

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

### **Decision notice**

**Date:** 7 March 2018

**Public Authority:** West Lancashire Borough Council

**Address:** 52 Derby Street  
Ormskirk  
Lancashire  
L39 2DF

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

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1. The complainant has requested information held by West Lancashire Borough Council (the council) relating to business (non-residential) property rates data.
2. Whilst the council provided some information, it withheld certain information under section 30(1)(a)-prevention and detection of a crime and section 40(2)-personal information, of the FOIA.
3. The Commissioner has decided that whilst the council was correct to apply section 31(1)(a), the public interest in the information being disclosed outweighs that in maintaining the exemption in this instance. However, the Commissioner has gone on to conclude that the council has correctly applied section 40(2) to information relating to sole traders and partnerships.
4. The Commissioner requires the council to take the following steps to ensure compliance with the legislation:
  - The council should disclose the withheld information to the complainant with the personal data relating to sole traders and partnerships redacted in accordance with section 40(2) of the FOIA.
5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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6. On 30 March 2017 the complainant wrote to the council and requested information in the following terms:

*'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). 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)", 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.'*

7. The council responded on 10 April 2017 and provided the complainant with some of the information he had requested. It advised that details of individuals or sole traders had not been disclosed as it regarded this to be third party personal information that was exempt under section 40 of the FOIA.
8. The council went on to say that section 40(2) provides that personal information about third parties is exempt information, if one of the conditions set out in section 40(3) is satisfied. It advised that under the FOIA, disclosure of this information would breach the fair processing principle contained within the DPA.
9. The council also confirmed that it had withheld any details that would directly identify empty and unused property stating that this is a '*crime prevention matter*' and is covered by section 31 of the FOIA.
10. On 14 April 2017, the complainant responded to the council to advise that he did not agree that information relating to the occupancy status of non-residential properties should be withheld. He referred to decision notice FS50628978 (Royal Borough of Kensington and Chelsea)<sup>1</sup> and decision notice FS50628943 (Cornwall Council)<sup>2</sup> to support his argument that the information should be disclosed. In these two cases the Commissioner accepted that section 31(1)(a) was applicable to details of the occupancy status of non-residential properties, but concluded that the balance of the public interest weighed in favour of the disclosure of this information.
11. The council responded to the complainant on 16 May 2017. It advised that it had dealt with his correspondence of 14 April 2017 as a request for an internal review of its decision to refuse to provide information relating to the occupancy status of non-residential properties.
12. The council confirmed that it maintained its previous position that this information was exempt from disclosure under section 31(1)(a) of the

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2013577/fs50628943.pdf>

<sup>2</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2013576/fs50628978.pdf>

FOIA. It advised that there is *'a risk of illegal drug use and production, gang activity, arson, vandalism, theft or other anti-social behaviour at the empty properties if information as to their whereabouts is made publicly available.'*

13. The council also confirmed that it had considered the public interest test. It stated that, in its view, publication of the occupancy status of the properties would lead to increased anxiety and fear of crime amongst occupants of adjacent residential and non-residential properties. In addition, it made reference to the subsequent likely targeting of the empty properties by those engaged in criminal and anti-social behaviour.
14. The council went on to say that both its efforts, and that of property owners, to bring empty properties back into use to improve the local communities and reduce crime and vandalism could be undermined, should the information be disclosed.
15. The council finally stated that the circumstances of this case could *'be distinguished'* from those described within the two decision notices referred to by the complainant in his correspondence of 14 April 2017. It advised that in both those cases neither council had provided sufficient evidence to support their arguments that the disclosure of the information would prejudice the detection and prevention of a crime. The council stated that, in contrast, it was able to provide such evidence.

### **Scope of the case**

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16. The complainant contacted the Commissioner on 9 June 2017 to complain about the way his request for information had been handled.
  17. The Commissioner's investigation has focussed on whether the council was correct to apply section 31(1)(a) to the information that has been withheld relating to the occupancy status of non-residential properties.
  18. If found to be necessary, the Commissioner has been prepared to then consider the council's application of section 40(2) to any remaining parts of the request.
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## Reasons for decision

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### Section 31-law enforcement

19. Section 31 provides a prejudice based exemption which protects a variety of law enforcement interests. In this case, the council considers that section 31(1)(a) applies. This section states:

*"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,"*

20. Consideration of this exemption involves two stages. Firstly, in order to be engaged, the following criteria must be met:

- i. 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;
- ii. 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
- iii. it is necessary to establish whether the likelihood of prejudice being relied upon by the public authority is met-i.e., disclosure 'would' result in prejudice or disclosure 'would be likely' to result in prejudice.

21. Secondly, this exemption is qualified by the public interest, which means that the information must be disclosed if the public interest in maintaining the exemption does not outweigh the public interest in disclosure.

22. Given the above, the Commissioner will consider in the first instance whether the relevant criteria for the engagement of section 31(1)(a), as set out in the three limb test above, is satisfied. If this is the case, she will then go on to consider the public interest test.

### **Does the harm envisaged relate to an applicable interest?**

23. The relevant applicable interests cited in this exemption are the prevention and detection of a crime.

24. The council has explained that the release of the occupancy status of the relevant properties would increase the risk of them being a target for criminals. It has gone on to refer to illegal drug use and production, gang activity, arson, vandalism, theft or anti-social behaviour at the empty properties, should information about their whereabouts be made publicly available.
25. The Commissioner is satisfied that the harm envisaged by the council does relate to an applicable interest, that being the prevention of crime and therefore the first criterion of the three limb test has been met.

**Is there a causal relationship between the potential disclosure and prejudice to crime prevention?**

26. The Commissioner must be satisfied that the nature of the prejudice is "real, actual or of substance" and not trivial or insignificant. She must also be satisfied that some causal relationship exists between the potential disclosure and the stated prejudice.
27. The council argues that revealing which properties are vacant makes them more vulnerable to crime as it would make it easier for criminals to target them for misuse, vandalism, theft and damage without having to seek out and find unoccupied premises. It cites the example of criminal gangs that strip empty buildings of valuable materials and fixtures.
28. The council has also made reference to *'Voyias v Information Commissioner and London Borough of Camden Council (EA/2011/0007)'*<sup>3</sup> (Voyias). In that case the First-tier Tribunal took into account the view expressed by the police that if a property was empty it would make it a *'softer target'* worth considering for the removal of any valuable material assets contained therein. The Tribunal concluded that *'the availability of information about empty properties is bound to be of some value to criminal property strippers and that there is some evidence, although relatively light, that some of them might make use of it'*.
29. The Commissioner acknowledges that, in this instance, there is logic to the argument that the disclosure of a list of empty properties would

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<sup>3</sup> [http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i937/EA-2011-0007\\_2013-01-22.pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i937/EA-2011-0007_2013-01-22.pdf)

provide those intent on committing crimes associated with such properties with 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 claims would occur can be correctly categorised as one that would be real and of substance.

30. Given that the Commissioner is satisfied that the prejudice being claimed is not trivial or insignificant and that there is a relevant causal link, she has determined that the second criterion of the three limb test has been met.

### **The likelihood of prejudice**

31. The council has been explicit in saying that the disclosure of the withheld information 'would', as opposed to 'would be likely' to, prejudice the prevention of crime.
32. The Commissioner has issued guidance<sup>4</sup> which explains that the terms 'would' and 'would be likely' have separate and distinct meanings when considering the prejudice based exemptions contained within the FOIA.
33. 'Would' means to be 'more probable than not' and that there is a more than 50% chance of the disclosure causing prejudice, even though it is not absolutely certain that it would do so.
34. 'Would be likely' refers to a lower probability of prejudice occurring than 'would'. There must still be a real and significant risk of prejudice, even though the probability of prejudice occurring is less than 50%.
35. In this case, the council claims to have evidence which shows that the disclosure of the information relating to the occupancy status of non-residential properties would prejudice the prevention and detection of a crime in the West Lancashire Borough area.
36. The council states that when it published the addresses of vacant properties in around 2011, it experienced a high number of nocturnal

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<sup>4</sup> <https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf>

break-ins by criminal gangs who targeted metal, primarily copper, within the units. The details of break-ins provided by the council are as follows:

- Christmas 2010/New Year 2011: two units were broken into with heavy duty electric cables taken and distribution boards destroyed.
  - February 2011: a block of four units with a single heavy duty supply suffered the same treatment as described above.
  - April 2011: one of the units broken into previously was targeted again and the wiring which had been replaced was stolen. In the same month another unit was broken into; all the copper pipework was stolen and the boilers and loading door were damaged.
  - 4 May 2011: five vacant units were broken into and all copper pipework was removed.
  - 5 May 2011: one of the units broken into previously was targeted again and all the copper pipework was stolen.
37. The council states that it is apparent from the evidence that it has presented that there is a risk to highlighting that premises are unoccupied and that its direct experience of the crime subsequently committed is a salutary lesson. It has stated that since it made the decision to publish generic addresses, all such break-ins have ceased.
38. The Commissioner has considered the timing of previous information requests made to the council for information relating to the occupancy status of commercial properties available on the 'whatdotheyknow'<sup>5</sup> website. She notes that information was disclosed by the council in response to such requests on the following dates:
- 10 January 2011: information disclosed relating to empty properties with a rateable value greater than £2600.
  - 4 August 2010: information disclosed relating to empty properties with a rateable value of over £50,000.

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<sup>5</sup>[https://www.whatdotheyknow.com/body/west\\_lancashire\\_district\\_council?utf8=%E2%9C%93&query=&request\\_date\\_after=&request\\_date\\_before=&commit=Search](https://www.whatdotheyknow.com/body/west_lancashire_district_council?utf8=%E2%9C%93&query=&request_date_after=&request_date_before=&commit=Search)



- 20 May 2010: information disclosed relating to empty properties with a rateable value of £18,000-£20,000.
  - 20 May 2009: addresses and rateable values of empty commercial properties disclosed.
39. Whilst the Commissioner is mindful of the fact that there may have been additional requests that were not submitted via the 'whatdotheyknow' website, the council has not provided any further details in relation to this for her consideration.
40. The Commissioner notes that the first break-ins referenced by the council occurred in late December 2010/early January 2011 and therefore took place before information was disclosed on 10 January 2011. Prior to that, the last disclosure of a list of empty properties by the council (that the Commissioner is aware of) was on 4 August 2010, and only concerned empty properties with a rateable value of over £50,000.
41. Whilst there have been a number of disclosures of the occupancy status of properties by the council since at least 2009, only details of incidents of crime which took place between late December 2010 and early May 2011 have been provided for the Commissioner's consideration. The council has also confirmed that the crime statistics it holds only relate to non-residential properties that it owns.
42. The council has been unable to provide reports of any incidents that may have taken place between August 2010 and the end of December 2010, or prior to this. It has also been unable to confirm how many of the properties targeted were included on any of the lists that were disclosed.
43. The complainant has argued that certain statistical evidence he has collated shows that a disclosure of empty non-residential properties does not result in an increase in the level of crime committed.
44. The complainant states that whilst the number of public authorities that have disclosed details held of vacant non-residential properties as a consequence of his FOIA requests has increased from around 20% to 90%, there have been no known reports of any subsequent '*vacant-property-related crime wave*'. Although the Commissioner has been unable to verify the accuracy of the complainant's figures, she is aware that a large number of authorities have provided the data to the complainant in response to his request.
45. The complainant has also informed the Commissioner that, in response to information requests, Thames Valley Police and North Wales Police have provided him with information on incidents of crime that have been

reported affecting empty commercial properties in their areas (he has advised that no other police forces recorded such data).

46. The complainant states that the information provided by North Wales Police indicate that the ratio of crimes in occupied v vacant commercial properties is almost 70:1, compared to an actual occupied v empty ratio of 6:1. He states that this suggests that an occupied property is therefore ten times more likely to experience an incident of crime than an unoccupied one.

47. With regards to the data provided by Thames Valley Police, the complainant argues that there appears to be no obvious correlation between the councils that do (or do not) provide empty property data and the recorded crimes committed on such property in each area. He has provided the following statistics to support his view:

*'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.'*

48. With regards to the barrage of break-ins described by the council, the Commissioner believes it pertinent to note that there was a large rise in the value of copper in early 2011, and that it was at one of the highest ever recorded levels in February 2011<sup>6</sup>. This appears to have had a significant effect on the level of theft of copper throughout the UK at the same time that the council reported an increase in break-ins at its properties.

49. An article published in the Independent dated 27 February 2011 describes 'an epidemic of copper thefts across the UK' and states that 'police recorded the highest level of copper thefts in January [2011]<sup>7</sup>.

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<sup>6</sup> <http://www.infomine.com/investment/metal-prices/copper/all/>

<sup>7</sup> <http://www.independent.co.uk/news/uk/crime/copper-thefts-rise-to-an-all-time-high-2226773.html>

50. A number of steps were taken nationwide to tackle the problem of increasing copper theft in 2011, including the introduction of 'Operation Tornado'<sup>8</sup> by British Transport Police. Attempts to deal with such crime, together with a decrease in the value of copper, appears to have contributed to a significant decrease in the number of reported thefts of this metal by 2012<sup>9</sup>.
51. Given all of the above, the Commissioner is not persuaded that the evidence provided by the council is sufficiently compelling to conclude that there was a direct link between its previous disclosures of details of empty properties and the break-ins described. She is therefore not persuaded that the disclosure of the information requested would prejudice the prevention and detection of a crime.
52. Where the Commissioner does not accept that the public authority has sufficiently demonstrated that prejudice would occur, she will then go on to consider whether the lower level of prejudice '*would be likely*' to occur is applicable. It is important to note that this of a relevance as the level of prejudice applied has an effect of any subsequent consideration of the balance of the public interest test. The more certain the prejudice, the greater weight it will carry when considering the public interest.
53. The Commissioner has taken into account the view taken by the First-tier Tribunal view in the Voyias case that crimes relating to the '*stripping*' of valuable materials from empty properties is likely to correlate more with some (larger) non-residential properties than with residential properties. She accepts that this has some relevance to this case.
54. In addition, she has considered the details provided by the council detailing the small number of break-ins committed on some of its empty properties.
55. The Commissioner does accept that the opportunity for prejudice to arise is more than a hypothetical or remote possibility. She is therefore satisfied that the lower test of '*would be likely*' to prejudice has been met in this instance.

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<sup>8</sup> <https://www.channel4.com/news/crackdown-on-metal-theft-launched-in-north-of-england>

<sup>9</sup> <http://www.bbc.co.uk/news/technology-21229762>

56. The Commissioner has therefore concluded that section 31(1)(a) is engaged and has gone on to consider the public interest test required by section 2(2) of the FOIA.

### **The public interest test**

57. The test is whether *"in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information"*.

### **The public interest in the exemption being maintained**

58. The council is of the view that whilst the information may be of interest to a small number of individuals, it is not of interest to the public at large, and it does not have a widespread impact on the public. It goes on to say that, on the other hand, the impact of damage caused by criminals at vacant units does impact on the wider public in terms of resources to deal with these issues which ultimately come from the public purse.
59. The council has argued that there would be increased anxiety and fear of crime and criminal activity amongst occupants of adjacent properties as a result of making the information publicly available. It has gone on to refer to the subsequently likely targeting of empty properties by those engaged in criminal activity.
60. The council also makes mention of the potential negative effect on the local economy (for example preventing business start-ups), the aesthetic appearance of the estates in the West Lancashire district area, and health and safety. It refers to an example scenario of larger premises being set on fire, together with the knock on effect of the potential spread of fire to neighbouring units which then further impacts on the economy, employment etc.
61. The council states that the disclosure would affect the potential to attract new businesses to the area, if crime and disorder on commercial units were to further increase. It states that Skelmersdale (where most of its industrial units are situated) has particularly high rates of economic deprivation together with challenges around employment levels.
62. In addition, the council has explained that its insurance did not cover all the losses from the break-ins which meant that monies had to come from the public purse.
63. In decision notice FS50628978 and FS50628943 the Commissioner stated that commercial premises are more likely to have greater levels of security than most residential premises. The council has advised that

it disagrees with this view arguing that, in terms of its own empty units, there are limited security measures in place to protect those properties which are unoccupied during the evening and night (when the reported break-ins have occurred).

64. The council goes on to say that it would be imprudent to provide details of vacant and therefore vulnerable commercial properties. It states that to fully secure such properties against trespass, such as by sheeting up all openings, would be prohibitively expensive and visually detrimental to neighbouring premises. It also states that it makes viewing with prospective tenants extremely difficult whilst also advertising that these units are empty by virtue of them being screened up.

### **The public interest in the disclosure of the information**

65. The council has advised that it has considered that there are public interest arguments in favour of disclosure, confirming that it has taken into account those that relate to transparency, the promotion of public understanding of availability of council units, and potential interest in expenditure on empty business rates.
66. When the complainant submitted an earlier request to the council on 14 March 2016 for the same information he included some explanation of the purpose of his request. He stated that he was compiling a comprehensive time series data base of business activity across the UK which would require the dataset updated on a quarterly basis. He also advised that:

*'In terms of Public Interest, the purpose of our use of the data requested is informing entrepreneurs and business seekers about opportunities in empty premises when they are advertised for new tenants. We combine local authority premises occupation data with other data (from the Valuations Office and ONS) to develop forward guidance on business potential in each empty business property.'*

67. The complainant went on to say that combined data is made available via online commercial property leasing intermediaries as a free service to business seekers. He stated that his activity is supported by the Open Data Institute and that he has received funding from the EU Open Data Incubator to develop this service.
68. He also advised that there is a public interest in economic development and improving opportunities for independent businesses and entrepreneurs which would far outweigh any concern that the release of the data identifying empty business properties may cause crime. He stated that:

*'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.'*

69. The complainant has explained to the Commissioner that he is now able to use the data which approximately 90% of councils currently disclose in relation to vacant non-residential units. He has advised that commercial property developers, and inward investment teams at local authorities, are using vacancy and socio-economic analysis produced from the data he is publishing to guide investments and improve access to opportunities for independent businesses and entrepreneurs.
70. He has gone on to say that researchers who normally investigate access to residential housing have started looking at commercial vacancy data where entire office blocks have remained empty for decades (as 'land banks') pending conversion into residential homes. He states by way of an example that after decision notice FS50628978 was issued, the Royal Borough of Kensington and Chelsea disclosed data relating to vacant non-residential properties. He states that this revealed that 22% of 2,885 office hereditaments are vacant in the council in comparison to less than 1% offered for rental. The complainant states that this discrepancy is of particular interest to researchers looking to understand property availability.
71. The complainant has also pointed out research: *'British High Streets: from Crisis to Recovery? A Comprehensive Review of the Evidence'* <sup>10</sup> by Neil Wrigley and Dionysia Lambiri of the University of Southampton on behalf of the Economic & Social Research Council. He states that this review suggests 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 adding open data on this available for free. 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*

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<sup>10</sup>[http://www.riben.org.uk/Cluster\\_publications\\_&\\_media/BRITISH%20HIGH%20STREETS\\_MARCH2015.pdf](http://www.riben.org.uk/Cluster_publications_&_media/BRITISH%20HIGH%20STREETS_MARCH2015.pdf)

*structures, and the constraints that having to fund use of commercial data imposes on research."*

### **The Commissioner's position**

72. 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.
73. If a public authority can establish that prejudice 'would' happen, the argument for maintaining the exemption carries greater weight than if they had only established that prejudice 'would be likely' to happen.
74. In this case the Commissioner has determined that only the lower standard of 'would be likely' to prejudice has been met. Whilst this lessens the weight of those arguments for maintaining the exemption, it does not necessarily mean that the balance of the public interest will then lie in favour of disclosure. This will be dependent upon a number of factors and the circumstances of the case under consideration.
75. In this instance the Commissioner has not been persuaded that the evidence provided by the council is sufficient to show a direct link between information disclosed in response to previous information requests and the break-ins described. However, she does accept that it is likely that information that reveals a property is empty will be useful to a criminal.
76. The Commissioner has taken account of the fact that the break-ins described by the council all occurred within one mile of each other and were based in industrial areas. The council has described the area where its industrial units are situated as one which has high rates of economic deprivation together with challenges around employment levels.
77. Given this, it is the Commissioner's view that there would be a higher probability that vacant industrial units would exist in such an area. In addition, there is a greater likelihood that these would be more vulnerable to crime at a time where copper had a particularly high value, and when the rate of theft of this metal was at an all-time high nationally.
78. The Commissioner also considers that the publication of a list of vacant properties by a council is not the only way that an empty non-residential property can be identified. In decision notice FS50628978 and decision notice FS50628943 the Commissioner refers to commercial websites which can be searched for details of commercial properties for rent or purchase. These details can include maps and /or photographs of the

sites. Whilst the information may not specify whether the sites are vacant or not, a motivated individual would be able to make checks on a property to identify whether that is the case or not.

79. In addition, the complainant has also explained to the Commissioner that he was able to obtain the same information he is requesting that the council provide to him in relation to three different properties (situated in a different borough), using a search of sources such as the Valuation Office Agency, Companies House and estate agents via the internet. He states that it had taken him approximately 20 minutes to research and collate the information that he required, and this included the occupancy status of the each property.
80. The Commissioner notes that the West Lancashire Borough Council website advertises its commercial premises that are currently available to rent<sup>11</sup> and includes maps of the area where they are sited. It also provides access to details of other commercial property and land to rent in its area upon registration of basic contact details.
81. The council has advised the Commissioner that properties listed on its website are identified in a generic manner and information about addresses is only provided once an enquirer has supplied information about themselves to enable the council to satisfy itself of the identification of that person.
82. In this case, the council states that whilst it agrees that a motivated individual may be able to identify potential empty properties from other sources, they would not be able to determine conclusively whether or not a property was unoccupied. It goes on to say that it does not want to market the fact that its units are empty which would make it easier for criminals to carry out their illegal activities.
83. Whilst the details published by the council may not provide explicit confirmation that any one property is vacant, the Commissioner is satisfied that the information included on its website, and on others which advertise commercial units to let, could still provide criminals with a good indicator of properties which may be potentially suitable for break-ins, particularly if it is put together with other sources of information. In addition, the Commissioner notes that often a property

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<sup>11</sup> <http://www.westlancs.gov.uk/business/business-location-links/council-owned-business-property.aspx>



is advertised 'for immediate occupation' which is a strong indicator that it is likely to be empty.

84. In addition, the Commissioner is of the view that non-residential properties are generally easier to identify as being vacant than domestic properties. Often simply being locked up during the day with no obvious signs of activity will indicate potential for the property to be empty. If any shutters are down to aid the property's long term security, this will add to any suspicion that the property is vacant.
85. The Commissioner is also of the view that in most instances of organised crime, a property would be checked for its occupancy status prior to any break in. For example, security arrangements which may be in place in relation to any one property would need to be checked out and this would include the occupancy status of the property.
86. The council has also made reference to *the 'Local Transparency Code 2015'*<sup>12</sup> (the Code) in its representations to the Commissioner. It refers to one part of the guidance which advises that when publishing local government data, local authorities should '*include no part of the address except for the town and first 3 parts of the postcode, no land and property gazetteer and easting or northing which may identify a property*' which is vacant and owned by the council. It states that this reinforces the approach it has taken in this instance.
87. The Commissioner understands that the purpose of the Code is to promote transparency and accountability in relation to how councils spend public money, how assets are managed and how decisions are made. Importantly, the Code states that it '*does not replace or supersede the existing legal framework for access to and re-use of public sector information provided by the Freedom of Information Act 2000*' (and also certain other specified statute which provides a right of access to, and use of, information).
88. The Commissioner, having considered the content of the Code, is satisfied that it is still appropriate in this instance for her to determine whether the council has correctly applied section 31(1)(a) of the FOIA to the withheld information and whether the public interest weighs in favour of withholding, or disclosing, the information in this instance. This

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<sup>12</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/408386/150227\\_PUBLICATION\\_Final\\_LGTC\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408386/150227_PUBLICATION_Final_LGTC_2015.pdf)

is because it is her view that the Code would not prohibit the disclosure of the requested information under the FOIA, unless a relevant exemption can be applied.

89. The Commissioner has considered the evidence provided to her by both parties. She acknowledges that a list of empty commercial properties may have the potential to be used for criminal purposes. However, the fact that many other public authorities disclose the requested information suggests that, generally speaking, the likelihood, severity, and or frequency of such prejudice must be fairly low to those councils that publish the information.
90. The Commissioner has also taken into account the statistics provided by the complainant which suggest that incidents of crime on vacant property tend to be rare and unconnected to any disclosures of lists of empty properties by local authorities. However, it should be noted that she has been cautious in the weight she has attached to such evidence, given that the figures only applied to two out of forty three police forces in the UK and neither covered the West Lancashire area.
91. The Commissioner accepts each case should be considered in isolation. Even if a significant number of local authorities have disclosed similar information to that requested in this case, it does not automatically follow that all public authorities should disclose that information. She needs to consider each individual complaint that she receives on its own particular merits, taking into account the specific circumstances.
92. Having carefully considered all the information held in relation to this particular case, she is not persuaded that the evidence presented by the council makes it unique to the majority other councils with regard to the potential prejudice caused as a result of the disclosure of the information.
93. In the Commissioner's view, the evidence provided to show the direct effect that the disclosure of a list of empty properties has on crime is not as convincing as the council suggests it to be. The statistics it has provided showing an increase, and subsequent decrease, in break-ins where copper was stolen appear to coincide with a nationwide increase and decrease in such crime over the same time period. In the Commissioner's view, this weakens the council's arguments that the information should be withheld on the basis of the prejudice the prevention and detection of a crime.
94. The Commissioner has also taken into account the fact that that there is already sufficient opportunity for criminals to identify vacant non-residential premises. Vacant properties will always be vulnerable to certain crimes and, whilst the Commissioner sympathises with the

council's concern about the negative impact that such crimes have, it has not provided sufficient evidence to show that disclosing the information would have any direct effect on this.

95. The Commissioner has considered the public interest in favour of disclosure and views this to be relatively strong in this instance. The council argued that the information would only be of interest to a number of individuals and could have a negative effect on the local economy. However, the Commissioner is satisfied that the complainant has sufficiently demonstrated that there would be economic advantages from the disclosure of the information which would be of interest to the wider public. Indeed, the disclosure of the information could provide the opportunity to bring certain properties back into use and may address some of the problems the council has suggested are experienced in Skelmersdale, such as economic deprivation and unemployment.
96. The Commissioner therefore recognises a strong public interest in the disclosure of the information due to the effects which the use of the disclosed data could be put to. Outside of the direct intentions of the complainant, there is a public interest in this information being available. Even where business owners are not intending to use the complainant's service, a list of vacant commercial premises within an area will be of use to companies looking to develop their businesses within a specific area.
97. The Commissioner's decision therefore is that whilst the exemption in section 31(1)(a) of the FOIA was engaged, in this particular instance the public interest in the information being disclosed outweighs that in the exemption being maintained.

## **Section 40**

98. In the council's response to complainant dated 10 April 2017 it advised that it was to withhold that information which would reveal the details of individuals or sole traders. It stated that this information was deemed to be the personal data of third parties and that to disclose such information would '*breach the fair processing principle contained in the Data Protection Act 1998 (DPA)*'.
99. The Commissioner would refer again to decision notice FS50628978 and decision notice FS50628943 where consideration was given to same information that has been withheld in this instance. In both those cases, whilst the Commissioner decided that the list of vacant properties should be disclosed, she went on to advise that a disclosure of any information revealing the identities of sole traders and partnerships would not comply with the first data protection principle and therefore section 40(2) was applicable to such data.

100. The Commissioner has concluded that the circumstances of this case are sufficiently similar to take the same view in this instance. She therefore considers that the council is correct to withhold that information which relates to a sole trader or partnership under section 40(2) of the FOIA.

## Right of appeal

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101. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504  
Fax: 0870 739 5836  
Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

102. 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.

103. 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 .....**

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