

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 February 2018

Public Authority: Vale of Glamorgan Council
Address: Civic Offices
Holton Road
Barry
Vale of Glamorgan
South Glamorgan
CF63 4RU

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 Glamorgan Council. The council applied section 31(1)(a) to the information stating that it would prejudice the prevention and detection of crime to disclose the information.
2. The Commissioner's decision is that the council was not correct to apply section 31(1)(a) to the information.
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 disclosed the majority of the information but withheld information on whether properties were occupied or not. It said that that information was exempt under section 31(1)(a) as a disclosure of the information would prejudice the prevention and detection of crime.
7. Following an internal review the council wrote to the complainant on 29 April 2017. It confirmed its position that the information was exempt under section 31(1)(a).

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) 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 the information on empty non-residential properties in the borough could be used by criminals and squatters wishing to find properties to move into. Its arguments follow 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') wherein the First-tier tribunal found that a disclosure of lists of empty 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.
13. The council provided the following arguments in support of the exemption applying.
14. The council accepted that the decision notices in the cases of Cornwall and Kensington and Chelsea found against the application of the exemption in those cases. However it considered that the tribunal's decision in the Voyias Case was more appropriate to its situation and said that it would therefore follow the approach taken in this decision.
15. The Commissioner has also considered a similar case previously in a decision notice relating to *Westminster City Council, Decision Notice Reference FS50454267* (https://ico.org.uk/media/action-weve-taken/decision-notices/2012/783218/fs_50454267.pdf). In that case she accepted that details of empty commercial properties could be withheld under section 31(1)(a) and cited that:

"The Tribunal accepted that the disclosure of the list of properties would be of use to squatters and would be likely to lead to significant harm in the form of criminal activity." (paragraph 63)

The complainant's arguments

16. However since those 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.
- 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.
- 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.
17. The Commissioner issued 2 decision notices providing similar arguments to the council on 28 February 2017. She issued a Decision Notice FS50628943 to Cornwall Council ('Cornwall'), (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>.
18. 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.
19. Nevertheless in both cases the Commissioner accepted the validity of the argument that in principle, a disclosure of the lists may increase the likelihood of prejudice being caused to the prevention and detection of crime.

The causal relationship

20. The council said that it shares many of the concerns that were raised by the councils in Voyias, Westminster, Cornwall and RBKC and argues that this is the approach which it considers should be taken in such cases. It considers that there is a significant likelihood that crime would increase should it disclose the information and that this is proven by the decision in cases such as the findings of the first-tier tribunal in *London Borough of Bexley v Colin England (EA/2006/0060 and 0066)* and a Decision Notice involving the *London Borough of Tower Hamlets (FS5025991)*. It adds that the First Tier Tribunal decision in *London Borough of Bexley v Colin England (EA/2006/0060 and 0066)* found that:

- a. There is evidence that empty properties are associated with criminal activity from organised local gangs (paragraph 41 - identified occasions of organised 'stripping' of empty properties).
- b. There is evidence that while squatting is not a crime, it is associated with criminal activity (paragraphs 48 and 57 identified a number of instances).
- c. The disclosure of the list of properties would be of use to squatters and would on the balance of probabilities lead to significant harm in the form of criminal activity (paragraph 63).

The likelihood of prejudice

21. The council argues that it is not specifically able to demonstrate evidence of disclosure causing issues within its own area as it has not disclosed this information. It 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 requested information it would make it widely available and this would be likely to assist people in committing 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.
22. As regards the more recent decisions issued by the Commissioner the council said that whilst it acknowledges these decisions it strongly agreed with the decisions made and the guidance given at Tribunal level. It therefore felt that any decision to go against that guidance would be misjudged.
23. The council did not specifically address the information provided by the complainant in support of his position that the information should be disclosed. Neither did it specifically address the Commissioner's arguments in the Cornwall nor the RBKC decision notices other than to state that it considered the tribunal's decision was preferred.
24. The Commissioner notes however that the *Bexley* and *Voyias* decisions related primarily to residential properties rather than commercial premises. She considers that there is a significant difference between these two types of property insofar as whether individuals are able to identify whether the property is vacant or not without reference to the withheld information.

Conclusions

25. 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 an easy way to identify them. 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 referred to above, the Commissioner is persuaded that identification of vacant non-residential premises 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.
26. The Commissioner therefore considers that the exemption is engaged. She 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

27. The Commissioner can take into account the 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.
28. The council argues that the main public interest rests in the prevention of crime. Whilst it has not highlighted numerous examples of issues where crime has occurred in vacant commercial premises in its borough it argues that the public interest rests in protecting the public from the effects of crime, and argues that disclosing the information would be

likely to increase the levels of crime in the area. It therefore considers that the public interest in withholding the information outweighs the public interest in the information being disclosed.

29. The council refers to the public interest tests carried out in the *Voyias* case and in the other previous cases mentioned above. Essentially it argues that both the Tribunal and the Commissioner have previously identified that the public interest in the exemption being maintained includes:
- The public interest in avoiding damage to property;
 - The efficient use of police resources;
 - The potential for indirect consequences of crime, for example the impact on neighbouring properties of crimes perpetrated on the empty properties; and
 - The impact of crime on individuals.
30. The council's argument is not that withholding this information will prevent crime as such. Crime will always take place, and some vacant commercial properties will be affected. The council's argument is that disclosing the lists widens the information available to potential criminals. It provides information which criminals will use as an easy list of properties which they can use to identify potential targets. Its point is that crime will be easier to commit if the information is disclosed.

The public interest in the information being disclosed

31. The Commissioner notes that the *Voyias* decision highlighted by the council primarily related to domestic, rather than commercial properties. The Commissioner notes that there is a difference between these as it is relatively easy to make a domestic property look occupied, whereas this cannot be said to be the case for the majority of commercial properties. The Commissioner's decision notice in the cases of Cornwall and RBKC note as part of the arguments that vacant commercial properties can often be evident from the nature of the premises – steel shutters on windows and doors, whitewashed windows or the absence of activity such as parked cars on the properties car park etc.
32. Further to this, the complainant has demonstrated that the information he has requested is often available from estate agents, the Land Registry, Companies House, the Valuation Office Agency and other sources. He provided the Commissioner with details of 3 properties in a London borough where he had obtained all of the information he had requested from them simply by research over the internet using publically available sources. He argued that it had taken him

approximately 20 minutes of research to determine the entirety of the information he had requested from another authority for 3 properties. A large number of properties are advertised by estate agents, (although the Commissioner accepts that this will not include all properties), and although this is not a guarantee that they are vacant, potential criminals would be able to visit these to determine whether they are or not. The Commissioner notes however that estate agents will often state that commercial properties are 'available immediately', which is a strong indication that they may be vacant.

33. 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 a lot of cases, providing an individual is willing to carry out the necessary research.
34. Whilst the necessary information may not be available from the internet for the majority of properties, the Commissioner stands by her decision in the Cornwall and RBKC cases that the occupancy of commercial properties is more visible than domestic properties. If nothing else, it will generally be evident whether they are occupied or not by visiting to the property.
35. 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 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."

36. The appeal went to the Upper Tribunal and was remitted back to the first-tier Tribunal. It was subsequently decided through a consent order relating to other matters. The statement of the tribunal quoted above was not however in question in these further appeals.

37. The Commissioner therefore notes the Tribunal's opinion that the occupation of commercial premises may generally be in the public domain because people will be able to see who is occupying it. In the same way it is also evident whether a property is occupied or not as people can visit the property and see whether it is or not.
38. The Commissioner recognises that the council's argument is not that crime will not occur; it is that disclosing the lists would be likely to widen the list of potential properties which criminals are aware of and the number of potential targets of crime therefore increased.
39. The Commissioner considers it important to consider that those intent on committing organised crime would find opportunities simply from visiting an area, looking on commercial estate agents websites, investigating an area of low occupancy and go ahead with their plans in any event. Withholding this information will not prevent this sort of crime from taking place. Criminals can already obtain this information for some properties as demonstrated by the complainant. They are likely to commit crime regardless of whether the list is published, particularly as empty commercial properties are easy to identify. The Commissioner considers that this significantly weakens the council's argument that disclosing the requested information might be prejudicial to its ability to prevent crime.
40. Whilst the lists 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 the prejudice caused by this must be fairly low to local authorities who actively publish the information. This does not detract from the fact that the Commissioner fully accepts the council's argument that crime occurs in empty commercial properties and that they are a draw to squatters etc. This would be likely to occur anyway, and the disclosure of the lists would not particularly facilitate this to the degree that the council argues that it would as much of that information is already available to the public.
41. The central difference is that commercial property is generally easier to spot as being empty. Residential properties may look occupied even though they are not. The Commissioner considers that it is much harder to disguise the fact that a commercial property is vacant. Those intent on crime will do so anyway, particularly if empty commercial properties are easy to spot.
42. 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, but this consideration cannot take into account the private interests of the complainant.

43. 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.
44. As stated, the Commissioner is not able to take into account the private interests of the complainant in her decision. She is however is able to take into account the wider consequences of a disclosure of the information, and any usage of that data for the purposes outlined by the complainant, either by him or any other organisation able to offer similar services, and consider the public benefits to businesses and communities this would create.
45. The complainant has previously argued 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."
46. Outside of the direct intentions 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 a specific area. Clearly such information will be useful to business owners and higher rates of occupation by businesses in an area aid in the areas economic development (and redevelopment). Companies moving into an area are generally going to 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.
47. Some public authorities therefore provide similar advice to businesses which are hoping to set up within their area. The council has not said whether it provides any similar form of service. The council itself recognises the public interest in the information being made available to

business users in this manner but is concerned that disclosing the information will facilitate crime within its area.

48. 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."

Conclusions

49. When considering the public interest arguments in support of an exemption being applied, 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.
50. 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 have provided this information in response to the request or proactively publish it. She considers that the fact so many other authorities disclose this data is a strong indicator that the impact and the prejudice which the council considers will occur

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

is not so great as to cause concern amongst other authorities to the extent that they withhold the requested data. The Commissioner does recognise 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 and geography of the area concerned.

51. 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 mentioned taking place.
52. The Commissioner must make her decision based upon the evidence presented to her. The Commissioner notes that the opportunity to identify whether a property is vacant or not exists 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.
53. As stated in paragraph 40 above, the Commissioner recognises that the lists may be used for purposes such as identifying potential targets, however 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 the prejudice caused by this must be fairly low to local authorities who actively publish the information. The Commissioner considers that those intent on crime will do so anyway, particularly as empty commercial properties can already be identified.
54. 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 identified by those intent on either squatting or committing other crimes on the properties.
55. As stated above, the council's argument is not that withholding the information will prevent crimes altogether – it is that a disclosure of withheld information will widen the information available to potential criminals in order to plan their activities. This is the level of prejudice which needs to be balanced against the strong public interest benefits which a disclosure of the information would result in.
56. The Commissioner has considered the economic advantages such a disclosure 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 occurs when a large numbers of commercial properties lay empty. When balancing this against the level of prejudice which she has identified to the prevention and detection of crime she has described above the Commissioner considers that the balance of the public interest rests in the disclosure of the information.

57. The Commissioner's decision is that the council was not correct to apply section 31(1)(a) in this instance.

Right of appeal

58. 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

59. 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.

60. 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 Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF