

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 12 February 2019

**Public Authority:** Blackpool Council

**Address:** PO Box 4  
Blackpool  
FY1 1NA

### Decision (including any steps ordered)

---

1. The complainant has asked the Blackpool Council for a list of properties, specifically Homes in Multiple Occupation, located in the Blackpool's Talbot Ward, which are under consideration by the Council's Empty Properties Risk Group. The Council has refused the complainant's request in reliance on section 30(2) of the FOIA.
2. The Commissioner's decision is that Blackpool Council has properly applied section 30(2) of the FOIA to the requested information. The Commissioner has also decided that the Council has breached section 10 of the FOIA by failing to respond to the complainant's request within the twenty working day compliance period.
3. The Commissioner requires the public authority to take no further action in this matter.

### Request and response

---

4. On 28 June 2018, the complainant wrote to the Council and submitted a request for information using the following terms:

"I am writing to you under the Freedom of Information Act 2000 to request the following information from Blackpool Council's Additional License Team.

I request information on HMOs located in Talbot Ward to the west of Park Road, in particular the 300 or so properties that the new (empty properties at risk group) are looking into. Significantly the property

address and also the owner or managing agent to include an emergency/out of office contact number and email address”.

5. Having received no response to his request, on 9 August 2018, the complainant wrote to the Council and asked to be advised when he would receive its response.
6. On 28 August 2018, the Council wrote to the complainant and advised him that it had processed his complaint as an internal review. The Council informed the complainant that it had upheld his complaint and it apologised to him for failing to respond to his request.
7. The Council told the complainant that it had liaised with the service which had compiled the list of properties and that it had been advised that the list referred to is a working document in which some of the addresses will have been removed and therefore the list is significantly reduced.
8. The Council advised the complainant that the information he has requested is being withheld under section 30(2)(a) of the FOIA, on the grounds that its disclosure would be likely to prejudice the ongoing investigations into the properties. The Council said, “We have considered the public interest in the disclosure of this information and it is our view that the public interest lies in the Council being able to conduct its investigations without prejudice. Therefore the public interest in disclosure does not outweigh maintaining the exemption”.

### **Scope of the case**

---

9. The complainant contacted the Commissioner on 14 August 2018 to complain about the way his request for information had been handled.
10. The Commissioner advised the complainant that her investigation would focus on the Council’s reliance on section 30(2) of the FOIA to refuse to disclose the information he has asked for.

### **Reasons for decision**

---

#### **Section 30 – Investigations and proceedings conducted by public authorities**

11. Section 30 states –

“(1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of—

- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained—
- (i) whether a person should be charged with an offence, or
- (ii) whether a person charged with an offence is guilty of it,
- (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
- (c) any criminal proceedings which the authority has power to conduct.
- (2) Information held by a public authority is exempt information if—
- (a) it was obtained or recorded by the authority for the purposes of its functions relating to—
- (i) investigations falling within subsection (1)(a) or (b),
- (ii) criminal proceedings which the authority has power to conduct,
- (iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, ..."
12. Section 30 is a 'class based' exemption and as such it is not necessary to show that disclosure of the withheld information would or would likely result in any prejudice. It is enough that the information sought by the request should fall within the particular class of information described by the exemption.
13. The Council has confirmed its reliance on section 30(2)(a)(iii) of the FOIA to withhold the information the complainant has asked for.
14. It is the Council's view that section 30(2)(a)(iii) applies to the withheld information by virtue of powers conferred on the Council to undertake investigations on its own accord or in conjunction with other agencies or organisations. The Council lists the following legislative provisions under which it conducts investigations of the properties referred to in the complainant's request:
- Housing Act 2004, section 239
  - Environment Protection Act 1990
  - Miscellaneous Provisions Act 1982
  - Building Act 1984, section 95 – in respect of structural collapse.

15. Additionally the following provisions are cited by the Council as they concern investigations carried out by the Police and Fire and Rescue Services with whom the Council works:
  - Police and Criminal Evidence Act 1984, section 17
  - Regulatory Reform Order (Fire Safety) 2005, section 27
16. In addition to its reliance on section 30(2)(a)(iii), the Council has advised the Commissioner that it also relies on sections 30(2)(a)(iv) and 30(2)(a)(iv).
17. The Council considers that section 30(2)(a)(iv) applies on the grounds that civil proceedings may be brought by or on behalf of the authority arising from its investigations. The Council says that section 30(2)(a)(iv) applies because the agencies or organisations bring civil proceedings against owners of the properties following investigations where the owner fails to comply with legislative or public task enforcement notices. It considers that disclosure of the information prior to investigation would prejudice the Council's ability to take civil proceedings.
18. The Council is relying on section 30(2)(a)(ii) in respect of those investigations it conducts which might result in the authority undertaking criminal proceedings.
19. The withheld information is comprised of a spreadsheet which identifies the addresses of properties in each of the Council's Wards which are considered to be actual or potential problematic properties. The spreadsheet records only the addresses of properties and not their owners or managing agents.
20. The Council accepts that it might be able to undertake a case-by-case search for some additional information by interrogating its Council Tax and Business Rates systems but it advised the Commissioner that it does not hold details of emergency or out of office contact details or email addresses.
21. The properties, whether occupied or not, are considered as being 'problematic' for a variety of reasons such as criminal activity, health and safety issues, fire setting or for providing poor standard accommodation that fails to meet Health and Safety Housing Standards for rented homes.
22. The Commissioner noted that certain properties on the Council's spreadsheet highlighted in green or red. The Council has explained that green indicates the property has been investigated and does not require further action, and red indicates that the property has been investigated and may require further action.

23. The Council has advised the Commissioner that the spreadsheet it has provided for her consideration is not the one held at the time the complainant made his request. The Council says that the spreadsheet is an amalgamation of information provided by the Police, Fire Service and other council services. It is an operational or 'live' working document where problem properties are continually being removed or added to.
24. Under the legislation listed above, the Council and/or its partner agencies and organisations has a duty to investigate the properties listed on the spreadsheet before determining whether further action or steps need to be taken. As noted above, such steps may include civil proceedings or criminal prosecution.
25. The Commissioner has considered the representations made by the Council in support of its application of section 30(2)(a). She has also examined the current or 'snap-shot' information which the Council held at the time the Commissioner made her enquiries and which the Council argues falls within the scope of the complainant's request.
26. The Commissioner is satisfied that the withheld spreadsheet contains information which is held by the Council in respect of investigations which the Council undertakes to satisfy certain of its statutory functions. She is therefore satisfied that the exemption provided by section 30(2)(a) is properly engaged. The Commissioner must now consider whether the public interest is best served by disclosing the spreadsheet or by its continued withholding.

*The public interest test*

27. The Commissioner gives significant weight to the disclosure of information which provides accountability and transparency in respect of the decisions and actions taken by public authorities.
28. In this case, the Commissioner acknowledges that disclosure of the list of problem properties would go some way in assuring the public that the Council, in conjunction with its partner organisations, is carrying out statutory investigations to improve the housing and property standards in Blackpool, and is endeavouring to ensure a safer environment for its residents and visitors.
29. The Commissioner also acknowledges that disclosure of the spreadsheet would enable the public to better understand how the Council's resources are utilised.
30. Weighed against the above is the strong public interest that must be given to ensuring the Council and its partner agencies are able to work together within their respective legislative frameworks without interference and prejudice to their investigations.

31. It is clear to the Commissioner that disclosure of the spreadsheet would jeopardise the strong working relationships which exists between the Council and its partner organisations and agencies. This in turn would diminish the Council's ability to perform its statutory functions with regards its problem properties.
32. The Commissioner cannot ignore the fact that the requested information can only be provided from a 'live' and constantly changing spreadsheet. The disclosure of this snap-shot information could alert the public to investigations which, at that time, had not yet taken place. This might have placed the Council's staff in situations which would negatively impact their health and safety and the effectiveness of their investigations.
33. Where investigations have already taken place, disclosure of the spreadsheet would identify properties which have been identified for potential criminal proceedings. Placing this information into the public domain could result in the disclosure of the identities of the owners of those properties and this would likely constitute a breach of the Data Protection Act 2019 by virtue of the disclosure of special category data.
34. The Council points out that it regularly discusses property standards within Blackpool at regular intervals, where the issue of problem properties is discussed at meetings involving the Council's Chief Executive, council staff and the requester. The Council considers that such discussions place information about problem properties in to the public domain and therefore goes some way in meeting the public interest in this matter.
35. Having considered the respective public interest factors, the Commissioner has determined that greater weight should be given to those factors which favour the continued withholding of the requested information. The Commissioner has therefore decided that the Council has properly applied section 30(2) to the information which the complainant has asked for.
36. The Commissioner notes the Council's representations made in respect of its subsequent application of section 30(2)(b) and 31 – Law enforcement. In view of her decision above, the Commissioner has not been required to consider these additional exemptions.
37. The Commissioner notes that the Council made its substantive response to the complainant well in excess of the twenty working day compliance period required by section 10 of the FOIA. The Commissioner therefore finds that the Council has breached that section.

- 38. Right of appeal
- 39. 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)

- 40. 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.
- 41. 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**