

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

### **Decision notice**

**Date:** 25 January 2018

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

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

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1. The complainant has requested information on a complete and up-to-date list of all business (non-residential) property rates data held by Westminster Council under the FOI Act ('the Act'). The council applied section 31(1)(a) of the Act to the information stating that it would prejudice the prevention and detection of crime to disclose the information because it would provide details which would facilitate the commission of fraud against the council.
2. The Commissioner's decision is that the exemption in section 31(1)(a) of the Act was engaged however the public interest in the disclosure of the information outweighs that in the exemption being maintained. The council was therefore not correct to withhold the information under section 31(1)(a).
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - To disclose the information to the complainant
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court

pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 30 March 2017 the complainant made the following request for information under the Act for:

*"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.*

*We recognise that you ordinarily refuse to release these data in terms of Regulation 31(1)(a). In November 2016, we appealed this class of refusal - specifically as it relates to this request - to the Information Commissioner's Office and they issued a Decision Notice (FS50628943 - <https://ico.org.uk/media/action-veve-tak...>, and FS50628978 - <https://ico.org.uk/media/action-veve-tak...> on 28 February 2017 finding that "it is not correct to withhold this information under Regulation 31(1)(a)", and that "the public interest in the information being disclosed outweighs that in the exemption being maintained".*

*Note that these Decision Notices supersede Voyias v Information Commissioner and London Borough of Camden Council (EA/2011/0007) and Decision Notice FS50538789 (related to Stoke on Trent Council).*

*Please provide this as machine-readable as either a CSV or Microsoft Excel file, capable of re-use, and under terms of the Open Government Licence.*

*I'm sure you get many requests for business rates and we intend to update this national series every three months. Could we request that - as more than 30% of local authorities already do - you update and release this dataset via a dedicated page on your local authority website or on an open data service. You should find that this reduces the time and cost of this request process."*

6. The council responded on 21 April 2017. It said that the information was exempt under section 31(1)(a). It argued that a disclosure of the information would prejudice the prevention and detection of crime. It said that the information relates to account holders and that by disclosing publically who was liable for specific periods the council was opening itself up to fraudulent activity.
7. No review took place as the Commissioner did not require the complainant to do so. This is because this request followed a previous one to the council, by the same complainant, which had been responded to by the council with the same response previously. The Commissioner did however give the council the opportunity to review its response in preparing a response to her questions during the investigation, and so the council was not disadvantaged by this. The council confirmed its wish to rely upon Regulation 31(1)(a) to the Commissioner.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 8 May 2017 to complain about the way his request for information had been handled. He believes that the council was not correct to apply section 31(1)(a) to the information.

## **Reasons for decision**

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9. 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..."*

10. In order for a prejudice based exemption, such as section 31, to be engaged the Commissioner considers that three criteria must be met:

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

(i) Applicable interest within the exemption

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

(ii) The nature of the prejudice

12. The Commissioner next went on to consider whether the prejudice being claimed is "real, actual or of substance", that it is not trivial, and whether there is a causal link between disclosure and the prejudice claimed. With a significant amount of money involved with refunds she is satisfied that the prejudice being claimed is not trivial or insignificant. She is also satisfied that if the information is disclosed this would provide information which could facilitate attempts at fraudulent claims being made, and therefore there is a relevant causal link between the disclosure of the information and the exemption being claimed.

(iii) The likelihood of prejudice

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

The council's arguments

14. The Council informed the Commissioner that given the number of properties and value of money involved, it considered that there was a heightened risk of crime as a result of disclosure of its data. It explained that:

*"The Council is required under Non-Domestic Rating (Collection & Enforcement) (Local Lists) Regulations 1989 S.I.1989/1058) to bill and collect Non Domestic Rates ("NNDR"). Westminster City Council is currently responsible for the administration, billing and collection of £1.8 billion in NNDR, which equates to 8% of the national NNDR debt.*

*"The Council issues approximately 9000 refunds annually which total approximately £165 million. The number and value of these refunds is significantly more than any other local authority due to the size of Westminster's NNDR database. The Council regularly issues individual refunds in excess of £1 million and on one occasion an individual refund exceeded £8 million."*

15. The council went on to explain that:

*"Refunds are issued for a number of reasons but usually due to a business moving properties or if there is a decrease in their liability, e.g. through a rateable value reduction from the valuation office (central government). These amendments can go back over many years and amendments will be made on a daily basis, so the list of credits is not simply a list of unclaimed money."*

16. The Commissioner was informed by the Council that it sends notices to a company that has a credit on its business rate account with instructions on how to claim a refund. It confirmed that it takes active steps to find those to whom payments are due, including searches at Companies House for registered offices and sending reminders, including, where appropriate, care of banks or building societies. In addition, the Council explained that many companies employ accountants or Rating Agents to manage their tax affairs and the Council liaises with these third parties where express permission is provided by the relevant company.

17. The Council further informed the Commissioner that it advertises how to claim a refund in all documentation that it sends to ratepayers and that it also takes out an annual advert in the local press. It said that if any company contacts the Council, it could easily request details of its account balance. It is also possible for a company to create a secure account online which would inform it of any credits that it may be due.
18. The Council said that when an individual/company claims a refund, it requires them to sign a refund application form. It confirmed that it does not have the capacity to make any further identity checks to ascertain that the individual was acting validly on behalf of the ratepayer. The Council contends that the system is self-policing in that the only people who would know that a refund was due would be those who have been actively contacted because they are directly associated with the business or company.
19. The Council therefore argues that, consequently, the disclosure of a list of the nature requested by the complainant to the world at large would directly provide an opportunity for fraudulent activity. Any person would be able 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. The significant sums involved would clearly make it worthwhile to set up an organised fraud to take advantage of the situation and allow fraudsters to target individual accounts.
20. The Council noted that while there were some safeguards in place to try to stop bank accounts being opened in false names, it was aware that such controls could be circumvented by those bent on fraud and that identity fraud was a significant problem in the current climate. The disclosure of the requested information would mean that it would not be able to assess which were real and which were fraudulent claims. The Council felt that it must take as many steps as possible to "shut the door" to criminals, i.e. to protect the public purse from fraud.
21. The council confirmed that it had previously requested advice from the Metropolitan Police on this matter. It provided the Commissioner with the comments of a Detective Chief Inspector with the Metropolitan Police. He had said that:

*"Publication of the data would identify accounts where money was owed that would not otherwise have been known. I would have concern as a senior police officer that these accounts would then be vulnerable to fraud. As you say large sums of money would be an attraction. In addition the data is actually used to check whether the*

*claimant is genuine so without this safeguard the likelihood of getting away with the fraud and avoiding detection is also greater.*

*I have not come across this specific type of fraud personally, perhaps because councils are so careful with the data. However, my experience of crime tells me that when there is temptation and a window of opportunity, and this data would be such an opportunity, someone will take advantage. Clearly most crime is committed when there is such opportunity. With the internet this data would quickly become proliferated, increasing the likelihood of a person with the intent and knowledge coming into contact with it."*

22. The Council informed the Commissioner that it had experienced first-hand attempts by individuals to obtain significant funds using information already in the public domain. In 2012 it received a notice from one of its suppliers that it was changing its bank account. The letter was on company headed paper and was signed by a director of the company. The Council duly updated its records. On investigation it was discovered that the letter was a hoax and that the bank account had been set up specifically for the purpose of committing the fraud. Fortunately before the funds were obtained from the Council, the fraud was identified.
23. The Council noted that this fraud was attempted with only the knowledge that the Council made payments to a particular company. The individuals that had instigated the fraud had made several other successful attempts across a number of authorities and had fled abroad before the police could apprehend them. Therefore, the Council believed that the disclosure of the withheld information would enable the commission of such fraudulent activity, thereby prejudicing the prevention and detection of crime.

#### The complainant's arguments

24. The complainant has addressed the councils concerns by reviewing what information is already in the public domain, and considering how that information might increase the potential and the likelihood for fraudulent activity as described by the council. His central counter arguments are that:
  - 1) That the data requested do not facilitate fraud, and do not change the council's threat model for fraud in any significant way;
  - 2) That the data requested do not form any legitimate part of the Council's existing business ratepayer authentication system such as to permit any illegitimate bypassing of their authentication systems;

- 3) The information he has requested is already available in the public domain in some respects. Any person intent on fraud could therefore already gain the information which they need in order to make fraudulent claims for business rate refunds if the council solely uses the lack of availability of this information as its central means of preventing fraud.
25. The complainant's initial action was to demonstrate that by taking information which is already available from various public sources such as the Valuation Office Agency, Companies House, the Land Registry and commercial estate agents, together with information which is published generally in the media he could already obtain much of the information which the council is withholding. His argument is therefore that the council's argument is undermined – it cannot argue that the reason for withholding the information is because it is only available to the council and to the correct business and therefore suitable for an identification/verification process. The council argued that as only it and the client would be aware that a refund is due the system is effectively self-policing.
26. He provided 3 examples of vacant properties where he was able to establish all of the information which he had requested from the council from purely publically available sources of information. He said that for each property it had taken him approximately 20 minutes of research to obtain that information. He provided a table of information relating to the properties and demonstrated where he had been able to obtain that information from. He was able to demonstrate that he had obtained information on:
- Billing Authority Code
  - Firm's Trading Name
  - Full Property Address
  - Occupied / Vacant
  - Date of Occupation / Vacancy
  - Actual annual rates charged
  - company details listed at the original address and at their new address
  - details of their filing history, lists of directors,
  - official notification of an address change to Companies House
  - example of company letterhead
27. He further demonstrated how individuals are able to obtain details of companies who are due refunds.
28. He provided further information, and said that it argues that a short period of research had enabled him to obtain information which he considers would allow him to make fraudulent claims in the way that the



council had described when providing its reasons for withholding the information.

29. The complainant's point in providing this information was to demonstrate that that information is available publically and its disclosure would not therefore prejudice the prevention and detection of crime. He argued that with the potential sums of money involved any fraudsters would be prepared to put in the effort (as he had) to obtain this information if it would enable or benefit any potential fraudulent claim against the council.
30. When responding to the Commissioner's questions on this case the council had relied upon its arguments from a previous request for information which the Commissioner had issued a decision notice on. The complainant raised the point that the council's arguments were provided to the Commissioner in response to a different request for information, and the information requested in that case is slightly different to his own. He argues that the council has not taken account of these differences when responding to his own request. He pointed out that the previous request had requested details which his own request had not:
  - the property occupant's confidential ratepayer customer number;
  - the credit value due to each ratepayer;
  - any information on revaluation of the property;
31. The complainant therefore argues that the data he requested are not part of the council's threat model, and that the data he requested can, in any case, be recreated, albeit following time and cost investment.
32. In effect, part of the council's argument is that disclosing that a particular company is owed a refund is likely to alert fraudsters to the potential for a fraudulent claim to be made. The complainant argues that he has not asked for this information in his request. The council's argument regarding 'self-policing' (outlined in paragraph 18 above) is therefore misplaced in respect of the information which he has requested.
33. The council argued that that where money and opportunity is available fraudsters will be prepared to take a significant deal of time, care and money in order to commit fraud due to the potential benefits to them of doing so. Using this argument, the complainant argues that the investment which he has outlined in the process he has used, given the amounts of money concerned, would not dissuade potential fraudsters given that they could already identify much of the information which the council was withholding, and in some cases they could identify all of that information. He considered that the security levels of the council must

be questionable if it followed the above process without further checks and balances being made before payments were issued.

34. His argument is therefore that the council's arguments do not stand up to scrutiny as the information which it says needs to be withheld is already available, at least for some properties, which already gives fraudsters the opportunity to identify all of that information and use it for fraudulent claims. He also argues that his request would not put into the public domain the fact that any particular company is due a refund from the council.

#### The Commissioner's conclusions

35. The Commissioner has considered the previous submissions of the council in case FS50611895 together with its arguments for withholding the information in the current case. For the most part the council sought to rely upon the previous arguments it had provided for case FS50611895 but the complainant has pointed out that there are potentially significant differences between the information requested in the cases.
36. The complainant has pointed out that the council's arguments are flawed if that information can already be obtained by any individual for many of the properties within the area. He argues fraudsters can obtain that information about a number of properties and make fraudulent claims worth significant amounts of money already if the information he has requested encompasses the entirety of the checks described by the council before refunds are paid. His argument is therefore that a disclosure of the information he has requested would not change the potential for fraudulent claims to occur, and would not therefore prejudice the prevention and detection of crime.
37. The Commissioner therefore recognises that the council's arguments have been significantly weakened since her decision notice on case FS50611895, which was based upon the information she received from both parties at that time. As stated, the complainant has also pointed out that his request is different to the one made in that case as he has not asked the council to disclose details of any refunds due to particular companies.
38. The central argument which the council could argue is that the requested information is not already publically available for all properties. For instance it may argue that it will not always be possible to identify which companies are owed refunds from the information which is publically available. The council argues therefore a disclosure of the information in response to an FOI request would effectively provide that for all properties, and increase the potential for fraudulent claims,

or at the least, increase the number of properties which a potential fraudster might be able to use for his or her purposes.

39. The Commissioner has taken this into account. The Act does not stipulate the level of prejudice which must occur in order for the exemption to be engaged. She can however take into account the likelihood, frequency, and level of harm which might be caused when considering the public interest test which is required if the exemption is engaged.
40. The Commissioner therefore considers that the larger list of properties suitable for potential claims to be made may become publically available should the information be disclosed. She considers that this is a 'prejudice likely to affect the prevention and detection of crime', and therefore she considers that the exemption is engaged.
41. The Commissioner has therefore gone on to consider the public interest test required by section 2 of the Act. The test is whether, in all of the circumstances of the case, the public interest in the exemption being maintained outweighs that in the information being disclosed.

#### The public interest

##### The public interest in the exemption being maintained

42. The central public interest in the exemption being maintained relates to the potential for large amounts of money to be lost to the public purse through fraud. The council has outlined the levels of money which is involved in its business rates which are clearly significant. Any danger of increasing the likelihood of successful fraud risks significant damage to the public purse.
43. The council argues that it would be more difficult to prevent fraud occurring if the requested information were to be disclosed; it uses part of the requested information in its verification process prior to making payments to property owners. The complainant argues that he has not asked for information which would raise this prospect, and that the information he has asked for is already available in any event (as outlined in paragraph 26 above).
44. Effectively the complainant's argument is that the council must use other information as well, as its arguments do not stand up to scrutiny bearing in mind that the information he has requested can be obtained from publically available sources for many of the properties. Newspaper articles and commercial media report on businesses moving addresses. All of these leave the potential for refunds to become due and the potential for fraudulent claims to be made following this.

The public interest in the information being disclosed

45. The central public interest in the information being disclosed relates to the benefits which would derive from a disclosure of the information. This includes the use of the information which the complainant has explained the he would use it for.
46. The complainant runs an organisation which, working with other organisations, provides information to business users on empty business properties. Effectively he wishes to provide statistical data and advice on the viability of types of businesses in particular properties within particular areas. The complainant says that this is partly funded by a grant from the EU Open Data Incubator to develop this service.
47. The Commissioner is not able to take into account the private interests of the applicant in a decision. She is however is able to take into account the wider consequences of a disclosure of the information, and allowing access to the data for purposes such as those outlined by the complainant, or any other organisation able to offer similar services, would have wider benefits to businesses and communities.
48. In his request for review the complainant stated to the council:

*"I would ask that you consider that the public interest in economic development and improving opportunities for independent businesses and entrepreneurs far outweighs any concern that the release of data which can identify empty business properties may cause crime.*

*Unemployment and economic deprivation are often key to reducing the potential for crime. Our intention is to support local economic development initiatives through the use of these data."*
49. Clearly such information will be of use to business owners and would aid in the economic development (and redevelopment) of an area. The council itself recognises the public interest in the information being made available to business users in this manner but is concerned that disclosing the information will ultimately leave open the potential for it to be defrauded.
50. The Commissioner therefore recognises a strong public interest in the disclosure of the information due to the effects which the use of the disclosed data could be put to. Outside of the direct intentions of the complainant there is a public interest in this information being available. Even where business owners are not intending to use the complainant's service, a list of vacant commercial premises within an area will be of use to companies looking to develop their businesses within a specific area.

51. The Commissioner also notes that some authorities provide this information to potential businesses who are looking to move in to an area as part of the services they provide. A disclosure of this sort of information to facilitate companies moving into an area is generally going to be beneficial to the economic health of the area. It also lessens the possibility of crime within vacant properties, and hence heightens the security of properties in the surrounding areas.
52. The complainant has also pointed out research: '*British High Streets: from Crisis to Recovery? A Comprehensive Review of the Evidence*<sup>1</sup>' by Neil Wrigley and Dionysia Lambiri of the University of Southampton on behalf of the Economic & Social Research Council which argues that there is a lack of open data on town centre/high street structures which affects research into the area as well as local government's response to retail issues on high streets. The complainant argues that this request is a step towards making open data on this available. The research (at page 4) states:

*"In part, these difficulties reflect the dominance of proprietary research on topics which have considerable commercial value, and its consequences in terms of a resulting lack of visibility of the true spectrum of available research and findings. But, more widely, it also reflects: the long slow demise of publically accessible open data'; the rise and importance of 'commercial data' on town centre/high street structures, and the constraints that having to fund use of commercial data imposes on research."*

### Conclusions

53. When considering the public interest arguments in support of an exemption applying, the Commissioner can take into account the severity and likelihood of prejudice identified, and this in turn will affect the weight attached to the public interest arguments for the exemption being maintained. The complainant has outlined how the information withheld by the council can be established for many properties already from information in the public domain. The Commissioner and the complainant accept however that this would be a time consuming process.

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[http://www.riben.org.uk/Cluster\\_publications\\_&\\_media/BRITISH%20HIGH%20STREETS\\_MA\\_RCH2015.pdf](http://www.riben.org.uk/Cluster_publications_&_media/BRITISH%20HIGH%20STREETS_MA_RCH2015.pdf)

54. The Commissioner considers that the public interest arguments in favour of disclosure are relatively strong, particularly when combined with the fact that so many other local authorities proactively provide this information, or at the least have provided it in response to requests. She considers that the fact so many other authorities disclose this data is also a strong indicator that the impact and the prejudice which the council considers will occur is not so great as to cause concern amongst other authorities to the extent that they withhold the requested data. This immediately raises concerns that the council's arguments are relatively weak.
55. As stated, there is a balance to be made between the prejudice identified by the council and the public benefits identified. On the one hand the council may recognise the benefit disclosing the information might bring, on the other it has strong concerns that disclosing the information will prejudice its ability to prevent fraudulent claims being made.
56. The Commissioner must make her decision based upon the evidence presented to her. The Commissioner notes that the opportunity to identify the relevant information on many of the premises has demonstrably been evidenced by the complainant. This significantly weakens the council's argument that a disclosure of the information might be so prejudicial to its ability to apply adequate security to claims.
57. Effectively, the 'proof of the pudding' is that many other authorities have disclosed the information without finding that this would be a significant issue. The use of the information cannot give rise to significant concerns amongst the majority of other authorities, albeit that they may have other methods of verifying the identity of customers they are providing refunds to.
58. Whilst the lists may be used for such purposes, the evidence from the complainant and from the fact that so many authorities continue to disclose the information, is that the likelihood, severity, and or frequency of the prejudice caused by this must be fairly low to local authorities who actively publish the information.
59. When balanced against the economic advantages such a disclosure might bring about, together with the fact that many genuine business owners may benefit from a disclosure of the information, the Commissioner considers that the public interest in the disclosure of the information outweighs the public interest in maintaining the exemption.

60. The Commissioner's decision is therefore that whilst the exemption in section 31(1) (a) of the Act was engaged by the information the public interest in the information being disclosed outweighs that in the exemption being maintained.

## Right of appeal

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61. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

62. 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.
63. 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 .....**

**Gerrard Tracey**  
**Principal Adviser**  
**Information Commissioner's Office**  
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**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**