

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 April 2020

Public Authority: Guildford Borough Council

Address: Millmead House
Millmead
Guildford
Surrey
GU2 4BB

Decision (including any steps ordered)

1. The complainant requested from Guildford Borough Council (the Council) information relating to empty, abandoned and/or derelict dwellings within the borough of Guildford. The Council withheld the information under section 31(1)(a) (prevention or detection of crime) of the FOIA.
2. The Commissioner's decision is that the Council correctly applied section 31(1)(a) of the FOIA to the information. Therefore, the Commissioner does not require the Council to take any steps as a result of this decision.

Request and response

3. On 7 June 2019 the complainant wrote to the Council and requested information in the following terms:

"I would like to register a Freedom of Information request in order to attain a list of empty, abandoned and/or derelict dwellings within your borough."
4. On 24 June 2019 the Council responded. It advised the complainant that commercial property details can be found on the Council's website but with regards to residential properties, the Council withheld the information under section 31(1)(a) (law enforcement) of the FOIA.

5. On 28 June 2019 the complainant asked the Council for an internal review.
6. On 14 August 2019 the Council provided its internal review outcome. It maintained its original position and also applied section 41 (information provided in confidence) of the FOIA to the information.

Scope of the case

7. The complainant contacted the Commissioner on 15 August 2019 to complain about the way her request for information had been handled.
8. During the Commissioner's investigation of this case, the Council withdrew its application of section 41 of the FOIA and stated that it relied solely on section 31(1)(a) for withholding some of the requested information, which consists of a spreadsheet which lists empty, abandoned and derelict residential properties in Guildford. With regards to the remaining information – commercial properties - the Council directed the complainant to its website where full commercial property details can be found.
9. The following analysis focuses on whether section 31(1)(a) of the FOIA was cited correctly in relation to the spreadsheet listing empty, abandoned and derelict residential properties in Guildford Borough.

Reasons for decision

Section 31(1)(a) – (prejudice to the prevention or detection of crime)

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(1)(a), to be engaged there must be likelihood that disclosure would cause prejudice to the interest that the exemption is designed to protect. 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. whether disclosure “would be likely” to result in prejudice or disclosure “would” result in prejudice. In relation to the lower threshold (would be likely), 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.
12. Consideration of section 31(1)(a) of the FOIA is a two-stage process; even if the exemption is engaged, the information must be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

The Council’s position

13. The Council confirmed the sub-section it had relied on was section 31(1)(a) (the prevention or detection of crime) to withhold the requested information.
14. The Council argued that the release of the requested information into the public domain “*could encourage squatting, vandalism, potential theft of electricity, fixtures and fittings, fly-tipping and arson as well as general anti-social behaviour.*”

The applicable interest

15. The first step in considering whether this exemption is engaged is to address whether the prejudice predicted by the public authority is relevant to the prevention or detection of crime.
16. In its submission to the Commissioner, the Council explained that release of the requested information could encourage criminal activity and provided examples of this, as quoted above at paragraph 14.

17. The Commissioner is satisfied that the prejudice the Council is envisaging in this case, is relevant to the particular interests which section 31(1)(a) is designed to protect. Accordingly, the first limb of the three part test outlined above is met.

The nature of the prejudice

18. The Commissioner considered whether the Council demonstrated a causal relationship between the disclosure of the information at issue and the prejudice that section 31(1)(a) of the FOIA is designed to protect.
19. With regard to harm being caused by disclosure, having viewed the withheld information, the Commissioner is satisfied that it contains details of empty residential properties. If disclosed, this could promote criminal activity such as vandalism, theft, occupying the properties illegally and anti-social behaviour. This could have a detrimental effect on the prevention or detection of crime. The Commissioner is satisfied that the resultant prejudice can be correctly categorised as real and of substance.
20. The Commissioner is also satisfied that there is a causal relationship between the disclosure of the requested information and the prejudice which the exemption is designed to protect.

Likelihood of prejudice

21. The Council confirmed to the Commissioner that it considered disclosure of the withheld information "*would be likely*" to have a prejudicial effect. In order for the Commissioner to accept that disclosure would be likely to result there must be a real and significant likelihood of this prejudice occurring, rather than this outcome being of remote likelihood.

Is the exemption engaged?

22. It is not sufficient for the information to relate to an interest protected by section 31(1)(a) of the FOIA. Its disclosure must also be at least likely to prejudice that interest. The onus is on the public authority to explain how that prejudice would arise and why it would be likely to occur.
23. The Commissioner accepts the Council's arguments that releasing the information would be likely to incite criminal behaviour, for example the information could be used to target properties to strip them of valuable materials and fixtures. The Commissioner also accepts the Council's arguments concerning disclosure being likely to result in a higher likelihood of other types of criminal activity, such as arson and fly-tipping.

24. The Commissioner recognises that the chance of prejudice occurring is more than a hypothetical possibility; there is a real and significant risk that disclosure of the information in question could result in the outcomes predicted by the Council.
25. The Commissioner is satisfied that disclosure of the information would be likely to represent a real and significant risk of prejudice to the prevention or detection of crime. As she accepts that the outcome of disclosure predicted by the Council would be likely to occur, the Commissioner is therefore satisfied that section 31(1)(a) of the FOIA is engaged.

Public interest test

26. Section 31(1)(a) of the FOIA is a qualified exemption and therefore the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption at section 31(1)(a) outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosure

27. Within the complainant's internal review request she summarised her argument in the following terms:

"Pros on releasing the information:

- *Business expansion;*
- *More affordable housing for first time buyers and in general;*
- *More sustainable housing;*
- *Sustainable lifestyle;*
- *A house I can call home;*
- *improvement to the surrounding as well as community;*
- *bring empty buildings back into use - whilst keeping the character;*
- *less properties to deal with;*
- *less properties to be sent for auction and dealing with paperwork;*
- *less problems faced by Council staff having to deal with squatting and its consequences;*
- *no crime;*
- *no cost of evicting squatters;*
- *no cost of securing buildings vulnerable to squatting and repairing damage resulting from it;*
 - *no potential detrimental impact on those directly affected by criminal damage;*
 - *no impact on the community in the vicinity of a squatted building;*
 - *no impact on police resources*
 - *no direct financial cost caused by stripping"*

28. The Council said it acknowledges that there is a public interest in releasing details regarding empty properties, and that the disclosure of the information would increase openness and transparency.
29. The Council stated that *"it is understood that a list of vacant premises may be of interest to companies or individuals seeking to develop their business within a specific area."* It said that there is also a public interest to ensure that the Council is *"taking appropriate measures to bring empty buildings back into use."*

Public interest arguments in favour of maintaining the exemption

30. The Council argued that there is a clear public interest in protecting the local community from the impact of crime, and ensuring that costs from the public purse are not incurred as a result of disclosing this information.
31. The Council summarised its position in the following terms:
 - *"There is an inherent public interest in the prevention of all crimes*
 - *The cost of securing buildings vulnerable to squatting and repairing damage resulting from it*
 - *The potential detrimental impact on those directly affected by criminal damage*
 - *The problems face by Council staff having to deal with squatting and its consequences*
 - *The impact on the community in the vicinity of a squatted building*
 - *The problems faced by Council staff having to deal with squatting and its consequences*
 - *The impact on police resources*
 - *The direct financial cost caused by stripping."*

Balance of the public interest arguments

32. In reaching a view on where the public interest lies in this case, the Commissioner has taken into account the withheld information and the arguments of both the complainant and the Council.

33. The Commissioner has weighed the public interest in avoiding prejudice to the prevention or detection of crime against the public interest in openness and transparency. She notes that there is a presumption within the FOIA that openness is, in itself, to be regarded as something which is in the public interest.
34. The Commissioner considers that it is important that the general public has confidence in the Council taking appropriate measures to restore and make use of vacant properties. Accordingly, there is a general public interest in disclosing information that promotes accountability and transparency in order to maintain that confidence and trust.
35. The Commissioner recognises that the requested information is clearly of interest to the complainant. She notes the complainant's explanation to the Council; she believes that the release of the information would provide her with an opportunity to "*improve my business and expand*" should there be an adequate property listed within the information.
36. The Commissioner understands that the information – a list of vacant premises, is of possible interest to individuals or companies that are wanting to develop their business in a particular area. However, disclosure under the FOIA is disclosure to the world at large. The Commissioner must therefore consider whether the information is suitable for disclosure to everyone.
37. In view of this, the Commissioner is mindful that the Council expressed concerns that disclosure of the information would be likely to impact on local residents. She has taken into account the argument that release of the withheld information would be likely to encourage criminal activities, which would have an adverse effect on the community. Having found that the exemption is engaged as disclosure would be likely to result in prejudice to the prevention or detection of crime, the Commissioner has taken into account here that this outcome would be counter to the public interest.
38. The First-tier Tribunal (Information Rights) has considered the issue of requests made to local authorities for information on empty properties previously, and has concluded that such information should be withheld under section 31(1)(a)¹. The Commissioner takes into account that the factors in this case are similar to these previous cases.

¹[http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2566/Sheffield%20Council%20EA.2018.0055%20\(03.12.19\).pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2566/Sheffield%20Council%20EA.2018.0055%20(03.12.19).pdf)

39. Having considered all the arguments in this case, the Commissioner's decision is that the public interest in maintaining the exemption outweighs the public interest in disclosure. Therefore, section 31(1)(a) of the FOIA was correctly applied to the withheld information and the Council was not obliged to disclose this information.

Right of appeal

40. 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@justice.gov.uk.

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

41. 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.
42. 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

Ben Tomes
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