crime easier. As such we accept that the disclosure of the list would be likely to prejudice the prevention of this particular type of crime.

Illegal raves

97. We accept that illegal raves that take place in empty properties are associated with various criminal offences including criminal damage in accessing the property, drug offences and public order offences. The evidence produced by Sheffield, including an article in the NME in 2018 and an article in the Star in 2017, shows that this is a genuinely significant and recent issue in Sheffield.

98. Many locations that are suitable for illegal raves are likely to be visibly vacant and many of the hereditaments on the list are unlikely to be suitable. We note that the NME article refers to the raves taking place in 'abandoned steelworks…or out in the countryside', neither of which locations are likely to appear in the disputed information. However we accept Sheffield's submission that where this is a known and current problem it is entirely plausible to say that this list would be likely to be used by those who run these events to locate potential new venues.

Urban explorers

99. In terms of urban explorers, we accept that the types of property likely to be of interest to urban explorers tend to be more visibly vacant and that some will be so derelict that they are not on the ratings lists. Further, it is clear that urban explorers do use other sources, such as Google Street View and planning portals to locate potential properties to explore. However the evidence shows that urban exploring does take place in Sheffield; that urban explorers do not just target 'well known' sites; and that finding new locations can involve painstaking research. All this suggests that a list which identified all the vacant rateable business properties is likely to be used as part of the tools for urban explorers in locating new properties to explore. We accept that there are crimes associated with urban exploring in particular criminal damage in order to gain entry. We find therefore that the publication of the list would be likely to prejudice the prevention of crime in this aspect. In terms of the public interest, we acknowledge that the less serious nature of the crime involved affects the weight to be given to the public interest in its prevention compared to more serious crimes. Further the other points made above about the availability of other sources of potentially more suitable properties reduces the weight of this prejudice in the public interest balancing exercise.

Other property crimes, including those related to squatting

100. Squatting in non-residential properties is not a crime, but is often associated with criminal offences such as criminal damage and anti-social behaviour offences.

101. We were referred to the evidence heard by the first tier tribunal in Voyias and the conclusions that the tribunal reached on the basis of that evidence. That

evidence was not before us and we do not place any weight on the factual findings of that tribunal.

102. Mr Harrow agreed that there was no evidence of a significant squatting problem in Sheffield, particularly not in empty commercial properties. He did give evidence that he is unaware of any large organised protest squats since Sheffield stopped publishing the requested data, whereas these still occur in, for example, Manchester. In our view there are too many variables to infer that this difference is causally related to the disclosure of data.

103. Sheffield placed less reliance on other property crimes. There is no direct evidence of recent problems in Sheffield. They submit, as a matter of common sense, that there will be at least some degree of property crimes such as criminal damage and arson on properties whose existence was previously unknown to criminals. There is evidence of metal theft being a problem in 2012, but this is more likely to be an opportunistic crime.

104. We accept that there is limited evidence of squatting and these other property crimes being a recent issue in Sheffield, and although we accept that the section is engaged, we find that these issues do not add significant weight in the public interest balance to the prejudice resulting from the other crimes set out above.

Conclusions

105. For the reasons set out above, we find that section 31(1)(a) is engaged. We find that there is a real and significant risk that fraud would be made easier by the release of this list; and that the provision of a readymade list of empty properties makes it easier for criminals to identify targets for the crimes grouped under the heading 'property crimes' above. We find that the release of the list would therefore be likely to prejudice the prevention of crime.

106. Turning to the public interest, taking into account our discussions and conclusions set out above, we find that there is a very significant public interest in maintaining the exemption.

107. 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.

108. In relation to urban exploring and illegal raves, there is recent evidence that this is a current problem in Sheffield and we place some additional weight on this prejudice in the balance for the reasons set out above.

109. In terms of the remaining group of property crimes, including squatting, we place some limited additional weight on this prejudice for the reasons set out above.

110. Taking all these matters together, including in particular the prejudice to the prevention of rates fraud, we find that there is a very significant public interest in maintaining the exemption.

The public interest in release of the information

111. Mr Chait argues that there is a lack of public data in this area, and that it is needed for the purposes of research. He argues that there is strong public interest in proper research relating to current concerns about empty commercial properties, particularly on the high street, claims that business failures are due to business rates, and the impact or potential impact of steps to tackle this including potentially discounting business rates. Without this disclosure Mr Chait argues that there is no data available to interrogate these claims or evaluate interventions. He highlights a number of specific issues which we deal with below.

Use by charity tax commission

112. Mr Chait referred us to a report by the Charity Tax Commission (CTC) dated July 2019 entitled 'Reforming charity taxation, towards a stronger civil society' which makes a number of recommendations intended to make charitable tax reliefs, including business rates relief, more effective in achieving their ends. The report states that there are areas where it cannot propose immediate solutions because of a lack of adequate data and robust research that would allow the CTC to understand the consequences of various possible changes (p 8). One of its main recommendations is headed 'improved data and openness'. This section describes a need for better government data because knowing how tax reliefs are distributed is important for understanding how far they influence public and charity behaviour and deliver their intended objectives. The report states that 'it is currently difficult to determine with any degree of accuracy where most charitable tax reliefs are targeted or the public benefit they support. The related recommendation is mainly focussed on the publication of government statistics but the CTC does also recommend that 'Local authorities should also publish their business rates registers as open data in a standardised format' (p 10).

113. At p 31 of the report, the CTC states that 'the data for business rates relief are less comprehensive owing to a lack of publicly available and accessible

information.' The CTC then uses data made available by 18 local authorities to examine the characteristics of a sample of charities that have received mandatory business rates relief and make observations on the distribution of business rates relief. The CTC states at p 43 'Our research into the distribution of business rates relief was similarly disadvantaged by the lack of available and consistent machine-readable data… This meant that we only had a relatively small sample of data to analyse…' recommending at p 44 that 'local authorities should publish their business rates registers as open data, to a standardised format, using charity and company numbers collected during the application process' and noting later that 'to be truly useful open data need to be both machine-readable and consistent in format' and at p 639 'Our own research into the distribution of business rates relief across the charitable sector is limited by the lack of open, machine-readable data for analysis'.

114. The fact that the CTC complains of a lack of sufficient useable data in July 2019, despite the number of local authorities now publishing information in response to Mr Chait's request, suggests that the public interest in the availability of data usable by organisations such as the CTC will not be served by another ad hoc release of data in a potentially inconsistent format. As the chart on p 4 of Mr Chait's skeleton argument shows, at the time the review was commissioned, over 200 local authorities self-published the requested information along with over 100 publishing in response to his requests. Despite this the CTC were only able to use data from 18 local authorities. What the CTC identified as lacking was the publishing of business rates registers by all local authorities in a standardised machine-readable format. That is not what Mr Chait has requested, nor what he is achieving by his many individual freedom of information requests and it will not be achieved by the release of the data in this appeal.

115. We do accept that the CTC report shows that some use can be made of non-standardised data on business rates released by individual authorities on an ad hoc basis (see the use of the data made available by the 18 local authorities) and therefore that the release of this information by these two Councils might add something to similar research in the future. However the evidence of Mr Harrow and Mr Hinkley was that this information could be made available directly to the CTC on request subject to appropriate safeguards, such as an information sharing agreement, providing an alternative route to achieve the same aim. The availability of this option significantly dulls the public interest in ordering release to the public at large.

Use of the information by researchers

116. It is accepted by the Councils that researchers, including Mr Chait, can use this data to contribute usefully to the general debate in this area and therefore there is some public interest in its release. The usefulness of data released by an

individual council in response to an FOI request is reduced for the same reasons set out in relation to the CTC above, i.e. ad hoc release by different Councils of different information in different formats has its limitations.

117. It is clear from, for example, the report on 'meanwhile use' by Centre for London (Meanwhile, in London: Making use of London's empty spaces), that researchers can use data produced by Mr Chait using the requested data from other authorities to undertake research which could facilitate economic development and Mr Chait gave further examples of researchers who were looking to undertake research using his data in diverse areas such as energy use.

118. However it is clear that this research can be and is being undertaken without the data from Sheffield or Westminster. Although there is some evidence that researchers complain of a lack of data in this area, it is open to researchers to approach either council to enter into licensed research agreements to obtain the same data, and therefore there are other routes to satisfy this interest without releasing the data to the world at large with associated risk of misuse.

Use of information by businesses looking for opportunities

119. We accept that a list of vacant commercial properties could be used by businesses looking for development opportunities. However there are already sources of information which can be used to identify these opportunities: in addition to those vacant properties which are being actively marketed, there is a list of vacant commercial properties on the BID list and information is available from the Council itself including, in Sheffield, from the town centre management scheme or planning officers.

Use of information by local authorities

120. Mr Chait referred us to a summary of responses to a Business Rates Avoidance consultation published by the Department for Communities and Local Government in July 2015. In response to question 8 ('Do you have any views on what steps could be taken to help authorities come together to tackle attempted business rates avoidance?') the DCLG records that:

> The majority of respondents suggested that a centralised information sharing portal where local authorities could share experiences and solutions would be helpful and provide more consistency to the way they tackle avoidance…Some identified the need for two-way data and information sharing between local authorities, the VOA and other public bodies to help strengthen attempts to tackle avoidance.

121. Mr Chait put to Mr Hinkley that this document specifically stated that data sharing would be helpful, but as Mr Hinkley stated in evidence, it is referring to data sharing between authorities and not with the public.

122. The data requested could be used by other local authorities in their attempts to reduce avoidance schemes: Mr Harrow's witness statement sets out the use he makes of data released by other authorities and Mr Hinkley accepted that a national database would be of use in identifying potential business rates fraud. However Mr Hinkley and Mr Harrow both gave evidence that steps were being taken to set up a shared data portal where this information could be shared between local authorities without release to the the public. Whilst this had not been set up at the time the request was made, we accept that the fact that the process is in motion reduces the public interest in the release of the information on this ground: a more appropriate channel is in the process of being created. This is in accordance with the views of local authorities expressed in the DCLG consultation set out above.

Conclusions on the public interest in disclosure

123. We accept that there is some public interest in disclosure, but we conclude that this interest is limited for the reasons detailed above, principally that these matters can and do take place without the data, and that where this data is helpful this public interest can be satisfied by obtaining it or equivalent information through other channels without the risks attendant on publication to the world. We conclude that this limited public interest in disclosure is outweighed by the very significant public interest in maintaining the exemption.

Section 31(1)(d) (Sheffield only)

If the disputed information, or any part of it, were released, would it be likely to prejudice the assessment or collection of any tax?

124. This exemption was put to us by Sheffield in this way: Prejudice is caused to the assessment or collection of tax by anything that leads to a reduction in the amount of tax that would otherwise have been collected (see the first tier tribunal decision in Doherty v Information Commissioner and HMRC). The release of information would by likely to lead to an increase in lawful avoidance schemes, which would cause Sheffield to collect less tax, depriving public funds of money. The increase would be caused by advisors using the disclosure to seek potential clients and to assess the penetration of competitor schemes.

125. We reject this argument. We do not think that the first tier tribunal was right in Doherty to interpret s 31(1)(d) as widely as it did. We do not think that the assessment or collection of tax would or would be likely to be prejudiced simply by dint of the fact that there would be, *for whatever reason*, less tax to assess or collect. In our view this is too nebulous. There are many entirely legitimate reasons why there might be less tax for a public authority to collect,

which Parliament could not have intended would engage this section. If, for example, the release of information by a public authority would be likely to lead to the dismissal or resignation of an employee this would lead to there being less tax to be collected. In our view, this is too remote from the interests protected by the exemption. To engage the exemption, in our view, the harm must be more closely related to the interests protected by the exemption than simply altering the level of tax which would be collected.

126. The finding in Doherty that the disclosure of HMRC's view that there is a loophole in tax legislation would lead to some taxpayers taking advantage of that loophole, does in our view satisfy the need for a causative link between the disclosure and harm related to the interests protected to the exemption. In this appeal, we find that the harm is too remote from the protected interests. We do not accept that (a) facilitating the identification of potential clients for lawful avoidance schemes or (b) enabling advisors to assess the penetration of competitor schemes, i.e. in essence providing marketing assistance to tax advisors, is a harm that is sufficiently closely related to the interests protected by the exemption.

127. For those reasons we find that s 31(1)(d) is not engaged.

Section 41
Is any of the disputed information confidential within the meaning of s.41(1) FOIA?

128. We accept Mr Knight's submissions that there is a general common law principle of tax payer confidentiality: see R (Ingenious Media Holdings plc and another) v Revenue and Customs Commissioners [2016] UKSC 54 ('Ingenious Media') at para 17: 'where information of a personal or confidential nature is obtained or received in the exercise of a legal power or in furtherance of a public duty, the recipient will in general owe a duty to the person from who it was received or to who it relates not to use it for other purposes.'

129. We do not think that the very short consideration of a similar issue by the first tier tribunal in London Borough of Ealing v Information Commissioner EA/2016/0013 assists us in determining whether or not the disputed information in this appeal is confidential.

130. We accept that the statutory bar on disclosure that applies to the VOA assists us in determining whether or not the disputed information is of the type that is protected by the law of confidence. Sections 63A and 63B of the Local Government and Finance Act 1988 ('LGFA') allow disclosure of revenue and customs information in certain circumstances in the business rates arena. Any further disclosure is not allowed under s 63A. This reflects s 18 of the Commissioners for Revenue and Customs Act 2005, which was held by the

Supreme Court in Ingenious Media to stem from the general common law principle referred to above. It does not apply directly to the Local Authority, but we accept Mr Knight's submission that it not only explains why the VOA publishes what it does, but also strongly suggests, by analogy, that the disputed information is covered by s 41.

131. We were provided in the hearing with a copy of Sheffield's small business rates relief application form. It transpired after the hearing that we had been provided with a different version to that in use at the relevant time, and we were provided with the 2017 version after the hearing. Both forms include statements under the relevant data protection legislation in force at the time about how personal data will be used and who it will be shared with. This is of limited assistance in determining whether or not the disputed data (which is not always personal data) has the necessary quality of confidence, however we find that there is nothing in these statements that is inconsistent with the information being confidential. We accept that information provided to a local authority for the purposes of calculating rates or reliefs is information that a reasonable person would regard as confidential.

132. We accept that it is relevant to consider whether the disputed information is already in the public domain, but given the difficulty of finding most of the disputed information we do not accept that it is generally accessible such that it cannot be regarded as confidential.

133. For these reasons we accept that the disputed information carries the necessary obligation of confidence.

For any information which is confidential, would disclosure be in the public interest such that it would not amount to an actionable breach of confidence?

134. Even if information is confidential, s 41 only applies where disclosure would be an actionable breach of confidence. We must therefore apply something akin to the public interest test and ask if there is some public interest in disclosure which outweighs the interest in the protection of confidence.

135. For the reasons set out in our consideration of the public interest balance in relation to s31(1)(a) above we have concluded that there is only a limited public interest in disclosure of this information, and consequently we conclude that there is insufficient public interest in disclosure to outweigh the importance of the general common law principle of taxpayer confidentiality.

136. We find that s 41 applies to the whole request. We accept Mr Knight's submission that dataset 2 should not be looked at in isolation but in the context of the whole request: the tax payer's identity is used in conjunction

with the rest of the information to calculate the level of taxation and therefore we accept that the whole of the disputed information is exempt under s 41.

S 40 – personal data

Is any of the disputed information personal data, insofar as it relates to Sole traders and/or partnerships?

137. Applying the usual tests we conclude that any of the disputed information that relates to sole traders and/or partnerships is personal data. Mr Chait argues that trading names and addresses are not personal data. We disagree: the information relates to a living individual and the individual is identifiable from those data. The information links to an identifiable individual and reveals something meaningful about their life, even though it is their professional life. Taken together all the information has an individual as its focus where it concerns a sole trader or partnership.

138. Mr Chait argues that he has only asked for trading names, but we accept Mr Knight's submission that as the request asks for the property occupier, this would identify the individual ratepayer where this was a sole trader or partnership.

Should the requests be construed as excluding any personal data, or including personal data subject to the application of the exemption at s 40(2) ?

139. Mr Chait did not express a clear view as to which of these meanings he intended: he knows that there is 'supposed to be a s 40 redaction' and he just cut and pasted a template for the wording.

140. Looked at objectively, we think that the request is unambiguous. The phrase 'subject to s 40(2) on excluding personal data' must mean that only data excluded in accordance with 40(2) should be excluded. It is difficult to see how it could be objectively construed as excluding all personal data, given the express reference to s 40(2). We construe the request as including personal data, subject to the application of the exemption at s 40(2).

To the extent that any of the information in the scope of the Requests amounts to personal data, would the release of that information breach the First Data Protection Principle, in that its release would be unfair to the data subject?

141. Mr Chait argues that trading names and addresses of sole traders and partnerships are already published in a number of places, including on the Companies House website, on the VOA, in the phone book, on SatNavs, on commercial drivers' licences and on the outside of company premises.

142. It is true that the information requested in these sections of the request, taken alone, is available in the public domain from a number of sources. However in

our view it is artificial to consider each element of the request separately. This is not a request for a list of the names and addresses of businesses within the local authority. The request is, in terms, for a 'list of all business (non-residential) property rates data'. The fields which follow are simply a list of fields that should be included. The specified rates data is only useful if it is provided with the name and address of the company and the names and addresses are only useful when provided with the specified rates data.

143. The rates data is only personal information because it is provided in conjunction with the identifying information of name and/or address. We must therefore look at whether or not release of the requested list as a whole, rather than of each individual item on the list, would be unfair.

144. We accept that Mr Chait is pursuing a legitimate interest, but we do not accept that disclosure is necessary to pursue that interest for the reasons set out in considering the public interest in disclosure under s 31(1)(a) above.

145. Unless the Councils expressly stated that they would publish personal data held for the purposes of the assessment and collection of business rates, we find that there would be a legitimate expectation that personal information held by the Council for these purposes would be used only for those purposes and not generally published. In reaching this conclusion we take account of the general principle of taxpayer confidentiality discussed above.

146. We find that release of this data would expose the individuals in question to the risks identified when considering s 31 above. It would increase the risk of crime in relation to that individual's property if it was empty, and would increase the risk of business rates fraud against that individual.

147. We infer that knowledge of this increased risk would lead to distress for the individuals. The fact that some individuals might choose to place details of their empty business properties on the BID list, or on a estate agents marketing website does not alter this conclusion. In those circumstances they took the decision to publish voluntarily with the knowledge of the risks and benefits to their business and could take appropriate precautions. The fact that they are not caused distress by publishing in these circumstances does not mean that they would not be distressed by the Local Authority, without their consent, releasing their personal data which includes details of their empty properties (where relevant) with attendant risks to security and rates data which would assist a fraudster to bypass security checks, in circumstances where they were obliged to provide the data to the Local Authority for the express purposes of assessing business rates or reliefs.

148. Taking account all the above, we conclude that although Mr Chait is pursuing a legitimate interest, the release of the data is not necessary for the purposes of those interests and, in any event, the processing is unwarranted in this case by

reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

Conclusion

149. For the reasons set out above the appeal is allowed. Our decision is unanimous.

Signed Sophie Buckley

Judge of the First-tier Tribunal

Date: 2 December 2019
Promulgation date: 3 December 2019