

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 February 2017

Public Authority: Wandsworth Council

Address: The Town Hall
Wandsworth High Street
London
SW18 2PU

Decision (including any steps ordered)

1. The complainant requested from Wandsworth Council ("the Council") information about credit balances on its business rate accounts. The Council withheld the information under section 31(1)(a) of FOIA.
2. The Commissioner's decision is that the Council has correctly applied section 31(1)(a) to the withheld information and so does not require it to take any further steps to ensure compliance with the legislation.

Request and response

3. On 29 September 2015 the complainant requested the following information under FOIA:

*"Under the Freedom of Information Act, I request a breakdown of credit balances accrued since your earliest records, for the amounts owing to all ratepayers within your billing area. **This information does not appear to be available via the datasets published on your website.** Please include the following information;*

- a) Occupier (where possible)
- b) Full hereditament address
- c) Rateable value
- d) Property Description

e) Billing Authority Reference Number

f) Start Date of Account

g) End Date of Account

h) Value of unclaimed Credit Balance

i) Period within which Credit Raised

*I fully understand where the occupier is a sole trader, you are prevented from supplying us with the occupier name under the Data Protection Act. I would therefore reiterate that I am **not asking for the occupier name in the case of sole traders** and only requesting information relating to (b) to (i) above."*

4. The Council responded on 30 September 2015. It refused to provide the requested information on the basis that it was exempt from disclosure under section 31 of FOIA.
5. The complainant requested an internal review on 8 December 2015. The Council provided the outcome of the internal review on 22 January 2016 in which it maintained its original position in relation to the application of section 31.

Scope of the case

6. The complainant contacted the Commissioner on 7 March 2016 to complain about the way his request for information had been handled. He specifically complained about the Council's failure to disclose the information that he had requested.
7. The Commissioner considered whether the Council was entitled to rely on sections 31(1)(a) to withhold the requested information.

Reasons for decision

Section 31 – Law enforcement

Engagement of section 31(1)(a)

8. Section 31(1)(a) of FOIA states that:

"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,"

9. The Commissioner initially considered whether the relevant criteria for the engagement of section 31(1)(a) were satisfied. These are:

(i) whether the prejudice claimed by the Council was relevant to section 31(1)(a);

(ii) the nature of the prejudice being claimed by the Council; and

(iii) whether there was a likelihood of the prejudice being claimed by the Council occurring.

(i) Applicable interest within the exemption

10. The Council argued that disclosure of the information withheld under section 31(1)(a) would be likely to prejudice the prevention of crime. It explained that it believed that releasing the requested information would allow potential fraudsters to use the information to identify business entities which were entitled to claim credits on their accounts. Once such a business had been identified, there would be a number of avenues open to the fraudsters to seek to obtain funds. Based on these arguments, the Commissioner accepts that the prejudice claimed by the Council relates to the prevention of crime.

(ii) The nature of the prejudice

11. The Commissioner next went on to consider whether the prejudice being claimed is "real, actual or of substance", that is not trivial, and whether there is a causal link between disclosure and the prejudice claimed. She is satisfied that the prejudice being claimed is not trivial or insignificant and that there is the relevant causal link.

(iii) The likelihood of prejudice

12. The Council argued that the disclosure of the withheld information would be likely to prejudice the prevention of crime. In the case of *John Connor Press Associates Limited v The Information Commissioner (EA/2005/0005)* the First-Tier Tribunal confirmed that, when determining whether prejudice would be likely, the test to apply is that *"the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk."* (para 15). In other words, the risk of prejudice need not be more likely than not, but must be substantially more than remote.

13. The complainant noted that the Council had said that the disclosure of the requested information would be "an invitation to be dishonest". However, he explained that he did not believe that it had provided any

evidence or instances where fraudulent claims had been made nor had it shown any direct link between disclosure and fraudulent activity. Whilst he acknowledged that the Council had a duty of care, his view was that its refusal was based on "what ifs".

14. The complainant went on to argue that that 90% of councils throughout England and Wales had freely provided the requested information, many of whom openly published the data on their websites. He queried why the Council's approach differed from other councils.
15. In relation to this latter point, the Commissioner is aware that some local authorities have disclosed similar information to that requested by the complainant. She is also aware that some local authorities have refused to disclose this information when requested to do so under FOIA. She is not able though to determine what percentage of local authorities in England and Wales have or have not disclosed similar information to that requested by the complainant.
16. The Commissioner notes, however, that even if a significant number of local authorities have disclosed similar information to that requested in this case, it does not automatically follow that all public authorities should disclose that information. She needs to consider each individual complaint that she receives on its own particular merits, taking into account the specific circumstances of each case and the evidence and arguments presented to her.
17. The Council informed the Commissioner that it considered that the publication of the requested information would be an invitation to the dishonest. It believed that potential fraudsters could use the published information to identify business entities which were entitled to claim credits on their accounts. Once such a business had been identified, there would be a number of avenues open to the fraudsters to obtain funds. These included:
 - (i) Hijacking the company's identity, before posing as the company to claim the funds; or
 - (ii) Setting up fraudulent accounts in the name of the company in order to seek a repayment; or
 - (iii) Posing as the Council in order to approach the company with relevant details of the overpayment in order to acquire confidential information such as banking details.
18. In support of its view, the Council explained that there were new and sophisticated methods for defrauding large quantities of money and that fraudsters cost businesses £50 million a year by falsifying details on the Companies House database so that they could take on the company's

identity. It went on to explain that fraudsters carried out 'company hijacking' by falsifying details on statutory paper forms to have a legitimate company's registered address or take on the company's identity. It believed that the disclosure of the detailed information requested could provide these fraudsters with new targets and might result in the Council paying out monies in fraudulent claims.

19. The Council argued that it would also be possible to look through the list for those businesses which were owed significant sums and then set up fraudulent accounts in appropriate names and apply for repayment. It believed that the very significant amounts of money involved would clearly make it worthwhile to set up an organised fraud to take advantage of the situation. Whilst it acknowledged that there were safeguards in place to stop bank accounts being opened in false names, it was of the view that such controls could be circumvented by those determined to commit fraud.

20. The Commissioner was informed by the Council that:

"If an individual obtained the details of credits on accounts that had yet to be claimed there is little to stop them from attempting to obtain the funds for themselves by writing in or completing an application form containing their bank account details. Normally a credit on an account is only revealed by it showing on a bill sent directly to the liable party of the account with the credit. This is essentially the first safeguard and reduces the risk considerably as that information stays out of the public domain.

A suspicious refund application that resulted from a recent credit bill being dispatched would mean contacting the applicant via letter or email to request further proof of a genuine claim. Some of these sums are considerable so we are cautious in ensuring they are returned to the correct account.

[The complainant] has requested details of unclaimed credits and by publishing that list it is automatically inviting claims which will be fraudulent unless the genuine owner happens to spot it whilst trawling the internet looking for their credits. In which case if they believe they have a credit they should have contacted the Council when originally notified."

21. The Council raised concerns that it would not be able to assess which were real and which were fraudulent claims without a great deal of investigation. It noted that it did not have the necessary skills or resources to carry out such assessments and to obtain these would involve additional extra costs. If there was a risk of fraud, the Council

stated that it would be placed under a duty as a responsible public body to ensure that the system was made as secure as possible.

22. The Council noted that there were already cases where fraudsters rang or texted residents purporting to be from the local Council, Valuation Office Agency or other company which dealt with changes to Council Tax banding or Business Rates revaluation. Fraudsters suggested that the rate payer is due a Council tax or Business Rates refund, then ask for personal and bank details to allow them to process the refund or payment. If a criminal were able to obtain the information requested on Business Rate credits, the Council believed that it would not only assist them in defrauding the Council but also companies who were due a credit. It was of the view that they would be able to target those on the list and as a result, provide details regarding the overpayment which might convince the company that they were speaking to a Council officer.
23. The Council also noted that fraud was a very real problem within Local Authorities both internally and externally and referred to a recent article concerning an officer jailed for the theft for stealing from Council tax payers accounts.
24. The Council went on to explain that it was constantly confronted by a variety of attempted frauds and considered that the publication of the information requested by the complainant would represent a clear danger of being a new avenue that fraudsters would be likely to seek to exploit.
25. The Council confirmed to the Commissioner that its policy was to refund all credits within 10 working days of receiving an application form which were processed once a week using a two tier checking procedure, one person to process the application form and one person to sign off the credit file. In the Council's view, the disclosure of the withheld information would mean that it would need to put in place additional checking processes which would risk delays to legitimate refunds and would lead to complaints and claims for compensation on its already stretched resources.
26. The Commissioner is reticent to pass judgement on the procedures a public authority should put in place to try to prevent fraud in circumstances such as this as the procedures that may be appropriate will depend on a whole range of factors, some of which will be specific to a particular public authority. However, in light of the explanation provided by the Council of its handling of requests for business rate rebates, it does not appear to the Commissioner to be a relatively straightforward and inexpensive task for it to make effective changes to its verification procedures for refund claims so as to counteract the risk

of fraud as a result of the withheld information being placed in the public domain.

27. As part of its arguments, the Council made reference to the decision of the First-Tier Tribunal in *London Borough of Ealing v The Information Commissioner (EA/2016/0013)* in which the Tribunal considered the application of section 31(1)(a) to an identical request for information to that made by the complainant in this case. However, the Commissioner notes that the Upper Tribunal in *London Borough of Ealing v The Information Commissioner (GIA/2360/2016)* has recently set aside the decision of the First-Tier Tribunal and remitted the matter for redetermination by an entirely differently constituted First-Tier Tribunal. Consequently, the Commissioner has not taken into account the views expressed by the First-Tier Tribunal in its judgement in coming to her decision.
28. As already noted, some of the information requested by the complainant, particularly the amount of credit accrued on a particular business account, is information that the Council uses as part of its security procedures in attempting to prevent fraudulent claims being made and in order to try to prevent any that are made being successful. As a consequence, the Commissioner accepts that the disclosure of the withheld information would facilitate an increase in fraudulent claims and make it more difficult for the Council to identify any such claims. Therefore, in light of this, the Commissioner is satisfied that the disclosure of the requested information would be likely to prejudice the prevention of crime. She consequently accepts that section 31(1)(a) is engaged. As it is a qualified exemption, she went on to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosure.

Public interest test

Public interest arguments in favour of disclosing the information

29. The complainant informed the Commissioner that he did not believe that the arguments provided by the Council were a valid basis for withholding the information requested. In his view, this could be perceived as the Council retaining monies that did not belong to it, but belonged to the public, and hiding behind legislation in order to do so.
30. The complainant noted that the Council had argued that the provision of the requested data provided minimal benefit to the general public. He disagreed with this statement on the basis that the Council held £2.5 million belonging to the public. He believed that it was therefore very much in the public interest to disclose the information. He queried why, if the Council actively pursued ratepayers regarding credits, as it had

said that it did, the value of credits held by the Council was so high. He informed the Commissioner that his research suggested that many councils within London boroughs did not actively pursue the refund of overpayments and that, in the main, it was the London boroughs (ie those retaining the most monies) that refused to disclose the information requested.

31. The Commissioner notes the complainant's arguments in relation to the Council's decision to withhold the requested information. With regard to his point about the total amount of business credit owing at the time that he made his request, the Commissioner would observe that this figure will include credit owing to sole traders, which is outside the scope of the request. It may also include large amounts of credit owing to a small number of businesses. Additionally, it will presumably include credit owed to a significant number of businesses which have been informed by the Council that a refund is due and from which the Council is awaiting receipt of a completed claim form.
32. As regards the complainant's argument that his research suggested that many local authorities in London did not actively pursue the refund of overpayments, the Commissioner is not in a position to confirm whether his research is correct. In any event, she is required in making her decision to consider the circumstances that specifically exist in relation to Wandsworth Council, which has explained to her the steps that it takes to ensure that businesses that have a credit balance on their account are made aware of this and encouraged to claim a refund of that credit. In the absence of clear evidence to the contrary, the Commissioner has to accept the Council's explanation of its relevant procedures and accept that those procedures are followed by its officers.
33. The Council acknowledged that there was a public interest in it being open and transparent in respect of public funds. It explained that it was for this reason that it disclosed to the complainant the total business rate credits that it held, which, it believed, allowed for transparency in respect of public funds without incurring the risk of the fraudulent activity that it had identified. It was of the view that the disclosure of the company names and associated details that had been requested provided minimal benefit to the general public. It noted that it actively pursued companies regarding the credits on their accounts and so there would be no benefit to the companies in credit, or to the public at large, from the disclosure of the requested company names and associated details.
34. The Council explained that when an account first went into credit, companies were informed of the status of their account and provided with a refund form to complete and return to it. A credit note was automatically issued in order to notify the ratepayer/company. If they

paid by Direct Debit and their account was live, then the credit would be refunded automatically by BACS. The Council confirmed that the credit balances were being reviewed on an ongoing basis and further to the initial credit notes raised when the credit was created, follow up notices were sent and would continue to be sent. It explained that this was a continuous process as the number of accounts in credit varied on a daily basis. In the Council's view, this on-going process allowed for credits to be claimed in a timely manner by ratepayers through a secure process.

35. Commenting on the efficiency its system in ensuring that businesses claimed money that was owed to them, the Council explained that credits normally occurred when a business had closed down or moved and overpaid business rates, although equally backdated credits could be created through revaluation changes that included periods when several businesses may have been in occupation over a number of years. It went on to explain that it was possible that some businesses no longer existed or had been dissolved. The Council informed the Commissioner that it made every effort to write to the last known address or to the insolvency practitioner, who often claimed the credits months or years after the Council had contacted them because of delays in their processes. The Council stated that it was consistently active in resourcing credit tracing and that it worked hard to refund all that were due. It believed that its system was effective and up to a good standard.
36. The Council acknowledged that there was a public interest in disclosure to provide some transparency to the records that it held in respect of the administration of business rates in the borough. It believed that the information could be of interest to a very small minority of the public who might be entitled to a refund and had somehow failed to receive the Council's notifications and reminders of their credit balance, as it might enable them to exercise that entitlement. However, it believed that this was outweighed by the wider public interest in maintaining the exemption.

Public interest arguments in favour of maintaining the exemption

37. The Council argued that there was a public interest in ensuring that monies from the public purse, such as rebates on business accounts, were not fraudulently claimed and also a public interest in not making it easier for fraud to be committed.
38. The Council also argued that its current verification procedure for refund claims was simple and cost effective. It believed that disclosure of the requested information would result in additional verification processes needing to be implemented at additional cost to the public which appeared disproportionate to the benefits that would accrue from disclosure. The additional verification procedures would also be likely to

slow the verification process, resulting in detriment to the genuine ratepayer which would be contrary to the public interest.

39. In relation to any new verification processes that might be needed, he Commissioner was informed by the Council that these would be likely to require the production of additional documents by those claiming a rebate which would place a new administrative burden on the majority of those legitimate claimants that did not currently exist. This would be compounded by the fact that the level of scrutiny of those documents would be higher than at present, given the increased suspicion that some of the claims (and associated documents) might well be fraudulent. The result would be that a new verification process would be likely to slow the rate at which credit balance claims could be considered and refunded, causing delay in all refunds and the likelihood of complaints, which would further burden the Council's limited resources.
40. Overall the Council considered that disclosure of the requested information would result in the need to implement disproportionate steps and additional expense to the public purse to counter an increased fraud risk that did not exist at present. It did not consider this to be in the public interest.
41. The Council argued that a final factor that needed to be considered was the cost consequences to it of a successful fraudulent claim. It pointed out that in the event of a successful fraudulent claim, it would:
 - (i) have incurred the cost of paying out to the fraudster;
 - (ii) remain liable to the legitimate rate payer for an equivalent amount, raising the prospect of paying out twice; and
 - (iii) be faced with the cost (legal and incurrence of internal management time) of seeking to recover the funds wrongly paid to the fraudster.
42. In the Council's view, it would not be in the public interest to expose it to such potential costs and expenses given that they would be funded from the public purse.

Balance of the public interest arguments

43. The Commissioner recognises the public interest in transparency and openness in relation to the procedures and decision making of public authorities and that the disclosure of the requested information might to some extent help to increase openness and transparency in relation to the Council's collection of taxes and the management of finances. The withheld information would provide the public with more information about the amounts of unclaimed business rate credits and would, more specifically, identify those companies that had to date failed to claim

back credits on their business rate accounts. However, the Commissioner notes that the former more general public interest could be largely met by the release of information about business rates credits which did not identify individual accounts, for example, by providing total figures for business rate credits.

44. The Commissioner has already noted the Council's explanation that it sent notices to companies that had a credit on their accounts with instructions on how to claim refunds that were owing and also the steps that it took to remind relevant companies that did not initially make a refund claim.
45. The Commissioner also notes that the disclosure of detailed information about rate rebates owed to specific businesses would not benefit the public as a whole but only businesses that had outstanding rebates due. She assumes that efficient businesses would generally be able to identify when they were owed money by the Council and be able to claim that money back relatively quickly, particularly in light of the attempts that the Council has explained that it makes to alert them to any rebates that are owed and facilitate the claiming of those rebates. Consequently, the number of businesses potentially affected by any disclosure should not be large. In light of this and the attempts that the Council appears to make to contact businesses that are owed rebates and to get them to claim those rebates, the Commissioner views the public interest in the disclosure of the requested information as limited.
46. In this particular case, the Commissioner accepts that the Council has provided strong arguments as to how the disclosure of the requested information would be likely to prejudice its attempts to prevent fraudulent activity in relation to the claiming of refunds on its business rate accounts. This inevitably creates a significant public interest in favour of withholding the requested information.
47. In light of this, she believes that the public interest in maintaining the exemption outweighs the public interest in disclosure. She has consequently determined that the Council correctly applied section 31(1)(a) to the withheld information.

Right of appeal

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

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

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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

Signed

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