

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 April 2023

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

Decision (including any steps ordered)

1. The complainant requested information relating to Business Improvement Districts (BIDs). East Suffolk Council (the "council") disclosed some information and withheld other information under the exemptions for law enforcement (section 31), personal data (section 40) and information provided in confidence (section 41).
2. The Commissioner's decision is that the council correctly withheld the information under section 31(1)(a) of the FOIA and that the public interest favours maintaining the exemption. The Commissioner does not require the council to take any steps.

Request and response

3. On 20 December 2022 the complainant wrote to East Suffolk Council (the "council") and requested the following information (the council's numbering):

"(1) A complete list please of all the BID Levy payers for Felixstowe.

If above too vague, to use the BID legislation definitions.

Felixstowe Business Improvement District (BID), for which East Suffolk Council is the Billing Authority.

I request the details of all the hereditaments liable to pay the Felixstowe BID levy, that the Council is (or has been) required to invoice and collect the levy from. Please provide the following:

- Hereditament address
- Business Name
- Hereditament Rateable Value on which the BID levy is based
- Hereditament Description in the Government Business Rates List
- The amount billed annually for each hereditament

(2) Is the BID registered for VAT? If yes, how is the VAT accounted for when collecting BID Levy payment?

Experience Guildford in its late filed accounts with Company House shows a sharp increase in debtors. This implies a sharp increase in BID Levy payers who either can't pay or won't pay the BID Levy. Questions were asked at the BID AGM, which the board refused to answer, the meeting then declared closed to prevent further questions.

(3) As the body charged with collecting the BID Levy, is a similar rise seen for Felixstowe BID? If yes, the sum please and how that compares with the previous year."

4. The council disclosed the information requested in 1 for council owned properties. It withheld the remaining information under the exemptions for law enforcement (section 31), personal data (section 40) and information provided in confidence (section 41). The council disclosed information in response to parts 2 and 3 of the request.

Reasons for decision

5. The complainant considers that the council wrongly withheld some of the information requested in part 1 of their request. This section sets out the Commissioner's consideration of the matter.

Section 31 – law enforcement

6. The council withheld information in part 1 of the request that did not relate to council owned properties under section 31(1)(a).

7. 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,”

8. The council has explained that Business Improvement Districts (BIDs) are partnerships between local businesses and local authorities that are regulated by the Local Government Act 2003 and Business Improvement Districts (England) Regulations 2004 (the BID Regulations). It has clarified that the Felixstowe BID is funded by a levy charged to business ratepayers in the BID area. The council has confirmed that it has a duty under regulation 15 of the BID Regulations to “provide for the imposition, administration, collection, recovery and application of the BID levy”. It has explained that the use of the BID levy is governed by a limited company completely independent of the council that makes decisions on how funding received will be used.
9. The council has clarified that the requested BID levy payer data is derived from, is synonymous with, and cannot be extricated from national non-domestic ratepayer data, also known as business ratepayer data. It has confirmed that occupation of a business premises will give rise to both a business rates bill and BID levy charge for that property.
10. In relation to its application of section 31(1)(a), the council has identified a number of areas where it considers that the release of the withheld information would result in an increased risk of crime. These are:
- Physical property crime or civil disorder (e.g. arson, vandalism, squatting)
 - Fraud targeting empty property.

- Fraud identifying and targeting the business.
 - Fraud against the council using the business details,
 - Fraud against other public bodies using the business details.
 - Fraud against third parties (such as customers, creditors or suppliers) using the business details.
11. The council has explained that (for example) the request asks for information identifying landlords “if there is no currently a business in the premises”. In the council’s view, this effectively asks for information that identifies whether a property is empty or not and empty properties carry an increased risk of physical crimes and property fraud. The council considers that, if disclosed, the presence of a readily available, pre-defined list of empty properties would increase the ease with which a local criminal could identify a target and cause harm.
 12. The council has further argued that empty properties are more susceptible to property fraud, where fraudsters operating remotely may falsely register or submit false information to the Land Registry in an attempt to take control of a property.
 13. The council has confirmed that public authorities responsible for crime prevention recognise that businesses are vulnerable to fraud in a number of ways, with potential fraud losses both to a business itself or to other parties who deal with it such as creditors, suppliers or customers. The council has argued that business information can be misused to divert payments, to submit falsified invoices or to target and defraud an identified business.
 14. The council has confirmed that it may use business rates information as a form of validation when dealing with local businesses. It has explained that, in particular, validation against business rates data when processing grants to local businesses is an important aspect of fraud prevention. The council has confirmed that it subscribes to the National Anti-Fraud Network (NAFN) and routinely receives alerts with examples of business impersonation fraud, where an individual fraudulently pretends to represent a business occupying a given premises and requests amendments to details of that business.
 15. The council has also provided the Commissioner with a specific example of an attempted fraud which involved the use of information equivalent to the withheld information.
 16. In addition to the arguments above the council also referred to a number of decision notices in which the Commissioner concluded that

the exemption had been correctly engaged in respect of equivalent requested information.

17. In reaching his conclusions in this case the Commissioner has referred to the decision notices cited by the council and to other decision notices in which section 31(1)(a) has been applied to requests for equivalent business rates information. He considers that the conclusions reached in those cases are transposable to this case¹.
18. Having considered the available evidence the Commissioner is satisfied that disclosing the information would increase the likelihood of fraudulent activity. The Commissioner, therefore, finds that the chance of prejudice being suffered from disclosure of the requested information is more than a hypothetical possibility; it is a real and significant risk. As he has decided that the exemption in section 31(1)(a) is engaged he has gone on to consider the public interest test.

The public interest in disclosure

19. The council has acknowledged that there is a general public interest in promoting transparency and accountability, which in turn promotes public engagement and understanding by showing how public authorities are delivering their responsibilities.
20. The council has further argued that releasing the information may allow individuals with local knowledge to provide corrections if any listed ratepayers are no longer occupying a property. This would assist in ensuring correct taxes are paid.
21. The complainant has argued that other local authorities have disclosed the information requested, suggesting that the council's approach to transparency is out of step with other, similar, bodies.

The public interest in maintaining the exemption

22. The council has argued that there is a general public interest in preventing crime which includes preventing access by criminals to information that could be used to assist them in their crimes.

¹ See: <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022981/ic-171054-h6z6.pdf>; <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4023309/ic-179645-j1j9.pdf>; <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4020956/ic-137696-l7b4.pdf>

23. The council has also argued that the sums of money involved in national business and economic regeneration grant schemes are significant and loss of these funds via fraud would be a loss to the public purse.
24. The council has confirmed that the withheld information is unlikely to be available elsewhere in a reliable format. It considers that this would be a deterrent to fraudsters since without an existing dataset the time it would take to collate reliable business data from existing data sources is significant and likely to result in incomplete data.

Balance of the public interest

25. The Commissioner recognises that it is for individual public authorities to decide how to handle requests for information; however, he acknowledges that, where an authority's approach to transparency appears out of step with neighbouring authorities, with no justification, this might provide grounds for concern.
26. In this case the complainant has argued that other authorities have disclosed the same information which is being withheld by the council. The Commissioner put this to the council and the council has provided detailed submissions which set out its reasoning for withholding the information. He does not, therefore, consider that this argument carries great weight.
27. Moreover, beyond the general public interest in transparency, the Commissioner is not aware of any specific public interest arguments in favour of disclosing the information requested, at least none which would counterbalance the public interest in preventing the fraud which disclosure would be likely to cause. It is not apparent what legitimate interests would be served by placing the information in the public domain.
28. Conversely, the Commissioner considers that there is a very strong public interest in protecting the law enforcement capabilities of public authorities. When considering the public interest in preventing crime, it is important to take account of the consequences that can reasonably be anticipated.
29. Having considered the council's and the complainant's submissions and referred to the conclusions reached in the decision notices referred to in paragraph seventeen above, the Commissioner has concluded that the public interest in maintaining the exemption at section 31(1)(a) outweighs the public interest in disclosure. The council has, therefore, correctly relied on section 31(1)(a) in this case.

30. As he has concluded that the council correctly applied section 31(1)(a) to withhold the information in this case the Commissioner has not gone on to consider its application of section 40 and section 41.

Right of appeal

31. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

32. 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.
33. 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

Christopher Williams
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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SK9 5AF