

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 22 December 2020

**Public Authority:** South Northamptonshire Council  
**Address:** The Forum  
Moat Lane  
Towcester  
NN12 6AD

#### Decision (including any steps ordered)

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1. The complainant requested details of Covid-19 grants. South Northamptonshire Council ("the Council") provided some information but also relied on section 31(1)(a) of the FOIA to withhold information.
2. The Commissioner's decision is that section 31 of the FOIA is engaged and that the balance of the public interest favours maintaining the exemption.
3. The Commissioner does not require further steps.

#### Request and response

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4. On 10 June 2020, the complainant wrote to the Council and requested information in the following terms:

*"I understand that payments may have been made to Village Halls (or other facilities with the same purpose) in South Northamptonshire in order to compensate for their enforced closure due to Covid 19.*

1. *How many of such payments have been made?*
2. *What is the total of such payments?*

3. *Which Village Halls received such payments and how much did each receive?*
  4. *Before such payments were made were any enquiries made as to the loss of income closure would cause?*
  5. *Was any other measure used (eg village population) to assess the sum given to each Village Hall?"*
5. The Council responded on 18 June 2020. It refused to provide any information and relied on section 31(1)(a) of the FOIA (prevention and detection of crime) to do so.
  6. Following an internal review the Council wrote to the complainant on 24 June 2020. It now provided information within the scope of elements 1, 2, 4 and 5, but maintained its reliance on section 31 to withhold the information within the scope of element 3.

### **Scope of the case**

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7. The complainant contacted the Commissioner 3 July 2020 to complain about the way his request for information had been handled. He was sceptical that the withheld information could be used by those wishing to commit crimes.
8. The Commissioner considers that the scope of her investigation is to determine whether the Council was entitled to rely on section 31 of the FOIA to withhold the requested information.
9. The Commissioner did not seek the withheld information as she did not consider that its contents would be likely to assist her inquiry.

### **Reasons for decision**

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10. Section 31(1) of the FOIA states that:

*Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—*

*(a) the prevention or detection of crime,*

11. The exemption can be engaged on the basis that disclosing the information either "would" prejudice the regulatory function, or the lower threshold that disclosure only "would be likely" to prejudice that

function. For the Commissioner to be convinced that prejudice “would” occur, she must be satisfied that there is a greater chance of the prejudice occurring than not occurring. To meet the threshold of “would be likely to” occur, a public authority does not need to demonstrate that the chance of prejudice occurring is greater than 50%, but it must be more than a remote or hypothetical possibility.

12. The Commissioner’s approach to the prejudice test is based on that adopted by the Information Tribunal in *Christopher Martin Hogan and Oxford City Council v the Information Commissioner* EA/2005/0026 and 0030. This involves the following steps:

- Identifying the “applicable interests” within the relevant exemption
- Identifying the “nature of the prejudice”. This means:
  - Showing that the prejudice claimed is “real, actual or of substance”;
  - Showing that there is a “causal link” between the disclosure and the prejudice claimed.
- Deciding on the “likelihood of the occurrence of prejudice”.

13. The Council explained to the Commissioner that:

*“As part of the Governments response to the Covid 19 pandemic and supporting commercial organisations, local authorities have been required to administer various forms of grants and financial waivers. Grants to commercial organisations are available for different types of hardship and are dependent upon applications being submitted, in the main using electronic media.*

*“The level of demand coupled with the Government’s desire to channel financial relief to those in need at speed, limitations on internal Council resources due to the impact of Covid 19 and a requirement for minimal supporting documentation has resulted in sub optimal critical and forensic analysis of the applications and documentation. This has led to less scrupulous sections of the community making fraudulent applications for financial support. This can take many forms i.e. applications for grants that businesses are not entitled, to individuals misrepresenting who they and disguising themselves as organisations who would qualify for grants but have not made an application.”*

14. In support of its case, the Council also provided the Commissioner with a copy of a briefing it had received from the National Anti-Fraud

Network which highlighted a number of examples of scam emails based on Covid-19 grants or the furlough scheme.

15. The Council added that:

*"HMRC, Government Counter Fraud Function and National Audit Office have all recognised that the fraud threat is higher than at other times and encouraged local authorities to integrate low friction controls to reduce the threat of fraud."*

16. If the withheld information were released, the Council argued that would-be fraudsters would be able to use that information to make fraudulent applications for additional support – based on the real details of the grants already awarded. The information could also be used to identify organisations that had yet to apply for support they might be entitled to so that fraudulent claims could be made in their name. Finally, as well as posing as local organisations, fraudsters could also use the same information to pose as the Council itself in a bid to trick organisations into handing over money.

17. The Council argued that the lower bar of "would be likely to" prejudice the prevention or detection of crime would be engaged in relation to this request.

#### *The Commissioner's view*

18. The Commissioner accepts that the Council has shown a clear causal link between disclosure of the withheld information and harms occurring which are of substance.

19. Particularly at the start of the pandemic, there was an emphasis on ensuring that support funds and grants were distributed as quickly as possible to those that needed them. Schemes that would normally have taken months to design and implement had to be ready in a matter of days. The need for speed has unfortunately meant that the usual checks and counter-measures against fraud have not been implemented to the same extent. This appears to have been a conscious decision by the Government to prioritise speed of support and local authorities have been asked keep that speed up – even at the higher risk of fraud.

20. It is a sad reflection of society that a small number of individuals have and are, attempting to use the pandemic to line their own pockets by fraudulently obtaining funds meant to help struggling local organisations. That threat is real and it is confirmed by the evidence the Council provided in support of its position.

21. Given the relatively few details collected by the Council in order to process grant applications, the Commissioner is satisfied that the

withheld information would not only be of use to fraudsters, but would hamper the Council's ability to take effective counter-measures to prevent the fraudulent use of public funds. Given the relatively scarce information that appears to have passed between the Council and the grant recipients, the less of that information is in the public domain, the less chance there will be for unscrupulous individuals to use that information to commit fraud.

22. The Commissioner is satisfied that the chance of such harms occurring is clearly more than hypothetical and thus the lower threshold of likelihood (would be likely to prejudice) is cleared easily.
23. The Commissioner is thus satisfied that the exemption is engaged.

*Public interest test*

24. Whilst she is satisfied that section 31(1)(a) is engaged, because it is a qualified exemption, the Commissioner must still consider whether the public interest might require the Council to disclose the withheld information.
25. When conducting a public interest test in respect of a prejudice-based exemption, the Commissioner considers that there will always be an inherent public interest in preventing the identified prejudice from occurring – how much weight that will carry will depend on the severity of the prejudice and the likelihood of it occurring.
26. In this particular case, the Commissioner has determined that it is the lower bar of “would be likely to” cause prejudice that is engaged and this carries less weight in the public interest test than prejudice which “would” occur.
27. The Commissioner recognises that there will almost always be a public interest in transparency for its own sake and for the accountability of public bodies in the way that they spend taxpayers' money.
28. In this particular case, the Commissioner accepts that the public interest in transparency is stronger than normal – precisely because the usual checks and balances have been either weakened or done away with entirely. The Council is concerned that it might be defrauded, but the opposite is also possible – at least in theory. If the Council is allowed to distribute funds with little or no checks, there is a danger that the Council might use those funds to curry political favours or to enrich friends and colleagues.
29. The Commissioner wishes to stress that she is aware of no credible allegations that the Council has acted in this way – she is merely noting the potential risks of a lack of transparency.

30. Disclosing the withheld information would enable others to look at the way that the Council had distributed funds to decide whether it had been done in a manner that was fair.
31. However, whilst the public interest in disclosure is stronger than it might usually be, the Commissioner also considers that there is a stronger than usual public interest in maintaining the exemption.
32. The Commissioner notes that the Council has disclosed aggregated information about the funds that have been distributed without publishing individual awards. She is also aware that the precise sums awarded will be available to both the Council's internal and external auditors to guard against potential fraud. This will somewhat weaken the public interest in disclosure to the world at large.
33. Furthermore, the Commissioner is aware that the emphasis on speed was one that came from central government. Had the Council or other local authorities attempted to use the more bureaucratic (but less risky) processes they would normally use, it is likely that they would have faced considerable public and political pressure for failing to support organisations in need. That is not to criticise central government either – merely to highlight the pressures facing the Council.
34. The Commissioner is therefore satisfied that, whilst there may be a significant public interest in disclosure of this information, there is a much stronger interest in maintain the exemption. There will always be an inherent public interest in protecting a public authority and other organisations from crime. In the circumstances of this particular case, the Commissioner considers that the public interest in maintaining the exemption outweighs the public interest in disclosure.
35. The Commissioner therefore accepts that section 31(1)(a) of the FOIA is engaged in respect of this information and that the public interest favours maintaining the exemption.

## Right of appeal

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36. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

37. 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.
38. 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

**Phillip Angell**  
**Group Manager**  
**Information Commissioner's Office**  
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