

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

### **Decision notice**

**Date:** 19 December 2017

**Public Authority:** London Borough of Lambeth  
**Address:** PO Box 734  
Winchester  
S023 5DG

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

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1. The complainant has requested a copy of the London Lockdown July 2016 report concerning the operation of rogue landlords together with statistics relating to such landlords. The council provided some of the statistics requested apart from one set which it initially refused to disclose under section 30 - investigations and proceedings, which it also cited as its basis for refusing to disclose the Lockdown report itself. During the course of the Commissioner's investigation, the council changed its position. It explained that it was now withholding the report under section 31 - law enforcement, and that it did not hold the outstanding set of statistics.
2. The Commissioner's decision is that council is not entitled to rely on section 31 to withhold the report. However the Commissioner is satisfied that it does not hold the statistics. By failing to confirm this to the complainant the council has breached section 1(1)(a).
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - To disclose the London Lockdown July 2016 report.
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

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5. On 17 March 2017 the complainant requested information of the following description:

"Under FOIA 2000 I should like to request the following:

Firstly, I should very much like to view a copy of the London Lockdown July report 2016 to the DCLG.

I should also like to have answers to the following questions:

- 1) How many HMO landlords in 2016 were discovered operating premises without licenses?
- 2) Of those landlords discovered operating HMO premises without any valid or appropriate licence, how many were successfully prosecuted under Section 72 of the Housing Act 2004?
- 3) Given that it is a criminal offence to operate HMO premises without a license on how many occasions did Lockdown report this offence to the relevant police force?
- 4) Of those HMO landlords who were successfully prosecuted, how many paid fines of £20,000 or more?
- 5) Of those HMO landlords who were successfully prosecuted, how many were subject to rent repayment orders?
- 6) Of those landlords discovered operating HMO premises without any valid or appropriate licence, how many were issued with 'improvement notices'?
- 7) Of those landlords discovered operating HMO premises without any valid appropriate licence, how many claimed to be operating under RSL exemption?
- 8) How many 'criminal landlords' identified by Lockdown had previous or existing financial relationships with a London Borough? e.g. were they being paid rent under any private landlord scheme operating under any Borough."

6. On 11 April 2017 the council responded. It answered questions 1 to 7, but withheld the Lockdown report and the information requested in question 8 under section 30 – investigations and proceedings. Although referring to section 30(2)(b) it is clear from its explanation of the grounds for refusing these parts of the request that the council was in fact relying on section 30(1)(b) and (c). Section 30(1)(b) provides that information is exempt if it has been held by the public authority at any

time for the purposes of any investigation which is conducted by the authority and which may lead to a decision by the authority to institute criminal proceedings which the authority has the power to conduct. Section 30(1)(c) provides that information is exempt if it has been held at any time for the purposes of criminal proceedings which the authority has the power to conduct. The difference between the two being that (c) can be applied by a public authority which does not have responsibility for carrying out the initial investigation.

7. The complainant requested an internal review on 12 April 2017. The council sent him the outcome of the internal review on 17 May 2017. The council upheld its original position.
8. During the Commissioner's investigation the council clarified that it no longer wished to rely on section 30 to withhold the Lockdown report. Instead it now cited section 31(2)(a) which, in broad terms, provides an exemption for information which if disclosed would prejudice the ability of a public authority to ascertain whether someone had failed to comply with the law.
9. In respect of question 8 the Council now argued that it did not hold the requested information.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 31 May 2017 to complain about the way his request for information had been handled.
11. The Commissioner considers the matters to be decided are whether the council is entitled to withhold the Lockdown report under section 31 and whether it holds the information requested in question 8.

## **Reasons for decision**

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### **Section 31 – law enforcement**

12. The exemption provided by section 31(2)(a) has to be read in conjunction with section 31(1)(g) as follows:

Section 31(1)(g) provides that information is exempt if its disclosure would, or would be likely to, prejudice the exercise of any public authority of its functions for any of the purposes specified in subsection (2).

These include at 31(2)(a), the purpose of ascertaining whether any person has failed to comply with the law.

13. The council has clarified that it is applying the exemption on the basis that disclosing the information would only be likely to prejudice functions in respect of ascertaining whether the law had been complied with.
14. To engage the exemption a public authority must:
  - identify the public authority that has been entrusted with a function to ascertain whether a person had failed to comply with the law;
  - confirm that the function has been specifically designed to fulfil that purpose, and
  - explain how the disclosure would prejudice that function.
15. When the Commissioner commenced her investigation she wrote to the council asking it to explain its application of section 30, the exemption which at that time it appeared the council was relying on. Therefore in its initial submission to the Commissioner the council failed to address the first two points set out in the paragraph above. However the Commissioner directed the council to the relevant parts of the guidance on section 31 which she had published and specifically asked the council to provide a submission covering those points. Despite being chased for a response, the council has to date failed to provide the Commissioner with an explanation as to which public authority has the relevant statutory powers, what those powers are, or the source of those powers.
16. In particular the application of section 31(2)(a) requires the public authority claiming the exemption to identify a public authority (not necessarily itself) which has the power to 'ascertain' whether someone has failed to comply with the law. The term 'ascertain' is taken to mean to make certain, or prove. In this context it means that a public authority must have the power to determine with some certainty whether someone has failed to comply with the law. The relevant public authority must not only be responsible for the investigation but it must also have the authority to make a formal decision as to whether that person has complied with the law. The council has not specified which public authority has these powers and has neither identified what potential breaches of the law the relevant public authority would be investigating, or explained how that public authority has the power to make a formal decision on whether that law has been complied with.
17. For these reasons alone the Commissioner is unable to uphold the council's application of section 31(2)(a).
18. The subject matter of the Lockdown report is known to be the increasing practice of unscrupulous landlords to place vulnerable tenants in substandard accommodation, often small family properties which have

been split into micro flats which are then marketed as self-contained units, enabling landlords to obtain maximum housing benefits, often paid directly to them. The Commissioner would not lightly order the disclosure of information if there was a credible risk that doing so would aid such practices. However, the council has provided only very limited arguments in respect of why it believes disclosing the Lockdown report would prejudice the ability to regulate these practices. It has also provided a copy of the Lockdown report itself. Having viewed the report the Commissioner finds the arguments that were presented by the council are very weak.

19. When applying a prejudice based exemption such as section 31 a public authority must be able to demonstrate that the alleged prejudice is real actual and of substance. Even where the public authority seeks to engage the exemption on the basis that the prejudice is only likely to occur, it is still required to demonstrate that there is a very significant and weighty chance of the prejudice occurring even if that risk falls short of being more probable than not. These are high tests and the onus is the public authority to demonstrate a causal link between disclosure of the information and the alleged prejudice.
20. The council has simply said that it considers the disclosure of the Lockdown report would enable unscrupulous landlords to imitate the tactics used by other landlords and also to attempt to evade investigation by the council. It continued by stating that the report contains information on new tactics being employed by councils to address the problem which it would not wish to become widely known as this would enable landlords to attempt to circumvent council investigations.
21. In respect of the council's first argument, having viewed the report, the Commissioner is not satisfied that its contents would provide the sort of detailed information which would enable someone to set themselves up as a new 'rogue' landlord. The problems of such practices have been well aired in the national press and much of the report's contents are couched in fairly general terms. It is quite possible that the type of individual who would be prepared to take advantage of vulnerable tenants and exploit the housing benefit system in these ways would have their own means of acquiring more detailed information on how to do so. Therefore as the council has not identified specific information from the report which it believes would aid such individuals the Commissioner is not persuaded that disclosing the report would have the effect claimed by the council.
22. The council's other argument concerns the potential for the report's disclosure to reveal the new tactics being developed to combat the problem of rogue landlords. Whilst the Commissioner is able to identify some information relating new approaches, the information again

appears to be of a general nature and the new approaches would very quickly become apparent once employed or through subsequent tribunal or other legal proceedings. Without a fuller explanation from the council in support of how this prejudice would occur the Commissioner is not satisfied that the disclosure of the report would enable rogue landlords to circumvent these new approaches and so prejudice the ability of a public authority to determine whether such individuals were complying with the law.

23. In light of this the Commissioner finds that the council has failed to demonstrate that there is a significant and weighty chance that disclosing the report would prejudice the ability of a public authority to ascertain whether landlords were complying with the law. The exemption is not engaged. The council is required to disclose the report.

### **Section 1 - information held**

24. Although it initially refused to disclose the information requested in question 8 under section 30, during the Commissioner's investigation the council advised the Commissioner that it did not hold the information.
25. The information requested in question 8 is as follows:

"8) How many 'criminal landlords' identified by Lockdown had previous or existing financial relationships with a London Borough? e.g. were they being paid rent under any private landlord scheme operating under any Borough."
26. The council has confirmed to the Commissioner that it holds information in respect of how many of the problem landlords identified by the Lockdown report had a previous or existing financial relationship with the council itself. However it has explained that it does not hold such information in respect of the other London boroughs involved in the Lockdown project. The council understands that the Department for Culture and Local Government (DCLG) did collate these figures, but has stated that the council itself did not have access to these overall figures.
27. Where statistics are requested it is not uncommon for public authorities to argue that they do not hold the requested information because the information they do hold is inaccurate by virtue of it being incomplete. For example if a public authority was asked how many school children had used one of its swimming pools, a council may argue that although it had administrative procedures for collecting this information, those procedures are not always rigorously followed and that as a result the figures it held were not 100% accurate. The Commissioner would not accept this argument in such cases and the council would be required to provide the requested statistics based on what information it had gathered.

28. However the Commissioner considers this case to be different. The request clearly seeks not just information on the number of rogue landlords who have or had a financial relationship with Lambeth Council, but such information in respect of all the boroughs which participated in the Lockdown project. It is understood that this is not information which the council ever attempted to collate itself; it merely contributed its own figures to the DCLG. Therefore, although it holds one of the constituent parts of the overall statistics that have been requested, it cannot be said, in any sense, to hold the statistics relating to all the participating London boroughs. The council has also advised the Commissioner verbally that it does not have access to these overall figures.
29. Based on the above explanation the Commissioner accepts that the council does not hold the information requested in question 8. Under section 1(1)(a) a public authority is required to inform a person making a request whether or not it holds the requested information. To date the council has not complied with this requirement. It has therefore breached section 1(1)(a). However as this notice explains the council's position it would be meaningless for the Commissioner to require the council to now formally advise the complainant that the information is not held. The Commissioner has however provided some advice to the council on this element of the request under 'Other Matters'.

## **Other matters**

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30. Although not forming part of the formal decision notice the Commissioner may use the 'Other Matters' section of a notice to address matters that have arisen as part of the investigation.
31. Part III of the code of practice issued under section 45 of the FOIA sets out what is expected of a public authority when it does not hold the requested information itself but has reason to believe that it is held by another authority.
32. The public authority should consider what would be the most helpful way of assisting the applicant. The code states at paragraph 18,
- "... that this is most likely to involve:
- Contacting the applicant and informing him or her that the information requested may be held by another public authority;
  - Suggesting that the applicant re-applies to the authority which the original authority believes may hold the information; and
  - Providing him with the contact details for that authority."

33. The Commissioner would therefore expect the council to clarify with the DCLG whether it does hold the information requested in question 8 and if so to follow the guidance provided by the code of practice and assist the applicant if he wishes to make a fresh request to that Department.
34. The council may also wish to consider whether it is prepared to disclose the information that it does hold in respect of the number of problem landlords that Lambeth Council itself had a financial relationship with.

## Right of appeal

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35. 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)

36. 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.

37. 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 .....**

**Rob Mehan**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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