



Neutral citation number: [2022] UKFTT 514 (GRC)

Case Reference: EA/2022/0437

**First-tier Tribunal  
General Regulatory Chamber  
Information Rights**

**Determined on the papers**

**On 12 July 2023  
Decision given on: 31 July 2023**

**Before**

**TRIBUNAL JUDGE C GOODMAN  
TRIBUNAL MEMBER S SHAW  
TRIBUNAL MEMBER D SIVERS**

**Between**

**VAL BLAKE**

Appellant

**and**

**THE INFORMATION COMMISSIONER**

Respondent

**Decision: The appeal is dismissed.**

**Decision Notice IC-196429-S2X5 is in accordance with the law. No further steps are required.**

## **REASONS**

### **Background**

1. On 27 May 2022, the Appellant made a request for information under the Freedom of Information Act 2000 (“FOIA”) to the London Borough of Hounslow (“the Council”) which she clarified on 20 June 2022 as follows:

“Under the freedom of information (F.O.I) act 2000, please find an attachment containing a list of full house addresses and postcodes including property images within the Chiswick area, with regards to my request for assistance with verification of empty abandoned residential properties, current ownership status & registration (registered or unregistered) status for the attached addresses list”.

(“the Request”)

2. The Appellant attached to the Request a list of eight properties in Chiswick, west London, giving address and postcode and some photographs.
3. The Council interpreted the Request as a request for information held by the Council about the ownership status of the properties and whether they were assumed empty or abandoned. The Council refused to provide the requested information on the grounds that it was exempt pursuant to section 31 FOIA (law enforcement) and section 40 FOIA (personal data).
4. The Appellant confirmed that she was seeking information to verify whether the eight properties were empty and abandoned, and requested internal review. On internal review, the Council withdrew its reliance on section 40, but continued to rely on section 31 to refuse to disclose.
5. The Appellant complained to the Commissioner. The Council provided the Commissioner with a copy of the withheld information i.e. the information it held about the ownership status of the eight properties and whether or not they were occupied. The Council accepted that there was a public interest in disclosing the withheld information in terms of increasing transparency and giving an opportunity for unused buildings to be used, but submitted that this was outweighed by the public interest in preventing crime and anti-social behaviour, limiting criminal knowledge of vacant properties, maintaining privacy, and facilitating ongoing and future investigations.

### **The Decision Notice**

6. On 8 December 2022, the Commissioner issued Decision Notice IC-196429-S2X5 which held that the Council was entitled to rely on section 31(1)(a) FOIA to refuse to disclose the withheld information. No further steps were required.
7. In the Decision Notice, the Commissioner transposed its reasoning from Decision Notice FS50786336 dated 24 May 2019 in which the Commissioner found that the London Borough of Hackney was entitled to refuse to provide a list of vacant residential and commercial properties in its area in reliance on section 31(1)(a). The Commissioner also relied on the First-tier Tribunal decision in *Sheffield City Council v Information Commissioner and Gavin Chait* (EA/2018/0055) where the Tribunal found that Sheffield City Council could refuse to disclose business rates data for properties in its area, including whether properties were occupied or vacant, in reliance on section 31(1)(a).

8. The Commissioner concluded that:
  - a. the exemption in section 31(1)(a) was engaged because disclosure of a list of empty properties would help individuals intending to commit crimes associated with those properties; and
  - b. while the Appellant had genuine personal reasons for requesting the information, there was a clear public interest in protecting the public from such crimes.

### **The Appeal**

9. The Appellant appealed to the Tribunal. She made the following points:
  - a. she did not have fraudulent or criminal intentions; her sole purpose was to identify an empty property to restore because her current living conditions were unsafe and overcrowded and she was struggling with mental and physical health conditions;
  - b. she had been encouraged to request the information by Council staff; and
  - c. the disclosure of the withheld information would not increase the likelihood of vandalism because the properties were visible from the road.
10. In Response, the Commissioner relied on the Decision Notice. The Commissioner submitted that:
  - a. there was no reason to doubt the Council's assurance that disclosing the withheld information might lead to an increase in crime, squatting and anti-social behaviour;
  - b. although the properties were visible from the road and disclosure of the withheld information was not likely to prejudice the prevention of opportunistic property crime, the provision of a ready-made list of vacant properties would make it easier for crimes to be committed, as recognised by the Tribunal in the *Sheffield* case; and
  - c. disclosure of information under FOIA was disclosure to the public as a whole.
11. In Reply, the Appellant said that she would not disclose the requested information to anyone, not least because she suffers from social anxiety.

### **Determination on the papers**

12. All parties consented to this matter being dealt with on the papers and the Tribunal decided that it was fair and in the interests of justice to do so.

13. In reaching its decision, the Tribunal took into account all the evidence and submissions before it, whether or not specifically referred to in this Decision. The Tribunal had before it an open bundle of 90 pages and a small closed bundle containing the withheld information. A Registrar ordered on 4 May 2023 that the withheld information and the closed bundle be held by the Tribunal pursuant to Rule 14(6) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 on the basis that they would not be disclosed to anyone except the Commissioner and the Council.

## **The Law**

### ***Freedom of Information Act 2000***

14. Section 1(1) FOIA provides that:

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

15. Section 2(2) provides that:

“In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –

(a) the information is exempt information by virtue of a provision conferring absolute exemption, or

(b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

16. Section 31(1) provides 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”

17. Section 31(1)(a) is not an absolute exemption and is therefore subject to the public interest test in section 2(2)(b).

18. Section 31(1)(a) is a prejudice based exemption. In *Hogan and Oxford City Council v the Information Commissioner* (EA/2005/0026 and 0030), the First-tier Tribunal suggested three steps in approaching the prejudice test (at paragraphs 28-36):

- a. identify the applicable interests within the relevant exemption;
  - b. consider the nature of the prejudice claimed: the decision maker must show that the prejudice is “real, actual or of substance” and that “some causal relationship exists between the potential disclosure and the prejudice” which is more than mere assertion or belief; and
  - c. establish the likelihood of prejudice and whether disclosure “would” or “would be likely to” prejudice. Disclosure “would prejudice” if prejudice is more likely than not. Disclosure “would be likely to prejudice” if there is “more than a hypothetical or remote possibility; there must be a real and significant risk”. The “would prejudice” test places a much stronger evidential burden on the public authority.
19. The public interest must relate specifically to the relevant exemption. It must be assessed in all the circumstances of the case, and at the time when the public authority makes its initial decision on a request for information (*Montague v Information Commissioner and the Department of International Trade* [2022] UKUT 104 (AAC)). As a general rule, the public interest will diminish over time [*Hogan*, paragraph 58]. The greater the likelihood of prejudice, the more likely that the balance of public interest will favour maintaining the exemption [*Hogan* paragraph 35]. The motive of the applicant is not relevant.
20. The Tribunal took into account the *Sheffield* case and the case of *Voyias v Information Commissioner & London Borough of Camden* (EA/2011/0007), while noting that neither were binding upon us. The *Voyias* case was referred to in Decision Notice FS50786336, the reasoning from which had been transposed by the Commissioner into the Decision Notice under appeal in this case. In the *Voyias* case, the appellant had asked for a list of vacant properties in Camden. The Tribunal found that section 31(1)(a) was engaged, but that the balance of public interest lay in favour of disclosing the information.

### ***Powers of Tribunal***

21. The powers of the Tribunal in determining this appeal are set out in s.58 FOIA, as follows:
- “(1) If on an appeal under section 57 the Tribunal considers -
- (a) that the notice against which the appeal is brought is not in accordance with the law, or
  - (b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,
- the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner, and in any other case the Tribunal shall dismiss the appeal.

(2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.”

22. The Tribunal stands in the shoes of the Commissioner and takes a fresh decision on the evidence before us. The Tribunal does not undertake a review of the way in which the Commissioner’s decision was made.

## Discussion

23. The reasons for the Tribunal’s decision are set out in full below; there is no Closed Annex. Nothing in this Decision should be taken as confirming whether the information held by the Council about the eight properties indicates that they are or are not occupied.
24. The Tribunal accepted the Council’s interpretation of the Request as set out in paragraph 3 above. This interpretation was not disputed by the Appellant.

*Is section 31(1)(a) engaged?*

25. In considering whether the exemption in section 31(1)(a) is engaged, the Tribunal took into account that, as explained by the Council to the Appellant, disclosure of information under FOIA amounts to publication “to the world”. We have no reason to doubt the Appellant’s assurance that she would not disclose the withheld information to anyone else. However, by law, disclosure under FOIA cannot be made subject to an undertaking not to disclose; the legal position is as set out in *Hogan*:

“When considering the existence of ‘prejudice’, the public authority needs to consider the issue from the perspective that the disclosure is being effectively made to the general public as a whole, rather than simply the individual applicant, since any disclosure may not be made subject to any conditions governing subsequent use.” [paragraph 31]

26. The Tribunal applied the law as set out in paragraphs 14 to 20 above, while noting that other First-tier Tribunal cases are not binding upon us. We adopted the three steps set out in *Hogan*.
27. The applicable interests in section 31(1)(a) FOIA are the interests of the public in preventing and detecting crime.
28. The Tribunal found that there is a causal relationship, which is more than mere assertion or belief, between release of the withheld information and criminal activity. If the Council releases information about the ownership status and occupancy of the eight properties, it is likely that they will be targeted by individuals looking to break into empty properties and that this will result in them being targeted for criminal activity such as criminal damage, theft or “stripping” of items of value, cannabis farming and anti-social behaviour offences. That prejudice is real, actual and of substance.

29. While neither the Council nor the Commissioner produced evidence to support their assertions about the link between disclosure of the withheld information and criminal activity, the Tribunal noted the findings of the Tribunals in the *Voyias* and *Sheffield* cases, and in other cases referred to in those cases, which were based on substantial evidence, including from the police and council officers. Those Tribunals concluded that a causal link existed between disclosure by a local authority of information about vacant properties in their area and the commission of crimes, and that there was a real and significant risk that such crimes would occur if the information were released.
30. In reaching this conclusion, we took into account that the information requested in the *Sheffield* case related to non-residential properties. We disregarded crimes identified by the Tribunal in that case such as rates fraud, and illegal raves and dumping which are more likely to occur in business properties. We disregarded opportunistic crimes such as vandalism and arson.
31. We took into account the Appellant's submission that release of the withheld information would not increase the likelihood of crime because vacant properties could be identified from the road. This was also recognised by the Tribunal in the *Sheffield* case, but it concluded that the provision of a "ready-made list" made the task of identifying vacant properties much easier. Although the list in this case was of only eight properties, it would still make the task of identifying vacant properties in the Chiswick area easier. Council data would provide immediate and useful verification of what might be observed from the road over time; indeed, this was the reason the Appellant had approached the Council for the information.
32. The Tribunal found that the lower threshold of prejudice – that disclosure was likely to result in prejudice to the prevention and detection of crime – was satisfied.

#### *The public interest balance*

33. The Tribunal assessed the public interest in maintaining the section 31(1)(a) exemption in all the circumstances of the case.
34. The Appellant did not identify any general public interest in disclosing the withheld information. She submitted that the information should be disclosed so that she could use it for her own purposes, to help her identify an empty house which she could restore. The Tribunal sympathised with her difficult personal circumstances and her desire for more appropriate housing; however, this is a personal and not a public interest.
35. The Tribunal recognised that there is a general public interest in transparency of data held by a public body and, as found by the Tribunal in the *Voyias* case, in bringing empty properties back into use. But these interests must be balanced against the significant public interest in preventing crime, both in terms of the cost, inconvenience and distress caused to the owners of the properties and their

neighbours and community, and the cost to the public of policing to prevent and investigate crimes occurring in vacant properties.

36. The Tribunal found that the public interest in the prevention of crime at these properties outweighed the public interest in transparency and use of vacant properties. In this regard, the fact that the details of only eight properties would be released meant that, in contrast to the *Voyias* case, the withheld information would have a limited impact on the use of vacant properties.

### **Conclusion**

37. For the reasons given above, the Tribunal found that the exemption in section 31(1)(a) FOIA was engaged, the withheld information was exempt information, and that in all the circumstances of the case, the public interest in maintaining the exemption outweighed the public interest in disclosing the withheld information. The London Borough of Hounslow was not required to disclose the withheld information under section 1(1) FOIA.
38. The appeal is dismissed.

Signed Judge CL Goodman

Date: 24 July 2023