

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 May 2021

Public Authority: East Suffolk Council
Address: East Suffolk House
Station Road
Melton
Woodbridge
IP12 1RT

Decision (including any steps ordered)

1. The complainant has requested information about businesses applying for Covid-19 grants in the IP18 postcode. The Council refused to disclose the information, citing section 31(1)a of the FOIA – disclosure would, or would be likely to, prejudice the prevention and detection of crime.
2. The Commissioner's decision is that East Suffolk Council has correctly engaged section 31(1)a of the FOIA, and no steps are required.

Request and response

3. On 13 May 2020 the complainant wrote to East Suffolk Council and requested information in the following terms:

"I would like to formally submit a freedom of information request to find out the identities of the self catering holiday lets that we have granted £10,000 each in the ip18 post code"

4. The Council responded on 9 June 2020, refusing to provide the requested information, citing sections 31(1)(a) (prevention or detection of crime), and 38 (health and safety) of the FOIA as its basis for doing so.
5. The complainant requested an internal review and the Council responded on 17 July 2020. It removed its reliance on section 38 but continued to apply section 31(1)(a) to the withheld information.

Scope of the case

6. The complainant contacted the Commissioner on 22 July 2020 to complain about the way his request for information had been handled. He had concerns about the eligibility of those applying for grants and considered it in the public interest to know if any were being fraudulent.
7. The Commissioner considers the scope of the case to be whether East Suffolk Council was entitled to rely on section 31(1)(a) to withhold the requested information.

Reasons for decision

Section 31(1)(a) – (prejudice to the prevention or detection of crime)

8. The exemption under section 31 of the FOIA is designed to protect the law enforcement activities of public authorities. In this case, the Council has applied section 31(1)(a) of the exemption:

'Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice -

(a) the prevention or detection of crime'

9. For a prejudice based exemption, such as section 31(1)(a), to be engaged there must be likelihood that disclosure would cause prejudice to the interest that the exemption is designed to protect, which in this case is the prevention or detection of crime.

The Commissioner had identified a number of steps to determine the strength and validity of the anticipated prejudice. These are:

1. One of the law enforcement interests listed in section 31 must be harmed by the disclosure
 2. The prejudice claimed must be real, actual or of substance.
 3. The public authority must be able to demonstrate a causal link between the disclosure and the harm claimed.
 4. The public authority must then decide what the likelihood of the harm actually occurring is, i.e. would it occur, or is it only likely to occur?
10. For context, the Government has introduced a range of measures including financial benefits to support holidays lets affected by the Covid-19 pandemic. These include the grant information that forms the basis of this request.
 11. The Council has explained that the withheld information detailing the individual lets that have been awarded grants is currently subject to active local and national anti-fraud investigations. Daily and weekly work is taking place with the National Anti-Fraud Network, Credit Industry Fraud Avoidance Systems, the National Crime Agency and others. On this basis the first step of the test is met. Given that the investigations are currently active the Commissioner is satisfied that the prejudice claimed is both real and of substance. She notes there has been wide press coverage of the same.
 12. The Council has explained to both the complainant and the Commissioner that providing details of which businesses have received grants will put those businesses under scrutiny, and enable motivated individuals to investigate whether these grant claims are genuine. This is in fact a declared intention of the complainant himself, and whilst the FOIA is motive and applicant blind, it is likely that the information would be used by individuals to investigate potential fraudulent activity and this would compromise official investigations.

13. The Council goes on to say that the information could also be used by individuals to identify eligible businesses that have not applied for the grant, and then make fraudulent claims on their behalf. This is a real possibility as this has happened elsewhere nationally, and has come to light when the genuine eligible business has subsequently applied itself.
14. The Council also notes that there is a risk that knowledge of fraudulent claims, or assumed fraudulent claims, may expose businesses to physical damage or individuals to malicious behaviours. Whilst the Council reports that this has not yet happened locally, it believes that the risk of it happening through disclosure of the information is real.
15. Taking into account these arguments, the Commissioner accepts that there is a causal link between disclosure of the withheld information and the harm envisaged. She considers that the compromise caused to the current official investigations and the possibility of fraudulent claims being made would be more likely than not to occur, and the exposure of businesses and individuals to crime/malicious intent is a real possibility. Consequently, disclosure of the withheld information would prejudice both the prevention and detection of crime and therefore section 31(1)(a) is engaged.
16. Section 31 is subject to the public interest test. This means that even if the exemption is engaged, consideration must be given as to whether the public interest in maintaining the exemption outweighs the public interest in disclosure.
17. The complainant considers that disclosure of the information would enable him and others to identify and expose businesses that have fraudulently applied for the grant, and that disclosure would be in the public interest in order to provide greater transparency and to safeguard public funds. The complainant is a local Councillor with a keen interest in the matter, and has stated that information released to him would only be used to track down such fraud. However, disclosure of information under the FOIA is a disclosure to the world at large and public authorities must adopt this approach when considering any requests. Therefore, the complainant's motivations for making this request and his intentions in relation to any information disclosed are not directly relevant here.
18. The Council recognises that the economic factors concerning COVID-19 are a matter of considerable public interest both local and nationally. The economic impact on the tourist industry is of particular importance to the area as it is heavily reliant on such investment. Knowing that businesses are receiving funding that is due to them will help

communities understand how they are being supported by the government and aid transparency regarding the allocation of funding. It will also enable the wider public to understand how government grant schemes are assisting local business during such economic hardship, including where and in what sectors. Disclosing the information would enable the public to better understand government and council decision-making about factors which affect their lives.

19. The Council's arguments in favour of maintaining the exemption are inherent in the prejudice that it has already described as a result of disclosure – the Council's ability, and those of partner agencies to detect and prevent crime would be seriously compromised. The Council has stated that the information is actively being used in local and national anti-fraud investigations, which demonstrates that the concerns raised by the complainant are real. However these concerns are being investigated and to disclose the information at this time may prejudice these investigations. It could also increase fraud and criminal behaviour by enabling fraudulent claims supposedly from businesses that have not yet applied for the grant, or result in the targeting of perceived fraudsters causing damage or harm to properties or individuals. The Commissioner therefore determines that the public interest in protecting the Council's and partner agencies' ability to prevent and detect crime outweighs the public interest in transparency, and thus she concludes that the public interest in the maintenance of the exemption outweighs the public interest in favour of disclosure.

Right of appeal

20. 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@justice.gov.uk

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

21. 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.
22. 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

Ben Tomes
Team Manager
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SK9 5AF