

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 March 2018

Public Authority: Liverpool City Council
Address: Municipal Buildings
Dale Street
Liverpool
L2 2DH

Decision (including any steps ordered)

1. The complainant has requested information held by Liverpool City Council (the council) relating to business (non-residential) property rates data.
2. Whilst the council provided some information, it withheld certain information under section 31(1)(a) of the FOIA. It advised that the disclosure of the information would prejudice the prevention and detection of a crime. The council specifically referred to the illegal dumping of waste in empty commercial properties in the Liverpool area, stating that the disclosure of the information requested would result in further incidents of such crime.
3. The Commissioner has decided that whilst the council was correct to apply section 31(1)(a), the public interest in the information being disclosed outweighs that in maintaining the exemption in this instance.
4. The Commissioner requires the council to take the following steps to ensure compliance with the legislation:
 - The council should disclose the withheld information to the complainant.
5. 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

6. On 30 March 2017 the complainant wrote to the council via the 'whatdotheyknow' website and requested information in the following terms:
7. *'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-weve-tak...>, and FS50628978 - <https://ico.org.uk/media/action-weve-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'

8. The council responded on 27 April 2017 and provided the complainant with some of the information that he had requested.
9. On 28 April 2017 the complainant contacted the council to advise that the information that had been provided was not complete as it did not include the occupancy status of each property.
10. The 'whatdotheyknow' website does not include any further details about this particular request. However, the council has since provided the Commissioner with additional information which indicates that further correspondence was sent between the two parties in relation to this request.
11. The council informed the complainant that it had withheld information relating to the occupancy status of empty non-residential properties under section 31(1)(a).
12. The complainant subsequently made detailed representations to the council which it treated as an internal review.
13. The council provided the complainant with its internal review response on 10 May 2017. It advised that whilst the complainant's explanation as to the proposed use of the data was entirely legitimate and appropriate, it had gone on to consider the wider impact that the disclosure of details of vacant commercial properties may have.
14. The council stated that, since 2016, it had seen an increase in incidents of fly-tipping within areas of vacant commercial land as well as within vacant commercial properties. It had also considered the views of the Merseyside Police *'insofar as the disclosure of such information may give rise to additional incidences of criminal activities and anti-social behaviour.'*
15. The council confirmed that it was satisfied that the original assessment that section 31(1)(a) was engaged was appropriate. It also advised that when considering the public interest test, it was not the number of factors which supported either the withholding or disclosure of information that had been deemed relevant, but rather the weight of impact of each of those factors.
16. The council went on to say that, in this case, the impact on public health and finances arising from the unauthorised occupation and dumping of illegal waste are significant factors. It believed that disclosure of the requested information would result in substantial prejudice to public

authorities, private owners of vacant commercial property and the general public at large.

17. The council stated that it had a duty to ensure that it was acting in the best interests of relevant third parties and that it could not be sure that crimes would not be committed as a direct result of the release of the information that has been requested.
18. The council concluded that the original assessment that section 31(1)(a) was engaged was, and continues to be, correct and that the public interest weighed in favour of withholding the information in this instance.

Scope of the case

19. The complainant contacted the Commissioner on 9 June 2017 to complain about the way his request for information had been handled. He disagreed with the council's decision that the disclosure of the information could be linked to the crimes which had been described.
20. The Commissioner's investigation has focussed on whether the council was correct to apply section 31(1)(a) to the information that has been withheld relating to the occupancy status of non-residential properties.

Reasons for decision

Section 31(1)-law enforcement

21. Section 31 provides a prejudice based exemption which protects a variety of law enforcement interests. In this case, the council considers that section 31(1)(a) applies. This section states:

"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,"

22. Consideration of this exemption involves two stages. Firstly, in order to be engaged, the following criteria must be met:
 - i. 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;

- ii. 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
 - iii. it is necessary to establish whether the likelihood of prejudice being relied upon by the public authority is met - i.e., disclosure 'would' or 'would be likely' to result in prejudice.
23. Secondly, this exemption is qualified by the public interest, which means that the information must be disclosed if the public interest in maintaining the exemption does not outweigh the public interest in disclosure.
24. Given the above, the Commissioner will consider in the first instance whether the relevant criteria for the engagement of section 31(1)(a), as set out in the three limb test above, is satisfied. If this is the case, she will then go on to consider the public interest test.

Does the harm envisaged relate to an applicable interest?

25. The relevant applicable interests cited in this exemption are the prevention and detection of a crime.
26. The council has explained that the release of the occupancy status of the relevant properties would increase the risk of them being a target for criminals. It has gone on to refer specifically to the use of empty commercial properties for the illegal dumping of waste and fly-tipping, should information about their whereabouts be made publicly available.
27. The Commissioner is satisfied that the harm envisaged by the council does relate to an applicable interest, that being the prevention of crime and therefore the first criterion of the three limb test has been met.

Is there a causal relationship between the potential disclosure and prejudice to crime prevention?

28. The Commissioner must be satisfied that the nature of the prejudice is "real, actual or of substance" and not trivial or insignificant. She must also be satisfied that some causal relationship exists between the potential disclosure and the stated prejudice.
29. The council has provided the Commissioner with details of a number of incidents of fly-tipping and illegal dumping of waste in the Liverpool area which it states has increased considerably in recent years, notably within vacant commercial properties. By way of example, it has provided links to media coverage of what it describes to be recent 'prominent' cases of

waste dumping in the Liverpool area.¹ The council has also advised that it believes that some of the waste illegally dumped in Liverpool may have originated from overseas. It states that if it were to disclose details of vacant commercial properties, this would provide a source of data enabling individuals or organisations to identify locations where fly-tipping and illegal dumping could be carried out.

30. The Commissioner acknowledges that, in this instance, there is logic to the argument that the disclosure of a list of empty properties would provide those intent on committing crimes associated with such properties with an easy way to identify them. She therefore accepts that there is some causal relationship between disclosure of the withheld information and the prevention of crime. Moreover, the Commissioner is satisfied that the resultant prejudice which the council claims would occur can be correctly categorised as one that would be real and of substance.
31. Given that the Commissioner is satisfied that the prejudice being claimed is not trivial or insignificant, and that there is a relevant causal link, she has determined that the second criterion of the three limb test has been met.

The likelihood of prejudice

32. The council has been explicit in stating to the Commissioner that the disclosure of the withheld information would result in further incidents of illegal dumping of waste, together with incidents of nuisance and anti-social behaviour. The Commissioner has taken this to mean that the council believes that the disclosure of the withheld information 'would', as opposed to 'would be likely' to, prejudice the prevention of crime.
33. The Commissioner has issued guidance² which explains that the terms 'would' and 'would be likely' have separate and distinct meanings when considering the prejudice based exemptions contained within the FOIA.

¹ <http://www.liverpoolecho.co.uk/news/liverpool-news/1m-cost-liverpool-fly-tipping-11880798>

<http://www.liverpoolecho.co.uk/news/liverpool-news/exposed-look-inside-latest-foul-11879918>

² <https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf>

34. 'Would' means to be 'more probable than not' and that there is a more than 50% chance of the disclosure causing prejudice, even though it is not absolutely certain that it would do so.
 35. 'Would be likely' refers to a lower probability of prejudice occurring than 'would'. There must still be a real and significant risk of prejudice, even though the probability of prejudice occurring is less than 50%.
 36. In correspondence sent to the Commissioner on 21 December 2017 the council advised that whilst *'in previous responses prior to 2016 we would reasonably have disclosed the requested information, since early 2016 we have seen a considerable increase in incidents of illegal dumping and flytipping across the city, markedly so within vacant commercial properties.'*
 37. The Commissioner had originally inferred from the statement above that the council had disclosed details held of the occupancy status of non-residential properties in response to requests up to 2016. However, in a further response to the Commissioner dated the 23 January 2018, the council then advised that it had been aware of incidents of significant illegal dumping since February 2014 and that it had last disclosed details of the empty non-residential commercial properties in August 2014 (in response to an information request).
 38. The details provided in the council's response dated 28 January 2018 appear to concur with details held on the 'whatdotheyknow' website which indicate that the council began issuing refusal notices in response to requests for similar information after 2014. The Commissioner has therefore taken it to be that the council has not disclosed details of empty non-residential properties since 2014.
 39. The council also initially advised the Commissioner that it had knowledge of twelve significant incidences of fly-tipping and dumping of waste on, and within, vacant commercial properties in Liverpool since May 2016. However, in subsequent correspondence it provided the Commissioner with the following statistics:
 - nine significant incidents of large scale dumping of waste to date.
 - in excess of 87 medium level incidents identified, including the disposal of hazardous builders waste material.
-

- hundreds of lower level incidents.

40. Given the above, it is not entirely clear what precise number of significant incidents of illegal waste dumping have occurred in Liverpool, and over what period of time. However, the Commissioner has not deemed it necessary for the council to provide further clarification on this point. This is because she is sufficiently satisfied that the evidence available shows that, either way, there have been a number of significant incidents of illegal dumping of waste to date in the Liverpool area.

41. The council has confirmed that all the sites that it has referred to have previously formed part of empty property details disclosed in response to information requests. With regards to the dates that the details of the properties targeted were last published, the council has advised of the following:

'There is a natural 'churn' within any information provided in respect of the status of properties-commercial or domestic-as occupation can change from month to month. However, all of the properties subject to significant illegal dumping we included in one or more of the lists disclosed in response to requests up to and including August 2014. A number of the smaller scale sites were also included within previous responses.'

42. The council goes on to say that it believes it to be relevant that information previously disclosed also included details of the sites referenced in the above newspaper articles and has advised of the following:

'whilst a direct causal link cannot be evidenced, there is a clear correlation with such disclosures and use of this information by third parties intent on illegal dumping and flytipping.'

43. The Commissioner understands that fly-tipping and illegal dumping of waste (on a broader level, not just within empty commercial properties) is a problem that has affected many areas within the UK over the last few years. As might be expected, steps are being taken to try and address the problem.³

³ <https://www.gov.uk/government/news/new-steps-to-tackle-illegal-waste-and-fly-tipping-announced>

44. The large scale incidents reported by Liverpool do not appear to be unique to its city. For example, the following online media articles describe similar problems experienced in Staffordshire and the north east of England respectively over the same period of time:

<https://www.birminghammail.co.uk/news/local-news/lichfield-gkn-fire-criminal-gangs-13638098>

<http://www.bbc.co.uk/news/uk-england-41412857>

45. A House of Commons briefing paper 'Fly-tipping-the illegal dumping of waste'⁴ which was published on 21 June 2017 provides statistics which indicate that there has been a general increase nationally in the number of incidents of fly-tipping recorded year by year since 2012/13. Whilst this paper focuses primarily on household fly-tipping, it does also refer to the illegal dumping of waste by businesses, making reference to '*larger scale fly-tipping (more than a lorry load of waste), hazardous waste and fly-tipping by organised gangs.*'
46. It is also the Commissioner's view from the evidence available that the large scale illegal dumping of waste in empty warehouses and industrial buildings is likely to be carried out by organised criminals, rather than opportunist criminals. This view is supported by the arrest of a number of individuals in April 2017⁵ in relation to some of the specific crimes that have been described by the council (and to which it had provided links to newspaper articles).
47. The arrests made relate to an investigation which was carried out into the illegal dumping of 20,000 – 25,000 tonnes of waste at 17 sites across the Midlands, North West and the North East. Whilst reference is made to the sites in Liverpool described by the council as forming part of the investigation, this appears to have been a much larger operation of organised crime which covered a number of areas within the UK.
48. The Commissioner also notes a press release on the 'gov.uk' website dated 13 February 2018 which refers to the arrest of two men in

⁴<http://researchbriefings.files.parliament.uk/documents/SN05672/SN05672.pdf>

⁵ <https://www.liverpoolecho.co.uk/news/liverpool-news/two-arrested-over-illegal-waste-12927550>

connection to another nationwide waste crime investigation⁶, again involving the dumping of waste in a number of different areas in the UK.

49. The complainant has provided the Commissioner with certain statistical data he has collated which he argues shows that a disclosure of empty non-residential properties does not result in an increase in the level of crime committed.
50. The complainant states that whilst the number of public authorities that have disclosed details held of vacant non-residential properties as a consequence of his FOIA requests has increased from around 20% to 90%, there have been no known reports of any subsequent '*vacant-property-related crime wave*'. Although the Commissioner has been unable to verify the accuracy of the complainant's figures, she is aware that a large number of authorities have provided the data to the complainant in response to his request.
51. The complainant has also informed the Commissioner that, in response to information requests, Thames Valley Police and North Wales Police have provided him with information on incidents of crime that have been reported affecting empty commercial properties in their areas (he has advised that no other police forces recorded such data).
52. The complainant states that the information provided by North Wales Police indicate that the ratio of crimes in occupied v vacant commercial properties is almost 70:1, compared to an actual occupied v empty ratio of 6:1. He states that this suggests that an occupied property is therefore ten times more likely to experience an incident of crime than an unoccupied one.
53. With regards to the data provided by Thames Valley Police, the complainant argues that there appears to be no obvious correlation between the councils that do (or do not) provide empty property data and the recorded crimes committed on such property in each area. He has provided the following statistics to support his view:

'In 2015 Oxford had 4,038 commercial properties and suffered 2 cases of empty commercial property crime at a cost of £1,259. In comparison,

⁶ <https://www.gov.uk/government/news/nationwide-waste-crime-investigation-two-arrested-in-london>

they had 3,133 cases of crime committed in occupied business premises, at a cost of £507,956.

By comparison, Reading, with 5,659 commercial properties suffered 2 empty commercial property crimes that caused no damage at all.

Oxford refuses to publish under Section 31(1)(a) while Reading publishes regularly.'

54. The complainant does not agree with the council's belief that there was a connection between the disclosure of previous lists of empty properties and the incidents of illegal dumping of waste that it has referred to.
55. The complainant argues that it would not be possible to obtain the information required by such criminals from the data he has requested. He states that the data requested does not reveal the property size, access, buildings, parking areas, unbuilt space etc. He believes that a person could not ascertain the viability of a property for illegal dumping of waste just by looking at a list of empty properties.
56. The complainant also suggests that the cost of collating, cleaning and cross referencing empty property data to build a simple statistical data base of properties which could be suitable for the dumping of waste would be exceptionally large. He goes on to say that it takes a team consisting of a systems engineer, a data analyst and a data scientist to maintain and implement his current project which is dedicated to collating empty property data. He states that the cost implications of following this process to identify suitable properties to use for the dumping of waste and fly-tipping would be extremely high.
57. The Commissioner has taken into account the fact that the council last published a list of empty properties in 2014. The fact that properties which have been targeted up to the present time were included on lists previously published suggests that such properties are likely to have been empty for a considerable period of time.
58. The Commissioner believes it to be questionable that any individual who has obtained a list of empty properties disclosed by the council in 2014, or earlier, could be confident that this was still accurate and up to date and could be used to target appropriate empty properties for dumping of waste in 2016/2017. This, in the Commissioner's view, weakens the argument that there is a direct link between the previous disclosure of details of empty properties and the crimes which have recently occurred in the Liverpool area.
59. In addition, whilst the Commissioner notes the council's comment that Merseyside Police expressed the view that the disclosure of the requested information may give rise to additional incidents of crime,

there has been no statistical evidence provided from the police to support this view.

60. Having considered the information available, the Commissioner is not persuaded that the evidence provided by the council is sufficiently compelling to conclude that there is a direct link between the previous disclosures of details of empty properties which have occurred prior to August 2014 and the crimes described. Given this, she also does not agree with the council's assertion that the evidence available shows that the disclosure of the information in response to the complainant's request '*would result in further incidents of illegal dumping of waste together with incidents of nuisance and anti-social behaviour.*' The Commissioner therefore does not accept that the disclosure of the information requested would prejudice the prevention and detection of a crime.
61. Where the Commissioner does not accept that the public authority has sufficiently demonstrated that prejudice would occur, she will then go on to consider whether the lower level of prejudice '*would be likely*' to occur is applicable. It is important to note that this is of a relevance as the level of prejudice applied has an effect of any subsequent consideration of the balance of the public interest test. The more certain the prejudice, the greater weight it will carry when considering the public interest.
62. The Commissioner does accept that the opportunity for prejudice to arise is more than a hypothetical or remote possibility. The council has shown that the crime described does exist in the Liverpool area and she understands that should a list of empty properties become accessible to the criminals, it could help them to identify suitable properties for dumping waste. She also accepts that the location of Liverpool, which is easily accessible via a number of motorway links from other parts of the country and situated by a river (and docks), makes it potentially vulnerable to illegal dumping of waste from other areas and overseas.
63. The Commissioner is satisfied that the evidence provided by the council is sufficient to demonstrate that certain empty properties within its area are targets for the crimes described. The Commissioner accepts that the evidence from the council shows that there is an issue with larger scale fly-tipping in its area which potentially might be facilitated by the disclosure of the information that has been requested.
64. The Commissioner is therefore satisfied that the lower test of '*would be likely*' to prejudice has been met in this instance. She has therefore concluded that section 31(1)(a) is engaged and has gone on to consider the public interest test required by section 2(2) of the FOIA.

The public interest test

65. The test is whether *"in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information"*.

The public interest in the exemption being maintained

66. The council has provided a number of arguments in favour of withholding the information which are as follows:

- Public health impacts. The council states that the unregulated dumping of waste has a significant risk of harm to the public. It has advised that the waste illegally dumped on, and within, vacant commercial properties has included building and asbestos waste, medical waste, chemical waste and general refuse. It believes that the unregulated dumping of such waste in unsuitable locations can give rise to significant public harm.
- Nuisance and anti-social behaviour. The council states that Merseyside Police have raised concerns that the disclosure of this type of information would further exacerbate issues of nuisance and anti-social behaviour, which extends to the illegal storage and hiding of scrambler bikes which are subsequently used for the purpose of crime on the city's streets. It has advised that there have been a number of recent high profile incidences of injuries arising to the public as a result of such activities in Liverpool in recent months and this is considered to be a factor in providing potential locations to conceal such vehicles.
- The significant costs to public finances incurred as a result of illegal fly-tipping and dumping of waste on, and within, vacant commercial properties in Liverpool. The council refers to a number of significant incidents to date. The council has advised that substantial costs have continued to be incurred by the council in remediating such illegal dumping as it is the first statutory responder on such matters. It states that this requires additional resourcing in terms of staffing and vehicle movements and as well as incurring significant expense, it has a prejudicial impact on wider activities of the council in respect of waste management and maintenance of the environment.
- The impacts on owners of vacant properties. The council states that it will seek to recover the costs of any remediation works from owners of vacant commercial properties, delays of which impact on the provision of the council services for vulnerable residents and communities. In addition, the owners of such vacant

commercial properties will incur significant expense in response which may extend to include the forced sale and disposal of assets to enable the recovery of costs and expenditure incurred.

67. The council has advised the Commissioner that the factors described above have changed how it views the requests it has received for information relating to the occupancy status of non-residential properties.

The public interest in the disclosure of the information

68. The council has confirmed that it has considered public interest arguments in favour of disclosure, stating that it has taken into account those that relate to the following:

- The ability of third parties to identify vacant commercial premises for potential occupation.
- The ability of third parties to identify vacant commercial premises and, in turn, offer services to the owners of such premises.

69. The complainant had provided some explanation of the purpose of his request to the council. He stated that he was compiling a comprehensive time series data base of business activity across the UK which would require the dataset updated on a quarterly basis. He also advised that:

'In terms of Public Interest, the purpose of our use of the data requested is informing entrepreneurs and business seekers about opportunities in empty premises when they are advertised for new tenants. We combine local authority premises occupation data with other data (from the Valuations Office and ONS) to develop forward guidance on business potential in each empty business property.'

70. The complainant went on to say that combined data is made available via online commercial property leasing intermediaries as a free service to business seekers. He stated that his activity is supported by the Open Data Institute and that he has received funding from the EU Open Data Incubator to develop this service.

71. He has also advised the Commissioner that there is a public interest in economic development and improving opportunities for independent businesses and entrepreneurs which would far outweigh any concern that the release of the data identifying empty business properties may cause crime. He states that:

'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.'

72. The complainant has also explained that he is now able to use the data which approximately 90% of councils currently disclose in relation to vacant non-residential units. He has advised that commercial property developers, and inward investment teams at local authorities, are using vacancy and socio-economic analysis produced from the data he is publishing to guide investments and improve access to opportunities for independent businesses and entrepreneurs.
73. He has gone on to say that researchers who normally investigate access to residential housing have started looking at commercial vacancy data where entire office blocks have remained empty for decades (as 'land banks') pending conversion into residential homes. He refers to decision notice FS50628978⁷ which relates to a request made for similar information. He has advised that after that decision notice was issued, the Royal Borough of Kensington and Chelsea disclosed data relating to vacant non-residential properties. He states that this revealed that 22% of 2,885 office hereditaments are vacant in the council in comparison to less than 1% offered for rental. The complainant states that this discrepancy is of particular interest to researchers looking to understand property availability.
74. The complainant has also pointed out research: '*British High Streets: from Crisis to Recovery? A Comprehensive Review of the Evidence*'⁸ by Neil Wrigley and Dionysia Lambiri of the University of Southampton on behalf of the Economic & Social Research Council. He states that this review suggests 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 adding open data on this subject being made available for free. 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

⁷ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2013576/fs50628978.pdf>

⁸ http://www.riben.org.uk/Cluster_publications_&_media/BRITISH%20HIGH%20STREETS_MARCH2015.pdf

structures, and the constraints that having to fund use of commercial data imposes on research."

The Commissioner's position

75. 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.
76. If a public authority can establish that prejudice 'would' happen, the argument for maintaining the exemption carries greater weight than if they had only established that prejudice 'would be likely' to happen.
77. In this case the Commissioner has determined that only the lower standard of 'would be likely' to prejudice has been met. Whilst this lessens the weight of those arguments for maintaining the exemption, it does not necessarily mean that the balance of the public interest will then lie in favour of disclosure. This will be dependent upon a number of factors and the circumstances of the case under consideration.
78. In this instance the Commissioner has not been persuaded that the evidence provided by the council is sufficient to show a direct link between information disclosed in response to previous information requests and the crime described. However, she does accept that it is likely that information that reveals a property is empty will be useful to a criminal.
79. The Commissioner has taken into account the fact that the publication of a list of vacant properties by a council is not the only way that an empty non-residential property can be identified. She is aware that commercial websites can be searched for details of commercial properties for rent or purchase and that these details can include maps and /or photographs of the sites (which in itself may give clues to its current occupancy status). In addition, such adverts will be regularly updated and may also specify whether a property is available for immediate occupation. In those instances where it is unclear whether the sites are vacant or not, a motivated individual would be able to make checks on a property to identify whether that is the case or not.
80. The Commissioner is of the view that in most instances of organised crime, the occupancy status and security of a property would be checked prior to any break in. For the purposes of the crimes described by the council, the criminals are potentially looking for large properties, such as warehouses, which have been vacant for some time, that are in areas where they would not be noticed entering and leaving the

premises, and which can be used over a period time. The information requested by the complainant would not reveal any of these details, other than it is a non-residential property which was vacant at the time the list was published by the council.

81. The Commissioner also considers it to be the case that non-residential properties are generally easier to identify as being vacant than domestic properties. Often simply being locked up during the day with no obvious signs of activity will indicate potential for the property to be empty. If any shutters are down to aid the property's long term security, this will add to any suspicion that the property is vacant.
82. The complainant has also explained to the Commissioner that he was able to obtain the same information he is requesting that the council provide to him in relation to three different properties (situated in a different borough), using a search of sources such as the Valuation Office Agency, Companies House and estate agents via the internet. He states that it had taken him approximately 20 minutes to research and collate the information that he required, and this included the occupancy status of the each property.
83. The Commissioner considers that the examples provided by the council demonstrate that the sorts of crime described take place in spite of the fact that it currently does not disclose this information. The council has not been able to provide any details which would suggest any correlation between the amount of crime committed and the periods of time when it has, and has not, disclosed details of empty commercial properties.
84. The Commissioner has considered the evidence provided to her by both parties. She acknowledges that a list of empty commercial properties may have the potential to be used for criminal purposes. However, the fact that many other public authorities disclose the requested information suggests that, generally speaking, the likelihood, severity, and or frequency of such prejudice must be fairly low to those councils that publish the information. This includes authorities who are experiencing similar problems with large scale fly-tipping described by the council in this instance.
85. The Commissioner has also taken into account the statistics provided by the complainant which suggest that incidents of crime on vacant property tend to be rare and unconnected to any disclosures of lists of empty properties by local authorities. However, it should be noted that she has been cautious in the weight she has attached to such evidence, given that the figures only applied to two out of forty three police forces in the UK and neither covered the Liverpool area.

86. The Commissioner accepts each case should be considered in isolation. 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.
87. Having carefully considered all the information held in relation to this particular case, she is not persuaded that the evidence presented by the council makes it unique from the majority of other councils with regard to the potential prejudice caused as a result of the disclosure of the information. The large scale dumping of waste in empty properties is not unique to Liverpool and the rise in the number of such crimes recorded appears to apply to a number of areas within the UK.
88. It is the Commissioner's view that the statistics provided by the council fail to show any direct correlation between the disclosure of details of empty properties and the levels of crimes committed. Whilst the Commissioner acknowledges that the properties that have been targeted have been included on past lists of empty properties that have been disclosed, she has had some difficulty accepting the council's argument that this suggests that there is some link. Indeed, it is her view that, based on the information currently available, the likelihood of criminals using any of the lists of empty properties disclosed by the council prior to 2014 to commit the crimes referred to is very low. In the Commissioner's view, this weakens the council's arguments that the disclosure of the requested information would affect future levels of crime and would therefore prejudice the prevention and detection of a crime.
89. The Commissioner has also taken into account the fact that there is already sufficient opportunity for criminals to identify vacant non-residential premises. More importantly, there appear to be more appropriate means of establishing which properties would be suitable for the crimes which have been described in this instance.
90. Vacant properties will always be vulnerable to certain crimes and, whilst the Commissioner sympathises with the council's concern about the negative impact that such crimes have, in particular, in relation to the effect on public health and burden of costs of clearing large scale waste, it has not provided sufficient evidence to show that disclosing the information requested would have any direct effect on this.
91. The Commissioner has considered the public interest in favour of disclosure and views this to be relatively strong in this instance. The Commissioner is satisfied that the complainant has sufficiently demonstrated that there would be economic advantages from the

disclosure of the information which would be of interest to the wider public. Indeed, the disclosure of the information could provide the opportunity to bring certain properties back into use and may address some of the problems the council has suggested are experienced in Liverpool.

92. 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.
93. The Commissioner's decision therefore is that whilst the exemption in section 31(1)(a) of the FOIA is engaged, in this particular instance the public interest in the information being disclosed outweighs that in the exemption being maintained.

Right of appeal

94. 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

95. 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.
96. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF