

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 January 2018

Public Authority: London Borough of Tower Hamlets Council
Address: Mulberry Place
5 Clove Crescent
London
E14 2BG

Decision (including any steps ordered)

1. The complainant has requested information about credit balances on business rate accounts held by London Borough of Tower Hamlets Council ('the Council').
2. The Commissioner's decision is that the Council has appropriately applied section 31(1)(a) to withhold the requested information.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

4. On 31 January 2017 the complainant wrote to the Council and requested information in the following terms:
5. "I wish to request a list, in excel format, of the top 50 Business Rates credit balances, in terms of highest monetary value, currently held in your system. I would also ask for the top 50 'write on' balances /amounts, again with regards highest monetary value. In both cases I would ask that any entries that include personal / sole trader info are not included, and the top 50 cases in both criteria contain businesses only.

I would request the following detail, where available:-

Name of business/organisation

Ratepayer Property address (only if available)

Ratepayer Contact/correspondence address (only if available)

Amount of credit balance/write on

Billing period/year in which the credit balance exists

Account end date (if one exists)

I understand that any personal information relating to an individual (sole trader) may not be included."

6. The Council responded on 22 February 2017. It stated that the requested information was held but withheld from disclosure by virtue of the exemption at section 31(1)(a).
7. Following an internal review the Council wrote to the complainant on 9 March 2017 upholding its initial response.

Scope of the case

8. The complainant contacted the Commissioner on 10 March 2017 to complain about the way his request for information had been handled. The complainant provided the Commissioner with a detailed rationale in support of his view that the requested information should be disclosed.
9. The Commissioner considers the scope of her investigation to be to determine whether the Council is entitled to rely on section 31(1)(a) to withhold the requested information.

Reasons for decision

Section 31 – Law enforcement

10. Section 31(1)(a) of FOIA 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 or detection of crime,"

11. The Commissioner initially considered whether the relevant criteria for the engagement of section 31(1)(a) were satisfied. These are:

- (i) whether the prejudice claimed by the Council is relevant to section 31(1)(a);
- (ii) the nature of the prejudice being claimed by the Council; and
- (iii) whether there is a likelihood of the prejudice being claimed by the Council occurring.
12. The Council argued that disclosure of the information withheld under section 31(1)(a) would prejudice the prevention of crime. This is because, by releasing this information to the world at large the Council would be providing individuals with information which would enable them to potentially defraud the Council of significant sums of money. Based on this argument, the Commissioner accepts that the prejudice claimed by the Council relates to the prevention of crime.
13. The Commissioner next considered whether the prejudice being claimed is “real, actual or of substance”, that is not trivial, and whether there is a causal link between disclosure and the prejudice claimed. She is satisfied that the prejudice being claimed is not trivial or insignificant and that there is the relevant causal link.
14. The Council argued that the disclosure of the withheld information would be likely to prejudice the prevention of crime. In the Commissioner’s view, guided by the First-Tier Tribunal¹ “would be likely” means that the chance of prejudice occurring should be more than a hypothetical possibility; there must be a real and significant risk.

The Council’s view

15. The Council explained that when a ratepayer vacates their property, ceases to be liable for business rates or receives a reduction in Rateable Value a revised rate demand is issued which details the outstanding charge or overpayment. Where the account has a credit balance a refund application form is sent to the ratepayer’s address or forwarding address or by email if the ratepayer has elected to receive an e-bill. The Council considers that by issuing a credit notice to the address registered on its system allows it to have greater certainty that the ratepayer is aware of the overpayment and that any subsequent refund claim is made by the individual entitled to the overpayment. If the ratepayer pays by direct debit any overpayment is refunded directly to the bank account from which the payment was originally made without the need for a request.

¹ John Connor Press Associates Limited v The Information Commissioner (EA/2005/0005)

16. The Council's system for dealing with overpayment enquiries uses particular information to verify that the enquiry is being made by the ratepayer. The information used forms part of the information requested by the complainant. The Council considers that if the information, including a list of credit balances, was disclosed to the world at large this would increase the risk of fraudulent claims. The Council explained that the information easily accessible from Companies House added to the requested information exacerbates the risk. The Council considers that disclosure of the information would require the Council to use additional resources to protect against the risk of fraud by putting in place additional measures to examine applications for credit payments in order to protect public money which would increase the workload of the Revenues Team.

17. The Council advised the complainant and the Commissioner that:

"local authorities have been confronted by a variety of attempted frauds and fraudulent activity in relation to business rates, which evidences that the publication of the information requested would represent a clear risk of being an avenue that fraudsters would be likely to exploit."

18. The Council went on to explain to the Commissioner a particular example of a large scale fraud involving a number of Local Authorities including Tower Hamlets. In this instance a third party had obtained the ratepayer's name and address and provided a fraudulent authority to act on behalf of the ratepayer which was accepted by the Councils concerned. The fraudster then made a retrospective application for Small Business Rates Relief which resulted in a credit balance on the accounts. He then provided bank account details for repayment of the credit balance and the credit was refunded to the account details provided. The ratepayers had no knowledge of the application or refund until a criminal investigation on the organisation involved identified this particular fraud.

The complainant's view

19. The complainant explained to the Commissioner that, in his view, many councils do not follow legislation and do not issue refunds of overpaid business rates or advise businesses that they have overpaid. He stated:

"Some councils will even fraudulently claim that they **do** advise the businesses, however this is untrue, and most will have no **auditable** proof that they have contacted the businesses to advise of the credit. In short, many councils are defrauding the businesses themselves, then rather ironically use Exemption 31 to withhold credits data."

20. The complainant went on to advise the Commissioner that it would be difficult to take fraudulent actions to claim credits if councils had 'any' level of security. He suggested that the only viable action that could be taken by fraudsters would be to create a false letter on headed paper asking for any refunds to be paid into a false bank account.

21. He went on to explain:

"Firstly, the number of instances where this would occur would actually be exceptionally minimal. Secondly, there are a couple of quick easy checks for the council to carry out (and currently should be carrying out anyway) to determine if genuine or not:-

- 1) they could check against currently held banking detail held (where payee is paying by DD);
- 2) they could call/email the business in question to query if the letter/request is genuine;
- 3) the details on the possible fraudulent letter could be checked against existing held correspondence."

22. The complainant considers that these steps should already be in place in any "robust council". His view is that publishing the data could quickly and easily alert businesses to any credits they are due. He went on to explain his argument:

"..why should 99.99% of businesses suffer from council malpractice (in terms of withholding credits), just on the off chance that an occasional fraudster would chance his arm?"

The Commissioner's view

23. The Commissioner is aware that the complainant and others have made the same request to different Councils. The Councils have responded differently, some disclosing information whilst others have withheld the information.

24. The Commissioner notes, as she has previously written in her decision notices, that even if a significant number of local authorities have disclosed similar information to that requested in this case, it does not automatically follow that she will order disclosure of that information.

Each case will be considered on its own merits taking into account the evidence and arguments presented to her.

25. The Commissioner is reticent to comment on the procedures a public authority should have in place to try to prevent fraud. She does not consider it to be within her remit to instruct the Council on adapting its working procedures in order to comply with a request for information.
26. The Council uses some of the requested information as part of its security checks in attempting to prevent fraud. The Commissioner accepts that the disclosure of the withheld information could facilitate fraudulent claims. Consequently, taking account of the First-Tier Tribunal findings in the London Borough of Ealing v The Information Commissioner (EA/2016/0013) which concluded that disclosure of similar information would constitute "a real and substantial risk of prejudicing the prevention of crime.", she accepts that section 31(1)(a) is engaged. As this is a qualified exemption she has considered whether the public interest in maintaining the exemption outweighs the public interest in disclosure.

Public interest test

Public interest in favour of disclosing the information

27. The Council acknowledges the clear public interest in disclosure to promote the Council's accountability to its residents and businesses. It acknowledges that the requested information would provide the public with more information about the amounts of unclaimed business rate credits and therefore greater transparency about the Council's operation.
28. The Council advised the Commissioner that organisations exist to legitimately assist businesses to claim credit balances. Such organisations would be assisted by the information requested as they could proactively contact the appropriate businesses offering their services. However, this could only be described as a limited public interest for interested parties.
29. The complainant considers that a small group of London Borough councils have colluded in order to "hide their malpractice". He appears to believe that these councils have:

"managed to fool both the ICO and the Tribunal board, and have regularly misled in the details of their practices."
30. The Commissioner understands that the complainant is driven by his consideration that the alleged malpractice referenced in paragraph 29 is

leading to business owners not receiving the refunds due to them. His view is that the Council does not inform businesses that they have overpaid. The Council advises the Commissioner that it routinely informs businesses when they are due a refund.

31. The Commissioner's role is not to determine whether alleged malpractice has taken place in the Council's function of refunding overpayments. She recognises the public interest in transparency and openness regarding the procedures and decision making of public authorities. She acknowledges that disclosure of the requested information would increase transparency in regard to the Council's collection of tax and management of finance. However, the specific details of which businesses are entitled to a refund, as requested by the complainant, provides little to the wider public interest. A total figure of refunds due but unclaimed would be more likely to meet the wider public interest.

Public interest in maintaining the exemption

32. The Council argued that accountability to all residents for income and expenditure are met through disclosure of statistical and higher level data regarding the National Non Domestic Rates accounts. In respect of the specific business ratepayers involved the Council stated that there are established procedures for account holders to query their own accounts directly or via an authorised agent.
33. The Commissioner assumes that those operating businesses would be sufficiently financially astute to enquire if any rebate/refund was due to them without the publication of the requested information. Those employing a rating agent would have the agent carrying out this function.
34. The Council stressed the public interest in ensuring that:

"monies from the public purse, such as rebates on business accounts, are not fraudulently claimed and also in not making fraud an easy option."
35. The Council also raised the matter of the significant budget cuts and loss of resources faced by local authorities at this time. It suggests that the most cost effective recourse in this regard is the prevention of crime by not disclosing information which may prejudice this prevention resulting in public money being used in detection or investigation of crime.

Balance of the public interest

36. In balancing the public interest arguments the Commissioner accepts that disclosure would to some extent help to increase openness and

transparency regarding the Council's collection of taxes. Information on the amounts of unclaimed business rate credits and identification of those companies failing to claim their business rate credits would be in the public domain. However, the Commissioner is not convinced that the general public interest is served by such a disclosure. The specific information is of significance to a small minority of the public, those with unclaimed refunds or those wishing to assist those businesses by providing a service. Disclosure of the information would not greatly benefit the public as a whole. Consequently the Commissioner views the public interest in disclosure of the requested information as limited.

37. In consideration of this limited public interest the Commissioner has weighed the potential detriment to the Council in terms of cost and use of resources to investigate any fraud which may result as a consequence of disclosure. In addition the Council may be required to establish different systems to address the potential fraud. These costs to a public authority are costs to the public purse and in this case are not in the public interest.
38. In conclusion, the Commissioner considers that, in the particular circumstances of this case, the public interest in maintaining the exemption outweighs the public interest in disclosure. Consequently she has determined that the Council appropriately applied section 31(1)(a) to the withheld information.

Right of appeal

39. 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

40. 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.

41. 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

Gerrard Tracey
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