

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 March 2015

Public Authority: Newcastle City Council
Address: Civic Centre
Newcastle-upon-Tyne
NE909 2BN

Decision (including any steps ordered)

1. The complainant has requested details of the closed Council Tax accounts which are in credit between 1993 and 2014, where the liable party is now deceased.
2. The Commissioner's decision is that Newcastle City Council is not entitled to rely on the exemption to disclosure provided by section 31(1)(a) of the FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - The Council is required to disclose to the complainant the information he requested, which the Council compiled in spreadsheet format on 16 September 2014. The Council is not required to disclose the names and contact details of the executor or family member dealing with the deceased's estate – that information may be redacted.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 25 August 2014, the complainant wrote to Newcastle City Council ("the Council") and requested information in the following terms:

"I would like to request a list of all 'closed' Council Tax accounts with credits (overpaid Council Tax) from 1993 to 2014 where the liable party in question is now deceased.

I would like the following fields returned, preferably in Excel format, via email:-

Full name

Address

End date on the account

Amount of credit on the account

The breakdown of year(s) in which the credit(s) occur

The contact name and correspondence address of the Executor or Solicitors"

6. On 10 September 2014 the Council responded to the complainant's request by confirming that it holds the information he seeks and advising him that it was being withheld in reliance of section 31(1)(a) of the FOIA – where disclosure of the information would prejudice the prevention or detection of a crime.
7. The Council stated that, "revealing such details could provide an opportunity for criminal acts such as theft or fraud to be committed", and, "could alert potential offenders to the existence of an unattended, unoccupied property, making it a target for theft and vandalism".
8. The complainant wrote again to the Council on 10 September. In his email he asked the Council to undertake an internal review of its decision to withhold the information he seeks. He also stated that he does not require the executor details by way of a compromise.
9. The Council completed its review and wrote to the complainant on 15 October to advise him of its outcome. The Council's reviewers concluded that the original decision to apply section 31(1)(a) should be upheld and also that section 40(2) 'possibly' should have been applied.

Scope of the case

10. The complainant contacted the Commissioner on 15 October 2014 to complain about the way his request for information had been handled.
11. The Commissioner has acknowledged the complainant's withdrawal of the final element of his request in his email of 10 September 2014. He has therefore limited his decision to the Council's reliance on the exemption to disclosure provided by section 31(1)(a) of the FOIA.

Reasons for decision

Section 31 (1) – Law enforcement

12. The information sought by the complainant includes the full names and addresses of deceased persons who had liability for council tax and whose council tax accounts were in credit when they died.

13. Section 31(1) 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 and detection of crime,"

Would disclosure be likely to prejudice the prevention and detection of crime?

14. In *Hogan v the ICO and Oxford City Council* (EA/2005/0026 and EA/2005/0030), the Information Tribunal stated that "The application of the "prejudice" test should be considered as involving a number of steps. First, there is a need to identify the applicable interest(s) within the relevant exemption...Second, the nature of the 'prejudice' being claimed must be considered...A third step for the decision-making concerns the likelihood of occurrence of the prejudice" (paragraphs 28 to 34).
15. The relevant applicable interest in this exemption is the prevention or detection of crime.
16. The Council argues that revealing the information which the complainant seeks could provide an opportunity for criminal acts such as theft or fraud to be committed.

17. The Council asserts that disclosure of the last known address of a deceased person could alert potential offenders to the existence of an untended, unoccupied property and thereby making it a target for theft and vandalism.
18. The Council has not provided the Commissioner with any evidence to support its assertion. Rather, it argues that the information sought by the complainant is similar to, and carries the same risks, as the information considered by the Tribunal in *EA/20001/0007 Yiannis Voyias v Information Commissioner and the London Borough of Camden*¹.
19. In the case referred to above the requested information was the address of "every void property in the London Borough of Camden, in which a non-individual is listed as being either the owner or as having a material interest in the property".
20. The Council accepts that the information in this case is not as comprehensive as the list of empty residential properties considered by the Tribunal in the case referred to above. Nevertheless the Council considers that disclosure of the information requested in this case would create a risk that persons may use that information for unlawful purposes.
21. The Commissioner has reviewed the withheld information and has considered the Council's submissions.
22. The withheld information consists of a spreadsheet – created on 16 September 2014, which lists the names of deceased persons and their addresses, together with the names and addresses of persons dealing with the deceased's estates: The spreadsheet lists the year in which the Council Tax credit arose. It does not contain data for 2009 and 2010 as there were no Council Tax accounts in credit which were still outstanding during those two years. The spreadsheet lists the account reference numbers, the property numbers and account end dates where that is known.
23. The Commissioner understands that where there is no account end date the Council may still be working with the executor associated with that account.

¹ Commissioner's reference: FS50301943

The Commissioner's conclusion and decision

24. The Commissioner considers that the Council has failed to provide a maintainable causal link between the disclosure of the requested information and the claimed prejudice of prevention and detection of crime.
25. The Council's arguments are entirely predicated on the properties remaining unoccupied up to the date of the complainant's request. The Commissioner does not accept this position.
26. The Commissioner notes that the information sought by the complainant is for the period 1993 to 2014. The Commissioner cannot accept that the properties falling within this timespan would still be vacant at the time of the complainant's request: Many of the properties are likely to have been sold or let and others may be occupied by a variety of persons including spouses, other family members or rent-paying tenants.
27. The Commissioner also considers that the information sought by the complainant in this case is materially different from the information sought in the 'Camden' case: The information is entirely distinguishable and the same arguments cannot be relied on.
28. The Commissioner has decided that section 31(1)(a) is not engaged in this case and therefore the Council cannot rely on this exemption to withhold the information requested by the complainant.
29. Having made this determination the Commissioner has not gone on to consider the public interest test.

Other matters

Section 40(2) – third party personal data

30. The Commissioner has noted the complainant's withdrawal of the final element of his request – for the contact name and correspondence address of the Executor or Solicitors. Consequently he has not considered this element in detail as it no longer formed part of the complainant's complaint.
31. Nevertheless the Commissioner considers that the Council would be able to rely on the exemption to disclosure provided by section 40(2) of the FOIA to withhold this information: In the Commissioner's opinion the relatives and executors of the deceased persons would have no reasonable expectation that unknown individuals would contact them in

respect of the Council Tax credits owed to the estates of the deceased persons. He considers that it would be unfair to these individuals for the Council to place their names and contact details into the public domain.

32. The Commissioner has considered whether the Council could have relied on condition 6 of Schedule 2 of the Data Protection Act 1998 to allow it to disclose the names and addresses: In the Commissioner's opinion it would be difficult for the Council, or complainant, to establish a 'necessary' legitimate interest to require the disclosure of this information.

Right of appeal

33. 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

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

34. 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.
35. 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
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