

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 February 2018

Public Authority: Knowsley Council

Address: PO Box 24
Archway Road
Huyton
Liverpool
Merseyside
L36 9YZ

Decision (including any steps ordered)

1. The complainant has requested information on a complete and up-to-date list of all business (non-residential) property rates data held by the council. The council disclosed the majority of the information but applied section 31(1)(a) to information on whether properties were occupied or not. It argued that disclosing this information would prejudice the prevention of crime as it would provide details which would facilitate criminal activity. It also applied sections 40(2) (personal data) and section 41 (information provided in confidence).
2. The Commissioner's decision is that the council was not correct to apply the exemptions in section 31(1)(a), 40(2) and section 41.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To disclose the information to the complainant.

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 30 March 2017 the complainant made the following request for information under the FOIA for:

"In terms of the Freedom of Information Act of 2000, and subject to section 40(2) on excluding personal data, could you please provide me with a complete and up-to-date list of all business (non-residential) property rates data for your local authority, and including the following fields:

- *Billing Authority Reference Code (linking the property to the VOA database reference)*
- *Firm's Trading Name (i.e. property occupant)*
- *Full Property Address (Number, Street, Postal Code, Town)*
- *Occupied / Vacant*
- *Date of Occupation / Vacancy*
- *Actual annual rates charged (in Pounds)*

If you are unable to provide an absolute "Occupation / Vacancy" status, please provide the Exemptions and / or Reliefs that a particular property may be receiving.

We recognise that you ordinarily refuse to release these data in terms of Regulation 31(1)(a)[sic]. In November 2016, we appealed this class of refusal - specifically as it relates to this request - to the Information Commissioner's Office and they issued a Decision Notice (FS50628943 - <https://ico.org.uk/media/action-weve-tak...>, and FS50628978 - <https://ico.org.uk/media/action-weve-tak...> on 28 February 2017 finding that "it is not correct to withhold this information under Regulation 31(1)(a)[sic]", and that "the public interest in the information being disclosed outweighs that in the exemption being maintained".

*Note that these Decision Notices supersede *Voyias v Information Commissioner and London Borough of Camden Council* (EA/2011/0007) and Decision Notice FS50538789 (related to Stoke on Trent Council).*

Please provide this as machine-readable as either a CSV or Microsoft Excel file, capable of re-use, and under terms of the Open Government Licence.

I'm sure you get many requests for business rates and we intend to update this national series every three months. Could we request that - as more than 30% of local authorities already do - you update and release this dataset via a dedicated page on your local authority website or on an open data service. You should find that this reduces the time and cost of this request process."

6. The council responded on 28 April 2017. It withheld the information and applied section 31(1)(a) (law enforcement) as a disclosure of the information would prejudice the prevention and detection of crime. It also sought to apply section 40(2) to the information (personal data) and section 41 (information provided in confidence).
7. The council did not carry out a review following a discussion with the Commissioner regarding previous requests that had been made. Effectively the review was carried out during the course of the Commissioner's investigation, and the council's decision was to uphold its response to the complainant's request.

Scope of the case

8. The complainant contacted the Commissioner on 6 June 2017 to complain about the way his request for information had been handled. He believes that the council was not correct to apply section 31(1)(a) to the information.
9. The Commissioner considers that the complaint is that the council was not correct to apply the exemption in section 31(1)(a), 40(2) and section 41 of the Act to the withheld information.

Reasons for decision

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. In order for a prejudice based exemption, such as section 31, to be engaged the Commissioner considers that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.

The harm which would be caused

12. The council argues that a disclosure of information on the occupancy of non-residential properties in the borough would be likely to be used by criminals and squatters wishing to use them for criminal purposes. It has highlighted that it has a particular issue with organised crime such as the use of vacant properties for illegal cannabis farms, metal stripping and hiding stolen goods as part of their activities. It also highlighted the use of empty commercial and industrial properties for squatting and for fly-tipping. It provided a number of links to press and police reports reporting stories of the above occurrences in Knowsley and surrounding areas.

13. Its arguments follow, and expand upon a number of previous Tribunal cases related to empty domestic property lists, for instance, *Voyias v Information Commissioner and London Borough of Camden Council (EA/2011/0007)* ('Voyias') in which the First-tier Tribunal found that a disclosure of lists of empty residential properties would be likely to increase the likelihood of crime. The Tribunal concluded that the exemption in section 31(1)(a) applied and that the public interest rested in the exemption being maintained.

14. The Commissioner has also considered a similar case previously in a decision notice relating to *Stoke on Trent Council; Decision Notice Reference FS50538789*. In that case she accepted that details of empty commercial properties could be withheld under section 31(1)(b) and section 40(2) (personal data) as disclosing the information would be likely to facilitate crime on vacant non-residential properties.

The complainant's arguments

15. Since these decisions the complainant has collated and provided to the Commissioner statistical evidence which he considers demonstrates that a disclosure of unoccupied commercial premises does not increase the levels of crime.
- a. He said that 66% of local authorities either already make the information available, or made it available after the receipt of an FOI request. Whilst the Commissioner has not checked whether this figure is accurate she is aware that a large number of authorities have provided the data to the complainant in response to his request. The Commissioner understands that since the complainant has made this complaint the figure is much higher than 66% with the vast majority of local authorities now either proactively publishing this information or at the last making it available upon request.
 - b. He has made FOI requests to a number of police forces regarding the levels of crime in unoccupied commercial premises. Out of 44 police services, only two are actually able to provide data on incidents in empty commercial properties. The two who have are Thames Valley Police and North Wales Police. The remaining police services do not specifically collect such data and have no way of knowing what the incident rates are. The complainant therefore argues that any other forces which provide arguments supporting the application of the exemption are essentially providing an opinion based upon supposition rather than specific evidence.
 - c. In North Wales, there is an average of 1,780 crimes a year in occupied properties, and 26 crimes a year in unoccupied properties that largely have to do with theft, vandalism or arson (note that squatting in commercial property is not a crime and so unrecorded).
 - d. There are about 45,000 commercial properties in North Wales and vacancies range from 15% to 25%.

- e. The complainant therefore argues that the ratio of crimes in occupied vs empty commercial properties is almost 70:1, compared with an actual occupied vs empty ratio of 6:1 (i.e. an occupied commercial property is ten times more likely to experience an incident of crime than an unoccupied one).
- f. He gave an example of how publication of the information he had requested has had no effect upon crime levels in specific areas

In 2015 Oxford had 4,038 commercial properties and suffered 2 cases of empty commercial property crime at a cost of £1,259. In comparison, they had 3,133 cases of crime committed in occupied business premises, at a cost of £507,956.

By comparison, Reading, with 5,659 commercial properties suffered 2 empty commercial property crimes that caused no damage at all.

Oxford refuses to publish under Section 31(1)(a) while Reading publishes regularly.

- g. He argues that the data provided are unequivocal. Incidents of crime in empty properties are exceedingly rare, and there is no variation in the incidence rate between local authorities who do publish, and those who do not publish data on empty properties.
- 16. The Commissioner has previously issued 2 decision notices providing similar arguments to Knowsley Council on 28 February 2017. She issued a Decision Notice FS50628943 to Cornwall Council, (available from <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2013577/fs50628943.pdf>), and FS50628978, the Royal Borough of Kensington and Chelsea Council (RBKC) available at <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2013576/fs50628978.pdf>.
 - 17. Both of these decision notices found that the application of section 31(1)(a) by both authorities was correct under the circumstances of the case, however the public interest in the information being disclosed outweighed that in the exemption being maintained. The Commissioner therefore required the disclosure of the information in those cases.

The council's arguments regarding harm

18. The following arguments support the exemption applying:
- a. The disclosure of the information may facilitate or encourage criminal activity.
 - b. There is a clear public interest in protecting society from the impact of crime and avoiding damage to property.
 - c. The victims of crime can be both individuals and organisations.
 - d. The impact of crime is not confined to its immediate victims. A request for the addresses of empty properties provides the opportunity to consider the wider repercussions of crime in more detail, for example, fraud, criminal damage, illegal occupation, risk of the theft of electricity, unlawful practices, arson attacks etc. The list could be used to target properties. Buildings could be stripped of valuable materials and fixtures.
 - e. As well as the financial costs of crime, there are also social costs, criminal damage reduces the quality of life in the area; neighbours would live in fear of further crime being committed.
 - f. The information, if disclosed, could be used by squatters and could make properties more vulnerable to illegal activities or antisocial behaviour which is not in the interests of owners/residents nearby.
 - g. It is also appropriate to take into account the cost of removing those illegally occupying properties.
 - h. There are potential financial costs to local taxpayers arising from such crime.
 - i. Estate agents/letting agents advertise properties on websites, adverts etc but not all properties they advertise would indicate whether they are vacant.
 - j. The ICO previously supported Stoke-on-Trent City Council decision to use this exemption on the same data requested.
https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1042144/fs_50538789.pdf
 - k. In case law, in *Yiannis Voyias v Information Commissioner and the London Borough of Camden (EA/2001/0007 23 January 2013)* the First-tier Tribunal upheld the council's decision to withhold the addresses of empty residential properties under section 31(1)(a).

19. The council accepted that the decision notices in the cases of Cornwall and RBKC found against the application of the exemption in those cases. However it considers that the circumstances in Knowsley are different, to the point that the exemption is applicable to the information in its case.
20. The council said that it shares many of the concerns that were raised by the councils in Voyias, Stoke on Trent, Cornwall and RBKC but in addition the Council also submits that there is a significant and serious risk that vacant commercial premises would be targeted for breaking and entering and being used to grow cannabis if this information were to be disclosed. It cited numerous media reports to the Commissioner seeking to demonstrate that vacant non-residential premises within the borough are already a target for cannabis production. It said for instance that Merseyside Police have discovered cannabis farms in disused shops, offices, barns, chip shops and even a cinema. It argues that these have a significant impact on the local community and the police, as well as potentially serious consequences, and that cannabis production is also associated with more serious organised crime. It also said that Merseyside police reported that:

'Cannabis cultivation by criminal gangs can cause serious harm in our communities and we know criminal groups involved in the cultivation of cannabis are usually involved in other serious organised crime. The growing of cannabis also threatens the safety of neighbouring properties because cannabis farms are a serious fire risk. Electricity and water are never a good combination and fires have been caused by the crude systems put in place by the people who set up these farms'.

21. The complainant questions this police statement. He made a request to Merseyside police for its statistics on crime in non-residential properties and it said that it could not provide a response within the appropriate limit. The police response to the requests stated:

"There is no 'flag' or marker currently in use on crime recording systems used by Merseyside Police to denote the involvement of business premises (whether empty or otherwise), and therefore no means to automatically produce a list of such crimes. Location / retrieval of relevant crimes would therefore require a manual review of all crime records within the given time period in order to determine if business premises were involved. As there are many thousands of crimes recorded each year, such an exercise would take many hundreds of hours to complete.

For example, in 2015 alone there were over 1200 crimes of Criminal Damage Of A Building Other Than A Dwelling recorded, and each of

these cases would need to be manually read through to check if the building was a business premises, whether it was occupied or empty, and also to try and determine the value of theft or damage. So even refining the request so that it only covers a 6-month period would still not bring it within the 18-hour time/cost limit."

22. The council did however provide evidence of high level criminal activity within Knowsley through press reports of recent arrests and charges involving an alleged serious and organised crime gang based in the Fazakerley and Kirkby areas, suspected of being involved in large-scale cannabis cultivation in Merseyside and other areas:

<https://www.merseyside.police.uk/news/latest-news/2017/03/update-titan-cannabis-cultivation-operation/>

<https://www.merseyside.police.uk/news/latest-news/2017/04/thirteen-charged-with-conspiracy-to-produce-cannabis/>

23. Further to this it outlined how the police and fire services consider that empty properties are at a greater risk of arson attacks, and it provided links to press stories to demonstrate that arson attacks occur in the area.

24. It also highlighted how the largescale dumping of waste (fly-tipping) is particularly problematic in Merseyside over recent years, and has caused significant problems to the local community and expense to landlords and authorities alike. It said that there has been a planned and sustained campaign which was being organised by criminal gangs, due to the lucrative profits which can be made through this. It said that it has found rubbish dumped in the area from Yorkshire, Humberside and the Midlands, brought into the area to be illegally tipped:

<http://www.liverpoolecho.co.uk/news/liverpool-news/1m-cost-liverpool-fly-tipping-11880798>

<http://www.liverpoolecho.co.uk/news/liverpool-news/two-arrested-over-illegal-waste-12927550>

25. It argues that this has been a continual problem and has happened on a number of occasions on north Merseyside. It considers that Knowsley is particularly vulnerable to this, due to the motorway network and other major roads which provide excellent access to the area from within Merseyside and further afield. It said that this has caused substantial costs to be incurred by Councils across the region, but said Knowsley has fared much better than many other Authorities.

<http://www.bbc.co.uk/news/av/uk-england-merseyside-37407591/fly-tipping-north-west-councils-spend-7m-on-waste-removal>

26. It is considered that its strategy to withhold details of vacant commercial properties has assisted in limiting illegal dumping and fly-tipping by reducing the opportunities for criminals to identify potential sites in Knowsley.
27. The council argues that it is widely recognised that a number of crimes occur in vacant commercial properties and that if the Council were to disclose the addresses of such properties it would make information widely available which would be likely to assist people in committing these crimes. Therefore the prejudice which the council envisages would be likely to occur if the withheld information were disclosed, and this relates to the prevention of crime which section 31(1)(a) is designed to protect.

The causal relationship

28. The council argues that there is a causal relationship between the disclosure of the addresses of vacant commercial properties and prejudice to the prevention of crime.
29. It argues that there is evidence that Knowsley has not been a large draw for squatters compared to other areas within Merseyside when there has been an increase in squatting in commercial properties nationally since squatting in residential properties was made a crime in 2012. It says that the agencies are convinced that this problem has been lessened in Knowsley's case due to the lack of available lists on empty properties. Similarly it says that the level of prostitution in vacant commercial properties has only been a minor problem in the Borough in comparison to other authorities and, again, the lack of provision of details of void commercial premises is considered by the agencies involved to have reduced the potential for such activity by individuals or organised criminal gangs.
30. It further argues, following the decision in *Voyias*, that there is evidence that squatters use online resources to identify vacant properties to occupy, and that they are becoming more organised in their approach. For instance, the Advisory Service for Squatters (ASS) provides advice on squatting in commercial properties on its website:

<http://www.squatter.org.uk/for-new-squatters/squatting-made-less-simple/>

31. Paragraph 26 of the judgement in the remitted First-tier Tribunal's decision in *Voyias* states that the Tribunal were "provided with sufficient

evidence, in particular in material published by the ASS...to satisfy us that squatters do check available lists of empty properties and that the release of such a list by another council in response to a freedom of information request in the past had led to an increase in squatting". The finding of the Tribunal in this respect carries significant weight.

32. Further to this, the council points to the decision in *Voyias* as evidence that both the Tribunal and the Commissioner have previously accepted the likelihood that a disclosure of such information would lead to an increase in squatting and criminal activity in residential properties.
33. It argues that Knowsley has been less affected by this, (and also levels of prostitution in industrialised areas) than other areas of Merseyside because it has not published the requested information previously whereas other authorities have done so.
34. The ASS website did previously advise that lists of non-residential properties might be available on request from local authorities, and it provides legal and practical advice as to how to move in to non-residential premises without breaking the law. However as regards finding properties which are empty it now advises:

"FINDING A PLACE

There are thousands of empty properties, including many that are non-residential, some of which are more obvious than others. Normally you will have to keep an eye on a place to make sure it is empty. It is best to research a place thoroughly before you squat it.

The local council's Planning Department has a register of all planning applications and decisions which you can see online. This will tell you who, if anyone, has made an application or got permission.

The Land Registry records ownership of most places. You can get the details for a particular place at landregistry.gov.uk. It costs £3 per place (with a credit or debit card). If there is both a freehold and leasehold owner registered, the leaseholder is the one with rights to the place and can evict you. Don't assume that if you can't find an owner, or if the owner is dead or bankrupt that you are automatically safe. Dead owners have executors and bankrupt companies have administrators.

Once you are inside you will find more useful information in the mail and any documents left around. Keep them all carefully."

35. Although squatting in non-residential premises is not in itself illegal, the Upper Tribunal in the *Voyias* judgement recognised that squatting has

specific crimes which are associated with it, such as criminal damage which therefore needs to be taken into account when considering the application of the exemption.

36. The Commissioner also notes the arguments accepted by the First-tier Tribunal regarding the likelihood of stripping on building sites is likely to correlate more with some (larger) non-residential properties (which might have significant air conditioning, water and heating units) than with residential properties. In the Voyias decision, at paragraph 35 the First-tier Tribunal's remitted decision it found that;

"35. The guidance provided to us by the Upper Tribunal is to the effect that, just because criminals have in the past targeted building sites rather than empty properties from which to steal metal and other materials, it does not follow that they will not change the pattern of their behaviour once aware of publicly available lists of empty properties. The Council's own evidence on this type of possible criminal activity is thin. However, its case is again supported to some extent by the Appellant's own evidence. This included transcripts of conversations with certain police officers. They acknowledged that, while building sites are likely to be the most common target, knowledge that a property was empty would make it a "softer" target worth considering stripping, provided that it was also evident that it contained a certain amount of valuable material. This would include, in particular, a multiple occupancy building that was being renovated as this would include, for example, separate heating system for every flat, each including a certain amount of copper pipe and heating equipment.

37. Clearly the same arguments are applicable with larger non-residential business units. These will contain (in some instances) larger heating units and air conditioning which may provide more valuable material from a single property than a residential home would be likely to. The council argues that this is a substantial issue in the Knowsley area. It therefore argues that disclosing the information would substantially increase the threat of metals thefts. It says that vacant industrial property in Knowsley has been subject to break-ins for this purpose and provided an example:

<https://www.merseyside.police.uk/news/latest-news/2017/02/appeal-for-information-following-theft-of-copper-from-power-station-in-kirkby/>

38. Empty commercial property in the Borough has also suffered from recent non-metal related theft.

<https://www.merseyside.police.uk/news/latest-news/2017/06/merseyside-police-appeal-after-building-equipment-stolen-in-prescot/>

39. The Commissioner notes the complainant's counter argument to arguments regarding police opinion on the disclosure of this information is that he made a request for figures in relation to empty properties to all police forces and only two recorded relevant figures. His position on this is that if the relevant police force is not able to provide evidence relevant to this then any statement it might give is simply supposition or an opinion. He argues that in order for the exemption to be engaged an evidential basis needs to be demonstrated. In this case however the above do demonstrate issues with vacant properties being targeted for crime of various sorts in the area.
40. The council argues that the evidence shows that there is a causal relationship between the disclosure of the addresses of vacant commercial premises and prejudice to the prevention of crime. The evidence shows that there is a real and actual risk that people intending to occupy vacant premises for activities leading to crime, use lists of vacant properties to identify suitable premises and that squatting in the Merseyside area overall is an issue whereas it is not, currently, in the Knowsley area.

Would disclosure be likely to result in prejudice the prevention of crime?

41. The council argues that prejudice would be likely if the information were to be disclosed. It argues that withholding the list has reduced the amount of these sorts of crimes in the area, and that it therefore considers that by making this information available to the public it would be likely to increase the risk of these properties being targeted, which would be likely to prejudice the prevention of crime.
42. Although the complainant argues that the impact would be low there is no specific level of prejudice required which must be reached in order for the exemption to be engaged. The Upper Tribunal in *Voyias* accepted that certain crimes are associated with squatting, and ASS website provides advice to squatters regarding squatting in non-residential properties, including how to identify and enter such properties. The Commissioner also accepts the evidence from the council that it has an issue with commercial fly-tipping in its area which might be facilitated by the disclosure of this information. From this the Commissioner concludes that there must therefore be a degree of prejudice to the prevention of crimes associated with squatting.
43. The Commissioner accepts that there is evidence that ASS has previously used lists to identify potential properties, and its website

clearly refers potential squatters to the use lists for these purposes. However as regards its other arguments that criminals would use such lists to identify vacant properties this appears to be more speculative. The Commissioner does however recognise the clear potential for that to be the case and does acknowledge that the other issues the council has raised may be an issue within the area which a disclosure of the information could potentially facilitate.

Conclusions

44. The Commissioner has therefore considered the three criteria he has outlined above as regards the application of section 31(1)(a)
- With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice which the Council envisages would be likely to occur if the withheld information was disclosed, and this relates to the interests which the exemption contained at section 31(1)(a) is designed to protect.
 - With regard to the second criterion, the Commissioner accepts that it is clearly logical to argue that the disclosure of a list of empty properties would provide those intent on committing crimes associated with such properties a way to identify properties. She therefore accepts that there is some causal relationship between disclosure of the withheld information and the prevention of crime. Moreover, the Commissioner is satisfied that the resultant prejudice which the Council believes would occur is one that can be correctly categorised as one that would be real and of substance.
 - In relation to the third criterion, the Commissioner acknowledges that a number of other local authorities have disclosed similar information without any apparent impact on the prevention of crime. However, in the particular circumstances of this case, given the examples of crimes involving empty properties that the Council has identified in its borough, the Commissioner is persuaded that identification of vacant non-residential properties falling within the scope of this request represents more than a hypothetical risk of harming the prevention of crime. Rather, disclosure of this information would present a real risk.
45. The Commissioner has therefore decided that the council was correct to apply the exemption in section 31(1)(a). The Commissioner has therefore gone on to consider the public interest test required by section 2(2)(b) of the Act. The test is whether the public interest in the exemption being maintained outweighs the public interest in the information being disclosed.

The public interest in the exemption being maintained

46. The Commissioner can take into account the frequency, severity and likelihood of the prejudice identified, and this in turn will affect the weight attached to the public interest arguments for the exemption being maintained.
47. The council argues that the main public interest rests in the prevention of crime. It argues that the evidence it has produced in its response to the Commissioner, demonstrating illegal activities in vacant commercial premises, show that this is a real, ongoing problem in its area and therefore something which is likely to happen.
48. It notes the findings in the Cornwall and RBKC cases, however it argues that it has significant experience of actual incidents at vacant commercial premises in its area to the point that these decision notices (and the complainant's statistics in those cases) are distinguishable from the risk posed to its area.
49. Further to this it argues that a disclosure of the information risks making specific types of crime, which it considers it has low levels of at the moment, more likely to rise. It also argues that it has fared well compared to other areas of Merseyside because it has not previously disclosed the requested information, and it has also taken active steps to ensure that some properties look occupied when they are not.
50. The council submits that the likelihood of harm arising and the consequences of disclosing the information are significant and serious and that it is therefore clearly in the public interest for the information to be withheld.
51. The council also points to the costs to the community, to property owners and upon police and fire authority resources having to deal with the consequences of such crime. It argues that it is therefore clear that the balance of the public interest must lie in withholding the information in order to prevent that prejudice occurring.
52. Further to this the council argues that it is already providing a service similar to the complainants to those looking to rent or buy commercial properties within the area. It says that the Knowsley Growth Hub (KGH) has an excellent track record of assisting businesses and will continue to offer this support. It argues that this advice and support is available free of charge and not via any subscription service.
53. The council has outlined its own services which have been established with exactly that purpose. It provides specific assistance for businesses wishing to set up in the area through its Knowsley Hub team.

54. The Knowsley council website at <http://www.knowsley.gov.uk/business/business-support> explains some of the services offered by the council as:

"With a dedicated helpline and enquiry system, the Knowsley Growth Hub brings all available business support into one place.

We can support with:

- *Starting your own business*
 - *Funding for your business*
 - *Moving your business to Knowsley*
 - *Land and property searches*
 - *Tendering/selling your services*
 - *Support, advice and guidance"*
55. The Commissioner does recognise that the provision of this service does weaken the public interest arguments in favour of disclosure as some of the requested information which would be of use to businesses wishing to move into an area is therefore already made available to them through the council's team.

The public interest in the information being disclosed

56. The central public interest in the information being disclosed relates to the benefits which would derive from a disclosure of the information. This includes use of the information which the complainant has explained that he would use it for. This consideration cannot take into account the private interests of the complainant, but it can take into account the public benefits which would occur should the information be disclosed. This includes the wider consequences of a disclosure of the information, either by the complainant or any other organisation able to offer similar services, and consider the public benefits to businesses and communities this would create.
57. The House of Commons Library produced Briefing Paper Number 2012 on 9 June 2017 (after the request had been made), entitled 'Empty Housing (England)', in which the introduction to the report states:

"High levels of empty properties are recognised as having a serious impact on the viability of communities. As the number of empty properties within an area increases, so can the incidence of vandalism, which acts as a further disincentive to occupation."

58. This applies to both residential and non-residential properties. There is a consensus that many town and city high streets are facing issues with dedicated retail parks taking consumers away from high street shopping areas. Areas with low levels of occupation attract vandalism and crime.
59. The complainant runs an organisation which, working with other organisations, provides information to business users on empty business properties. Effectively he wishes to provide statistical data and advice on the viability of types of businesses in particular properties within particular areas. The complainant says that this is partly funded by a grant from the EU Open Data Incubator to develop this service. He has previously said to authorities he has requested information from that:

"I would ask that you consider that the public interest in economic development and improving opportunities for independent businesses and entrepreneurs far outweighs any concern that the release of data which can identify empty business properties may cause crime.

Unemployment and economic deprivation are often key to reducing the potential for crime. Our intention is to support local economic development initiatives through the use of these data."

60. Outside of the direct intentions and private interests of the complainant there is a public interest in this information being available. A list of vacant commercial premises within an area will be of use to companies looking to develop their businesses within that area. Higher rates of occupation by businesses in an area aid in the areas economic development (and redevelopment). It will be beneficial to the economic health of that, and surrounding areas. It raises employment levels, reduces crime by making the opportunities for squatting etc lower, lessens the possibility of crimes such as fly-tipping within vacant properties, and also heightens the sense of security for neighbouring properties and people visiting the area.
61. Some public authorities therefore provide similar advice to businesses which are hoping to set up within their area. The council has confirmed that it provides a similar form of service, as discussed above. The council therefore recognises the public interest in the information being made available to business users in this manner but is concerned that disclosing the information without restriction (as is envisaged in any responses under FOI) will facilitate crime within its area.

62. The complainant has also pointed out research: *'British High Streets: from Crisis to Recovery? A Comprehensive Review of the Evidence'*¹ by Neil Wrigley and Dionysia Lambiri of the University of Southampton on behalf of the Economic & Social Research Council which argues that there is a lack of open data on town centre/high street structures which affects research into the area as well as local government's response to retail issues on high streets. The complainant argues that this request is a step towards making open data on this available. The research (at page 4) states:

"In part, these difficulties reflect the dominance of proprietary research on topics which have considerable commercial value, and its consequences in terms of a resulting lack of visibility of the true spectrum of available research and findings. But, more widely, it also reflects: the long slow demise of publically accessible open data'; the rise and importance of 'commercial data' on town centre/high street structures, and the constraints that having to fund use of commercial data imposes on research."

63. However the complainant has also demonstrated to the Commissioner that a large amount of information is already in the public domain if individuals are willing to put the time and effort into the necessary research. He demonstrated how he had obtained all of the information he had requested for three properties simply through research over the internet, using sources such as the Valuation Office Agency, Companies House and estate agents. He argued that it had taken him approximately 20 minutes of research to determine all of the information he had requested from another authority for the three properties, including whether the properties were vacant and whether the company formerly in that property have moved address or ceased trading.
64. A large number of properties are advertised by estate agents, (although the Commissioner accepts that this will not include all properties). Whilst this is not a guarantee that they are vacant, potential criminals would be able to visit the properties or do further research to determine whether they are or not. The Commissioner also notes that estate agents will often state that commercial properties are 'available immediately', which is a strong indication that they may be vacant.

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http://www.riben.org.uk/Cluster_publications_&_media/BRITISH%20HIGH%20STREETS_MA_RCH2015.pdf

65. In the case of *London Borough of Ealing v IC (Appeal No: EA/2016/0013)*, at paragraph 13 the First-tier Tribunal considered whether details of occupancy of commercial premises could be considered confidential. It found that it could not be confidential as generally this would be evident:

"The only relevant confidential information relied on by the Council is the identity of the occupier and the start date and end dates of the account. Although this information may be supplied to the Council by ratepayers we do not think that it is confidential in the required sense because the identity of an occupier and the dates of its occupation of a property are likely to be matters of public knowledge in that the public are generally able to see who is occupying commercial premises and when. This is in contrast to the position with other forms of taxation (like income tax) where many of the details held by HMRC relevant to a taxpayer's liability will come entirely from the taxpayer and not be in the public domain. We therefore reject the Council's case on section 41."

66. The appeal went to the Upper Tribunal and was remitted back to the First-tier Tribunal and decided on other matters. The statement of the Tribunal quoted above was not in question in those further appeals. The Commissioner therefore notes the Tribunal's view that the occupation of commercial premises may generally be ascertained by observation of the property concerned.
67. The Commissioner notes that although it would not always be possible to determine whether a property was vacant or not purely from an estate agents advertisement, put together with the other sources of information which the complainant has mentioned this information will already be available in many cases, providing an individual is willing to carry out the necessary research. In cases involving organised criminals, they would be likely to do the necessary research and may also visit the property to identify whether, and what security measures are present, and to establish that the property is vacant with or without the lists being published.
68. Whilst the necessary information may not be available just from the internet for the majority of properties, the Commissioner stands by her arguments and decision in the Cornwall and RBKC cases; the occupancy of commercial properties is more visible than in the case of domestic properties. Even where information on a particular property is limited on the internet, it will generally be evident whether they are occupied or not by visiting the property. Although this may not always be the case, the Commissioner considers that this would be the case for the majority of non-residential properties.

Conclusions

69. When considering the public interest arguments in support of an exemption applying, the Commissioner can take into account the, severity and likelihood of prejudice identified, and this in turn will affect the weight attached to the public interest arguments for the exemption being maintained. The complainant has outlined how the information withheld by the council can be established for many properties already from information in the public domain.
70. The Commissioner considers that the public interest arguments in favour of disclosure are relatively strong, particularly when combined with the fact that so many other local authorities, including many London boroughs with similar issues to this council, have either provided this information in response to similar requests or proactively publish it. She considers that the fact so many other authorities disclose this data is also a strong indicator that the impact and the prejudice which the council considers will occur is not so great as to cause concern amongst other authorities to the extent that they withhold the requested data. The Commissioner recognises however that different areas will have different levels of crime, and the likelihood of crimes, such as those highlighted by the council, may be different for each council dependent upon the demographics, geography and levels of crime in the area concerned.
71. The Commissioner notes that the council argues that withholding the lists from publication has reduced levels of squatting and prostitution. There is however no evidence that that is the case, and the Commissioner notes that the council also seeks to argue that other crimes such as fly-tipping and cannabis production remain an issue. If individuals involved in these types of crimes are actively able to identify vacant properties to use for their purposes without reference to the lists this suggests that the council's argument regarding the role that withholding the lists has played in impeding squatting and prostitution levels is speculative.
72. As stated, there is a balance to be made between the prejudice identified by the council and the public benefits identified. On the one hand the council may recognise the benefits disclosing the information might bring, on the other it has strong concerns that disclosing the information will prejudice its ability to prevent the crimes it has highlighted taking place.
73. The Commissioner must make her decision based upon the evidence presented to her. The Commissioner notes the opportunity to identify whether a property is vacant or not without reference to the requested information. This significantly weakens the council's argument that a

disclosure of the information might be substantially prejudicial to its ability to prevent crime.

74. The council has produced a wide number of media stories demonstrating that fly-tipping and cannabis production already occur, and demonstrating the social and economic costs of this to the community, police and council. The Commissioner considers that these examples also demonstrate that the sorts of crime described by the council take place in spite of the fact that the council does not disclose this information. Empty non-residential properties will often be visible and identifiable; withholding the requested information does not prevent these sorts of crimes from occurring.
75. Opportunist crime is not based on prior organisation, and opportunist criminals are unlikely to refer to lists prior to carrying out their crime. These sorts of crime relate to individuals noting that a property is empty and taking action directly at that point, or shortly afterwards, with little forward planning.
76. Whilst the requested information may be used for purposes such as identifying potential targets, the evidence from the complainant, and from the fact that so many authorities continue to disclose the information, is that the likelihood, severity, and or frequency of any prejudice caused by this disclosure is fairly low. The Commissioner considers that those intent on crime will do so anyway, and vacant commercial properties can already be identified even if not all properties can be identified from research on the internet alone.
77. The Commissioner therefore considers that the council's arguments are significantly weakened by the fact that withholding this information would not prevent these types of crimes from occurring, and would not prevent empty properties from being relatively easy to identify by those intent on either breaking and entering, squatting, fly-tipping or setting up facilities for cannabis production.
78. The council's argument is not that withholding the information will prevent crimes altogether – it is that it will widen the information available to potential criminals which they can use to plan their activities. This is the level of prejudice which needs to be balanced against the public interest in the disclosure of the information and the benefits that that would result in. The Commissioner has not however been persuaded that any prejudice from disclosing this information is likely to be severe, or to cause any greater harm than would be likely to occur in any event because that information can be established through other means, and because crimes of the sort envisaged would be likely

to occur anyway. Other councils have disclosed this information and have not reported that levels of crime have risen as a result of doing so.

79. Liverpool City Council publishes a report on areas of the city which fall within the definition of 'deprived' and produced a report, *"The Index of Multiple Deprivation 2015, A Liverpool Analysis"*; at <http://liverpool.gov.uk/council/key-statistics-and-data/indices-of-deprivation/>. On page 4 of the full report this states:

- *"Liverpool was ranked 1st in the IMD 2004, 2007 and 2010 but is now ranked behind Blackpool (1st), Knowsley (2nd) and Kingston upon Hull (3rd).*
- *Elsewhere in the north west, Manchester (5th) and Burnley (9th) also feature in the top 10 most deprived local authorities in England.*

All Core Cites are more deprived than the England average with rankings that range from 4th most deprived (Liverpool) to 70th (Leeds). Liverpool, Manchester, Birmingham and Nottingham are all ranked among the ten most deprived local authority areas in England.

Similarly all Liverpool City Region local authority areas are more deprived than the England average with rankings that range from 2nd most deprived (Knowsley) to 76th (Sefton)."

80. The Commissioner has considered the economic advantages a disclosure of the information might bring about, the fact that many prospective business owners may benefit from a disclosure of the information as compared to the economic deprivation which can occur when a number of commercial properties lay empty. She notes the statement in parliament regarding the problems with high levels of empty properties outlined in paragraph 57 above, and considers that empty non-residential properties may cause similar issues, particularly where areas have a high level of vacant properties.
81. The disclosure of this information would provide useful information which would aid in bringing back properties into use, and potentially aid in preventing areas of deprivation from worsening. She does however note that details of empty properties will also be made available to individual businesses through the relevant team at the council and recognises that this weakens the public interest arguments in favour of a disclosure of the information as information on prospective business premises is already available from this team. The Commissioner notes however that independent advisors would potentially have other information which could be added to the information available to the

council to add to the knowledge which they provide to the business owner.

82. When balancing the benefits of a disclosure of the information against the level of prejudice which the council has identified to the effect and prejudice on the prevention and detection of crime the Commissioner considers that the balance of the public interest rests in the disclosure of the information.
83. The Commissioner's decision is that the council was not correct to apply section 31(1)(a) in this instance.

Section 40(2)

84. The council also applied section 40(2) to withhold the information. Section 40 states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the legislation would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').
85. In order to rely on the section 40(2), the requested information must therefore constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as follows:

““personal data” means data which relate to a living individual who can be identified –

 - (a) from those data, or
 - (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.”
86. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA.

Is the withheld information personal data?

87. The council argues that section 40 arises due to the fact that in the Tribunal case of *Colin P. England & London Borough of Bexley v Information Commissioner (EA/2006/0060 & 0066)* the Tribunal's decision was that disclosure of addresses alone (i.e. without the

associated details of the owner of a property) is personal data belonging to the owner of the property. The Commissioner has taken this into account in previous decision notices on this subject and found that section 40(2) applied where the business owners were sole traders or individuals.

88. The council also argues however that section 40(2) is applicable due to the fact that limited companies can be operated by a sole director and the associated information relating to the non-domestic rate account is information about the financial standing of a sole director's business with the Council, which it argues amounts to the trader's personal data. Accordingly, the Council argues that the disclosure of information about the non-domestic rate account of a sole director limited company would involve the disclosure of personal data about this director.

89. The Data Protection Act 1998 provides a definition of personal data as data;

"personal data" means data which relate to a living individual who can be identified—

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

90. The Commissioner notes that limited companies have their own legal personality in law, ie it is a legal entity. The DPA says that a data subject must be a living individual (because of the definition of 'personal data'). Organisations, such as limited companies and other corporate and unincorporated bodies of persons cannot, therefore, be data subjects and section 40(2) of the FOI Act will not apply to information about them.

91. The complainant has requested details of the company trading name, and the relevant property in question. He has not asked for specific details of directors, the number of directors or associated information such as this. Therefore any information disclosed is effectively related to the limited company, not its directors, and as limited companies have their own legal personality in law the information cannot be personal data for the purposes of the DPA. The Commissioner therefore considers that the council was not correct to apply section 40(2) to the information in this instance.

Section 41

92. The council argues that information is provided to them by various third parties depending on the individual circumstances of the case. This will ordinarily have been provided by the ratepayers or their agents/representatives, however the landlord or their agent, the previous tenant, a liquidator, administrator, other local authority or the Valuation Office Agency (VOA) may also have provided details under the statutory obligation.
93. The council argues that information provided to it by the VOA has been provided on condition that it is used for the collection of tax and will not be shared outside of the authority. The council says that the Government has recently introduced specific provisions to permit such data sharing. It argues that it is now unable to distinguish information which has been provided to it by the VOA without manually interrogating the records of each individual case, and there are over 3300 properties which it would need to look at. It therefore argues that it would take in excess of 18 hours to ensure that that information was not included when any lists were compiled. It argues therefore that it believes that section 41 of the Act applies, and if this was not applicable then the information would need to be exempted under section 12 of the Act (appropriate limits).
94. The Commissioner notes that the only information in question in this decision notice is information on whether non-residential properties are vacant or not. The remaining information has already been disclosed to the complainant in response to his request. The VOA provides lists of property valuations for the purposes of tax payments and updates to this; it does not provide details of whether properties are vacant or not. The Commissioner therefore notes that the information specifically in question is not information which has been provided to the council by the VOA. The council's argument is therefore misplaced in this respect.

The Commissioner further notes that the VOA does provide its data more widely than to councils, and subscribers are able to download data from the VOA. It publishes a regularly-updated schedule of all ratepayers and valuations at <https://voaringlists.blob.core.windows.net/html/rldata.htm> including addresses and billing-authority reference numbers, as well as weekly valuations changes updates. This also includes a data schedule which - while not complete - contains a significant proportion of names of ratepayers and dates of occupation;

95. Section 41(1) of the FOIA says that information is exempt from disclosure if (a) it was provided to a public authority by another person and (b) disclosing it would be an 'actionable' breach of confidence (ie the aggrieved party would have the right to take the authority to court

as a result of the disclosure and the court action would be likely to succeed). Although section 41 is an absolute exemption and is therefore not subject to a public interest test under the FOIA, the common law duty of confidence contains an inherent public interest test.

41(1)(a) - Was the information provided by another person?

96. The council argues that the information was provided by varied parties as described in paragraph 92 above. The Commissioner is satisfied that the information has been provided to the council by third parties and therefore this requirement has been met.

41(1)(b) – Would disclosing the information be an ‘actionable’ breach of confidence?

97. Following the test for confidence provided in *Coco v Clark* [1969] RPC 41, the following criteria are required in order for a duty of confidence to arise:
- whether the information has the quality of confidence
 - whether it was imparted in circumstances importing an obligation of confidence; and
 - whether disclosure would be an unauthorised use of the information to the detriment of the confider.
98. When determining if an action for breach of confidence would be likely to succeed, the authority will need to consider whether there would be a public interest defence to the disclosure.

Does the information have the necessary quality of confidence?

Information will have the necessary quality of confidence if:

- it is more than trivial; and
 - not otherwise accessible.
99. The council argues that the information requested is held by it in relation to the statutory duty to collect non-domestic rates, which are deemed to be a tax on those occupying non-domestic property. Therefore, it is considered that the information does have the necessary quality of confidence.
100. It says that taxpayer and ratepayer confidentiality is a long established principle of common law which protects taxpayer's affairs against disclosure to the public. The UK has always kept taxpayer's information confidential and disclosure of this information would clearly undermine

the principle of confidentiality. It is considered that ratepayers and others would be discouraged from confiding in public authorities, if they did not have a degree of certainty that such confidences would be respected.

101. However the Commissioner notes the comments of the outlined in paragraph 65 above. In that case the Tribunal decided that there were no grounds to consider the occupancy of commercial buildings confidential as the occupancy of a commercial property was something which could be seen by members of the public. As regards whether the information may be subject to a duty of confidence or not, information on the occupation of the building is already publically available as a matter of course. It would therefore be impossible to argue that the owner has taken steps to limit its disclosure if it was clear to anyone who saw the property that it was vacant or occupied.
102. Where this is the case, the information cannot have the correct quality of confidence as there are no effective restrictions on the disclosure of that information to anyone, albeit that they would need to see the building to ascertain this. In this case the complainant has demonstrated the ability to gather the majority of the information from sources such as the VOA and Companies House. The Tribunal decided that the occupation of the property is not information which can be considered to be held in confidence.
103. The Commissioner's decision is therefore that section 41 is not applicable to the information.

Right of appeal

104. 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

105. 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.

106. 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
Principal Officer
Information Commissioner's Office
Wycliffe House
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SK9 5AF**