

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 26 March 2015

**Public Authority:** Royal Borough of Kensington and Chelsea

**Address:** The Town Hall  
Hornton Street  
London  
W8 7NX

#### **Decision (including any steps ordered)**

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1. The complainant has requested the council to disclosure a list of void properties in the borough. The council responded to this request by refusing to disclose the information under section 31(1)(a) of the FOIA.
2. The Commissioner's decision is that the council acted appropriately by refusing to disclose the requested information under section 31(1)(a) of the FOIA. He therefore requires no further action to be taken.

#### **Request and response**

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3. On 14 August 2014, the complainant wrote to the council and requested information in the following terms:  
  
“(a) all the information you have on [complainant's name redacted] pertaining to his housing application that you have not already provided me  
  
and  
  
(b) the properties that are voids in your borough.”
4. The council responded on 12 September 2014. It stated that in relation to request (a), this was being dealt with as a subject access request under the Data Protection Act (DPA). Concerning request (b), the council confirmed that it holds the information but was unwilling to disclose it,

as it considered the requested information is exempt from disclosure under section 31(1)(a) of the FOIA.

5. The complainant requested an internal review on 13 September 2015.
6. The council responded on 30 September 2015. It stated that it remained of the opinion that the requested information is exempt from disclosure under section 31(1)(a) of the FOIA.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 22 October 2015 to complain about the way his request for information had been handled. The complainant explained his personal circumstances and why he requires access to the requested information and also referred to matters that had been addressed by the council under the DPA.
8. The Commissioner explained to the complainant the steps he needs to take to explore his DPA concerns further and why such matters do not form part of this investigation. The Commissioner confirmed that he could only consider part (b) of his request at this stage and the council's application of section 31(1)(a) of the FOIA. The complainant agreed and the Commissioner's investigation proceeded on this basis.
9. This notice will address request (b) and the council's application of section 31(1)(a) of the FOIA. The relevant consideration here is whether the requested information can be disclosed to the world at large. The FOIA is applicant blind and so the complainant's personal reasons for requiring access to the requested information are not relevant to this investigation or the Commissioner's decision.

### **Reasons for decision**

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10. Section 31(1)(a) of FOIA states that information is exempt from disclosure if its disclosure would, or would be likely to, prejudice the prevention or detection of crime.
11. This exemption is also a qualified exemption. So in addition to demonstrating that section 31(1)(a) of the FOIA applies, the council needs to consider the public interest. The council needs to consider the arguments for and against disclosure and explain why it is of the view that the public interest in favour of disclosure is outweighed by the public interest in maintaining the exemption in this case.

12. The council explained that it is of the view that disclosure of addresses of empty properties in the borough would be likely to lead to squatting and other criminal activity in and/or around these properties. The council confirmed that if a list of empty properties were to be disclosed then these properties would become more vulnerable to potential squatters and other criminal acts such as theft and vandalism. As a result it considers section 31(1)(a) of the FOIA applies.
13. The Commissioner has given the matter careful consideration. The Commissioner is of the view that disclosure of this information would be likely to lead to an increase in squatting and that an increase in squatting in the borough would be likely to result in an increase of certain categories of crime associated with it. The Commissioner's approach follows a decision made by the Upper Tribunal and First-tier Tribunal.
14. In the First-tier Tribunal hearing of *Voyias v Information Commissioner and London Borough of Camden (EA/2011/0007)* a very similar request was considered in depth. In this case, the complainant also requested a list of all vacant residential property in the area. Initially the council refused the request under section 31(1)(a) of the FOIA and this decision was upheld by the Commissioner by way of a decision notice. The complainant then appealed the Commissioner's decision notice to the First-tier Tribunal. This particular tribunal panel did not agree and substituted the Commissioner's decision notice with one of its own ordering the council to disclose the information.
15. The initial decision of the First-tier Tribunal was then appealed by the council to the Upper Tribunal. The Upper Tribunal ruled that the first constituted tribunal's ruling should be set aside and referred the matter back to the First-tier Tribunal for a complete and fresh consideration. A different constituted panel of the First-tier Tribunal reviewed various pieces of detailed evidence and reached a different decision to the previous panel. The decision of the different constituted panel can be accessed by the following link and using reference EA/2011/0007 of the tribunal's website:  
  
[http://www.informationtribunal.gov.uk/DBFiles/Decision/i942/EA-2011-0007\\_2013-01-22.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i942/EA-2011-0007_2013-01-22.pdf)
16. In this second hearing the tribunal stated that it accepted from the evidence submitted that disclosure of the requested information would be likely to lead in an increase in squatting. And, from further submitted evidence that an increase in squatting would be likely to lead to an increase in criminal activity. Criminal activity such as stripping, theft and vandalism.

17. For these reasons, the Commissioner is satisfied that the requested information in this case would be likely to prejudice the prevention or detection of crime and therefore section 31(1)(a) of the FOIA is engaged.
18. The Commissioner will now go on to consider the public interest test.
19. The council accepted that it is accountable for empty properties in the borough and it understands that information may be requested to help bring properties back into use, which would be in the financial and commercial interest of the public.
20. However, the council believes that there is a strong public interest in avoiding the likely prejudice to the prevention of crime. The council argued that it is the public interest to protect property and to avoid the considerable public expense that would be incurred dealing with crime associated with empty properties. Furthermore, the council stated that there is a public interest in preventing the distress that is caused to the victims of crime. It explained that residents who live in close proximity would also be affected by crime committed in the area and they will have a reasonable expectation of feeling secure in their own homes.
21. The council stated that although there is a strong public interest in bringing empty properties back into use, the council's immediate concern is the protection of property and the wellbeing of existing residents. As a result the council reached the view that the public interest in avoiding prejudice to the prevention of crime outweighs the public interest in disclosure.
22. The Commissioner has given the arguments for and against disclosure detailed consideration. He acknowledges there is a public interest in overall accountability and transparency and in the disclosure of information which enable members of the public to scrutinise more clearly how their local councils are operating.
23. The Commissioner also notes that social housing is always an issue which attracts significant public interest and debate. Local authorities are continually under pressure to address local housing needs and there is always a large list of individuals seeking social housing assistance. Empty properties have been one way of tackling the growing need for housing and governmental policy has addressed how local authorities can and should aim to get empty properties back into working order.
24. However, it is the Commissioner's view that the public interest in this case is best served by maintaining this exemption and this is in line with the *Voyias* tribunal hearing already referred to above. In this hearing the tribunal stated that it considered the prejudice outlined above was

substantial and therefore there was an inherent strong public interest in preventing crime. The tribunal also stated that it was realistic that increased squatting and therefore increased crime would result in increased costs and repairs for private property owners and the local council which is responsible for any empty social housing. There would also be the cost of eviction; the cost to the public sector and private homeowners of evicting squatters.

25. The tribunal acknowledged in this case that there will be occasions when individuals suffer serious and direct loss and distress as a result of squatting. The effects of disclosure also had the potential to negatively impact upon the surrounding area. In this hearing the tribunal agreed that there would be some impact upon council staff themselves; the cost to the public purse to deal with squatters leaving fewer funds to address their statutory functions and the overall distraction away from their work because they have to deal with an increase in squatters in the local area. The tribunal also felt there was a negative impact on the police and limited weight should be given to this in the public interest test. It however suggested that only limited weight should be given this argument because of the way the evidence was presented to it not necessarily the merit of the argument.
26. In *Voyias* the tribunal concluded the public interest test by saying:  
  
"The relatively small weight that the public interest in disclosure bears does not, in our view, come close to equalling the public interest in preventing the categories of crime we have identified in this decision. Accordingly the public interest in maintaining the exemption outweighs the public interest in disclosure."
27. The Commissioner is aware that each case should be judged on its own merits and he has exercised this in this particular decision. However, the fact remains that this case is very similar to that discussed in *Voyias* and so are the circumstances and significant impacts of disclosure. He can see no reason to treat this request any different and so concludes that the public interest in maintaining the exemption outweighs the public interest in disclosure.

## Right of appeal

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28. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

29. 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.
30. 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 .....**

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**