

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 29 October 2007

Public Authority: London Borough of Camden
Address: Town Hall
Judd Street
London
WC1H 9LP

Summary

The complainant requested the Council to disclose a list of all shops and premises visited by bailiffs during 2000 and November 2005 for the collection of rent debts and council taxes. In addition the complainant requested the Council to release a copy of the instructions sent to bailiffs for the collection of these debts. The Council responded to the complainant's request and refused to disclose this information, citing sections 40 and 43 of the Act. As the complainant remained dissatisfied, he referred the matter to the Commissioner for consideration. The Commissioner considered the requested information and the Council's application of the exemptions cited and concluded in this case that the requested information was exempt from disclosure under section 43 of Act. The Commissioner is also satisfied the public interest favours maintaining the exemption. Accordingly, he has not considered the Council's application of section 40 of the Act.

The Commissioner's Role

1. The Commissioner's role is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

The Request

2. The complainant contacted the Council on 2 December 2005 to make the following information request in accordance with section 1 of the Act (full text of this section of the Act and any other sections of the Act mentioned later in this Notice can be found in the Legal Annex towards the end of this Notice):

“This in an application under the Freedom of Information Act for the following information:

- 1) Please supply a list of bailiffs used by the Property Services Division, Camden Council to collect rent from shops together with a list of all shops and business premises they have visited for the period 2000-2005 (to the end of November 2005).
 - 2) A copy of the contract given to the bailiffs during the same period.
 - 3) Copies of the advertisement for bailiff jobs (how they are recruited).
 - 4) The list of bailiffs who have been sent to collect Council Tax and other collections. This is again for the same period listed above.
 - 5) The rates of commission paid to bailiffs.
 - 6) Copies of complaints you have received about the bailiffs' threatening behaviour and your response to them.”
3. The Council responded on 17 January 2006 to each element of the complainant's request as follows:
- 1) The Council provided the names and addresses of the firms it had used during the period in question. However, it refused to disclose a list of the shops and premises visited by bailiffs during 2000 and November 2005 for the collection of rent debts and council taxes to the complainant, citing sections 40 and 43 of the Act.
 - 2) It released a redacted version of a contract to one of the firms used together with two letters confirming the contract extensions. It explained that it had redacted the financial cost of the contract from the version provided to the complainant, as it considered this information was exempt from disclosure under sections 40 and 43 of the Act.
 - 3) The Council stated that it does not hold any information concerning the bailiffs employed by the firms disclosed in part 1 of this request, as the firms themselves recruit bailiffs.
 - 4) Answered by the Council in parts 1 and 3 of this request.
 - 5) The Council confirmed that it does not hold any recorded information relating to the rates of commission paid to bailiffs.
 - 6) It stated that it has not received any complaints relating to any alleged threatening behaviour.
4. The complainant wrote to the Council on 29 January 2006 to appeal against its decision to withhold information. He stated that the Council had failed to supply a list of the shops and premises visited by bailiffs and copies of advertisements for bailiff vacancies, as requested in parts 1 and 3 of his initial request. The complainant also clarified that he required a copy of the instructions sent to bailiffs for the collection of rent debts and taxes.
5. The Council responded on 20 February 2006 informing the complainant of the outcome of the internal review process. The Council confirmed that it had reviewed its initial decision but remained of the view that the outstanding information, as listed in the complainant's letter dated 29 January 2006, was exempt from disclosure under sections 40 and 43 of the Act. Concerning the

complainant's request to receive a copy of any advertisements for bailiff positions, the council advised that it does not hold any information of this nature.

6. As the complainant remained dissatisfied with the way his request had been handled and the Council's decision to withhold information under the Act, he referred his complaint to the Commissioner on 13 March 2006 for formal consideration.

The Investigation

Scope of the case

7. The Commissioner's investigation into the complainant's concerns sought to establish whether the Council had complied with the requirements of section 1 of the Act and, in particular, whether it had appropriately relied on the exemptions cited.
8. The complainant has agreed that the Commissioner's investigation should focus on the following elements of his request:
 - A list of all shops and premises visited by bailiffs for the collection of rents and council taxes between 2000 and November 2005 (remaining information from part 1 of his original request).
 - Copy of the instructions to bailiffs for the collection of rent debts and council taxes (complainant's letter dated 29 January 2006).
9. The Commissioner notes that the complainant has referred to council taxes in general terms. As the complainant's information request specifically relates to businesses visited by bailiffs during 2000 and November 2005, the Commissioner has decided that the collection of business rates and rent debts is only relevant to this case. As council tax is a domestic tax relating to occupied residential dwellings it is not relevant to the complainant's request. The remainder of this Notice will therefore be addressing specifically the collect of rent debts and business rates.

Chronology of the case

10. The Commissioner wrote to the Council on 1 March 2007 to request a further more detailed explanation concerning the application of sections 40 and 43 of the Act to the withheld information.
11. The Council responded on 28 March 2007. It confirmed that it considered section 43 of the Act applied to both the list of shops and premises visited by bailiffs and the instructions to bailiffs to collect rent and council taxes. The Council stated that copies of the instructions to bailiffs would release the names and addresses of those shops and premises visited. It explained that it was of the view that the reputations of those businesses concerned would be damaged if this information were disclosed and that disclosure would likely to be prejudicial to the commercial interests of those businesses.

12. As section 43 of the Act is a qualified exemption, the Council applied the public interest test. In favour of disclosure, the Council acknowledged that the public has a right to know who owes money to public authorities and that public authorities should operate in an open manner. However, the Council was of the view that such an approach failed to take into account the circumstances of each case. It argued that if this information were released, it would damage the commercial interests of those businesses visited by bailiffs during the period in question, which may then lead to those businesses being less likely to pay rents and council taxes in the future. The Council therefore concluded that the public interest in the non disclosure of this information outweighed the public interest in its release.
13. Concerning the application of section 40 of the Act, the Council confirmed that this exemption only applied to those businesses concerned that are owned by individuals and therefore not to limited companies. The Council argued that for these cases both a list of businesses visited and the instructions to bailiffs would constitute the personal data of those individuals concerned. It stated that disclosure would not only damage the commercial interests of each business but also the individuals themselves and would therefore contravene the Data Protection Act 1998. It advised that some information on debtors is made publicly available, for example when a County Court Judgement is served. However, it felt in this case that a list of businesses visited by bailiffs during the period in question would lead to a breach of privacy that was not necessary or proportional.
14. The Commissioner wrote to the Council on 2 May 2007 and asked it to explain in more detail in what way and to what extent it considered the commercial interests of those businesses concerned would or would likely be prejudiced if this information were disclosed. In addition, the Commissioner asked the Council to clarify further what information is available to the public and how this differs to the requested information.
15. The Council responded on 30 May 2007 forwarding a copy of the instructions to bailiffs for the collection of rent debts and taxes to assist with the Commissioner's investigation. It also explained in further detail how the commercial interests of the businesses concerned would or would likely to be prejudiced by the release of the requested information and clarified what information is currently available to the public.
16. The Council stated that the information could be sold to or used by credit reference agencies or other financial companies to the detriment of the businesses concerned. In addition, it was of the view that consumer groups and internet sites could use the information to rate businesses, thereby potentially persuading or dissuading consumers to visit or use particular businesses. Furthermore, it stated that the information could be sold to other businesses to enable them to gain a commercial advantage over those businesses affected. Regarding the information currently available to the public, the Council confirmed that information relating to the collection of rent debts and council taxes is not publicly available. It explained that it has powers under the Law of Distress to employ bailiffs to collect rent. For the non payment of council tax or business

rates, the Council first needs to obtain a Liability Order from the Magistrates Court. Currently, Liability Orders are not in the public domain.

Analysis

Procedural issues

17. The Commissioner notes that although the complainant's information request was hand delivered to the Council on 2 December 2005, it did not respond in full until 17 January 2006. As section 10 of the Act stipulates that a public authority must comply with section 1 of the Act promptly and in any event no later than the twentieth day following the date of receipt, the Commissioner has concluded that the Council was in breach of section 10 of the Act in this case.

Exemption

Section 43 – Commercial interests

18. As the Council has argued that section 43 of the Act applies to all the requested information, the Commissioner will first consider the Council's application of this exemption.
19. In order for the Commissioner to agree that section 43 of the Act is engaged, the Council would first need to demonstrate that prejudice would or is likely to occur to the Council and/or the businesses concerned if the information were disclosed and that the prejudice claimed is real and of substance. This view is taken from the Information Tribunal hearing of the case of *John Connor Press Associates Ltd v Information Commissioner (EA/2005/005)* and its decision, which outlined the tribunal's interpretation of "likely to prejudice". The tribunal confirmed that "the chance of prejudice being suffered should be more than a hypothetical possibility; there must be a real and significant risk". Secondly and once the prejudice test is satisfied, the Council would then need to apply the public interest test weighing up the arguments for and against non disclosure.
20. Prior to considering the arguments presented by both the Council and the complainant, it is important to outline how rent debts and the non payment of taxes are collected by the Council, what information is available to the public and how this differs to the requested information.

How rent debts and tax are collected and information currently available

21. The Commissioner understands that the Council has powers under the Law of Distress to collect rent debts. A warrant authorising the bailiffs to recover the debt is generated by the Council in accordance with these powers under the Distress for Rent Rules 1988. The process for the non payment of taxes, whether council tax or business rates, is different. The Council must first apply to the Magistrates Court for a Liability Order to be issued against the individual or business

concerned. This authorises the bailiffs instructed to recover the appropriate amount from the individual or business concerned.

22. The Commissioner notes that there is a public register available which holds records of County Court Judgments, High Court Judgments, magistrates court fines and so on. This is the Register of Judgments, Orders and Fines. However, there is currently no such register for Liability Orders obtained for the non payment of business rates. This information is therefore not currently available to the public. Similarly, any warrants generated by the Council for the collection of rent debts are not publicly available. Public registers are managed in accordance with statutory requirements. Any judgment or order recorded on the Register of Judgments, Orders and Fines is deleted after a period of 6 years. The individual or business party to the order or judgment is therefore no longer affected by that judgment or order after this period of time.

Likelihood of prejudice

23. The Commissioner has carefully considered the information requested and the opposing submissions made by both the Council and the complainant.
24. The Commissioner notes that County Court or High Court action, which may lead to a judgment or other order, provides an opportunity for the defendant to challenge the claim and/or be given more time for payments. The individual or the business concerned is provided with access to justice before any judgment is recorded on the public register referred to in paragraph 22. The same access to justice is not available to businesses visited by bailiffs, whether for the collection of business rates or rent debts.
25. Moreover, judgments and orders recorded on the Register of Judgments, Orders and Fines are managed in line with statutory requirements which ensure they are deleted after 6 years. No statutory requirements or other equivalent safeguards exist were similar information to be placed in the public domain about warrants authorising rent debt collections or Liability Orders obtained for the non payment of business rates.
26. In these circumstances, the Commissioner accepts that, if the requested information were disclosed, creditors, credit reference agencies, comparison websites and others could use it to assess traders despite risks of the information being misleading, outdated, inaccurate or taken out of context. Significant commercial prejudice would be likely to be caused to the businesses concerned through the free availability of this information to consumers and to actual or potential suppliers, lenders or other creditors.
27. For the reasons explained in paragraphs 24 to 26, the Commissioner is satisfied that the requested information, if it were to be disclosed, would or would be likely to, prejudice the commercial interests of those businesses concerned and therefore that this exemption is engaged.

Public interest test

29. As section 43 of the Act is a qualified exemption, the Commissioner has considered the public interest arguments submitted by both the complainant and the Council.

In favour of disclosure

30. The Commissioner accepts that there is a public interest in consumers, creditors, and others being informed about the way businesses operate in their area and a public interest in understanding the way public authorities collect rent debts and council taxes. Similarly, the Commissioner accepts that there is a public interest in knowing whether public authorities are collecting taxes and rents effectively.
31. The Commissioner is also of the view that there is a public interest in public authorities acting transparently and in an open manner and be willing to share information with the public about how certain decisions are made.

In favour of maintaining the exemption

32. However, for the reasons already stated, the Commissioner accepts that disclosure could negatively and seriously affect the financial standing, credit rating and reputation of those businesses concerned and damage their commercial interests. As there is no statutory requirement in place for the deletion of the requested information after a specified period (unlike, for example, a County Court Judgment) the Commissioner accepts that this negative affect could affect those businesses over the longer term even when the information is outdated and no longer accurate.
33. The Commissioner is of the view that the problems outlined in paragraph 32 could reduce the ability of those businesses to obtain credit or trade profitably, leading to commercial detriment or even possibly the potential closure of some businesses, particularly small businesses in the local area. All these consequences would have a negative effect on the local economy as well as on the businesses concerned.
34. As outlined above, the existing arrangements for the collection of business rates and rents by bailiffs were developed, and are used, on the basis that the process would not be recorded publicly in the same ways as other forms of indebtedness which have gone through a fuller judicial process. The Commissioner is satisfied that the potential damage and unfairness to relevant businesses in such circumstances generates a substantial public interest in maintaining confidentiality.

Conclusion

35. The Commissioner has considered the public interest arguments set out in paragraphs 30 – 34 and has concluded that in all the circumstances of this case the public interest in maintaining the section 43 exemption outweighs the public interest in disclosure. As the Commissioner is satisfied that section 43 of the Act

applies to the requested information, he has not proceeded to consider section 40 of the Act, which was also cited by the Council.

The Decision

36. The Commissioner has concluded that the Council dealt with the complainant's request in accordance with the Act and acted appropriately by relying on section 43 of the Act for the non disclosure of the requested information.

Steps Required

37. The Commissioner requires no steps to be taken.

Right of Appeal

38. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 29th day of October 2007

Signed

**Richard Thomas
Information Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act (2000)

General Right of Access

Section 1(1) 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.”

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Personal information

Section 40(1) provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

Section 40(3) provides that –

“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of

the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

Commercial interests

Section 43(2) provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).”