

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

### **Decision notice**

**Date:** 21 September 2021

**Public Authority:** Cheshire East Council  
**Address:** Municipal Buildings  
Earle Street  
Crewe  
CW1 2BJ

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

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1. The complainant requested from Cheshire East Council ("the Council") information regarding Covid-19 disbursements. The Council refused to disclose some of the information and cited section 31(1)(a) (prevention or detection of crime) of the FOIA.
2. The Commissioner's decision is that the Council correctly applied the exemption to the withheld information. Therefore, the Commissioner does not require the Council to take any steps as a result of this decision.

#### **Request and response**

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3. On 16 October 2020 the complainant wrote to the Council and requested information in the following terms:

*"I ask what grants and loans have been made by the Council in respect of Covid support for each recipient. What are the names of individuals and organisations to whom the payments have been made alongside the amount? On what terms and any deviations from the standard Ts & Cs. Have any members or senior officers declared an interest in any of the payments."*

4. On 6 October 2020 the Council responded. It considered this information to be exempt from disclosure under section 31(1)(a) (law enforcement) of the FOIA and said "*as it would be likely to prejudice law enforcement purposes (in this case fraud).*"
5. On 20 October 2020 the complainant asked the Council for an internal review.
6. On 26 October 2020 the Council provided its internal review response. It refused part of the request "*what are the names of individuals and organisations to whom the payments have been made...?*" under section 40(2) (personal data) of the FOIA. The Council maintained its position to rely on section 31(1)(a) of the FOIA to the remaining parts of the request. It also provided the complainant with a link to the government website to obtain "*high level totals of grants issued by each authority.*"

### Scope of the case

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7. The complainant contacted the Commissioner on 23 December 2020 to complain about the way his request for information had been handled.
8. During the course of the Commissioner's investigation, the complainant informed her that he had withdrawn a part of his request in which he asked "*What are the names of individuals...to whom the payments have been made...?*".
9. In light of the Commissioner's intervention, the Council subsequently provided the complainant with information relating to his request. The Council responded to the first part of the request (grants and loans) and provided a spreadsheet which comprised; the date of the grant; the type of grant; the amount of grant. The Council also responded to the last two parts of the request regarding T's & C's and members or senior officers.
10. However, the complainant expressed to the Commissioner, his dissatisfaction with the information to part of the request, and said that the information does not include the "*names of recipient organisations.*" The complainant therefore asked that the Council provide him with "*the names of recipient organisations alongside the amounts on the spreadsheet.*" He confirmed that he does not require the names of individuals but requires the names of organisations.
11. The following analysis focuses only on whether the exemption at section 31(1)(a) of the FOIA was cited correctly to information regarding the names of recipient organisations, and not on section 40(2) of the FOIA.

## Reasons for decision

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

12. 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"*

13. 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.

14. 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

15. The Council stated that it normally publishes information on its website which includes business rates, and that the information is usually updated every three months. It said that these reports, however, are not currently being published following the announcement of business grants by government in response to the Covid-19 pandemic. The Council therefore considered that section 31(1)(a) of the FOIA applies to this information.
16. The Council confirmed that it holds the information requested but refused disclosure under section 31 of the FOIA. It also confirmed the sub-section it relied on was 31(1)(a) (the prevention or detection of crime) to withhold the requested information.
17. It explained that disclosure could result in fraudulent applications for these grant payments being made to the Council. It believes that it *"needs to ensure that it safeguards the public purse appropriately. This includes protecting the authority from potential fraudsters. The authority needs to ensure that only the businesses and individuals who are entitled to the grants – are the ones applying for and receiving the grants."*
18. The Council considered that disclosure would be likely to prejudice the prevention of crime law, and in this case fraud.
19. The Council said the prejudice being claimed is real, actual and of substance, and there is a clear causal link between disclosure of the withheld information and the harm envisaged.
20. The Council explained that the Government introduced grants to support businesses affected by the Covid-19 pandemic, and at the time of the request, grant applications were ongoing. The Council argued that the requested information could have been used by individuals to identify eligible businesses that had not applied for the grants, and then make fraudulent claims on their behalf.
21. The Council further explained that *"there was a real possibility if this, as it had happened elsewhere nationally and had only come to light when the genuine eligible business had subsequently applied itself."* The Council said that there has also been press coverage and evidence of phishing, scams and fraudulent applications relating to such business rate grants.

22. It provided a link to an example of press coverage to the Commissioner, to illustrate this. Also, the Council highlighted that The Crown Prosecution Service "*has warned that criminals are seeking to capitalise on the Covid-19 pandemic.*" The Council informed the complainant that other local authorities had temporarily removed Business Rates data sets from public view, and refused FOI requests for Covid-19 grant information because of concerns about fraudulent claims.
23. The Council informed the Commissioner that applications for this round of Covid grants have ended since the date of the complainant's request. However, the Council said that it is currently awaiting further support from government and will be opening a second phase of Covid-19 grants/payments with a new policy and criteria, later in 2021. It stated that whilst the details are still being finalised, previous grant applications will be taken into account, and therefore, the possibility of fraudulent claims arising from the release of the requested information continues.
24. The Council added that whilst further Covid-19 grants/payments/loans continue to be made available to local business, the risk of exposure to fraudulent intent is still a real possibility. The Council believes that withholding the information at the current time, will reduce the risk to the Council from fraudulent applications being made. It reiterated that as there has been fraudulent claims across the country, all councils must make every effort to minimise the risk of losses.
25. The Council is of the view that its ability to detect and prevent fraudulent applications would be seriously compromised by disclosure of this information. The Council stated that it follows a robust verification procedure to process grant applications and prevent fraudulent claims. Withholding the information at this time, the Council said, will help to ensure that this procedure remains robust whilst further Covid-19 disbursements are available to local business.

*The applicable interest*

26. The first criterion 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.
27. In its submission to the Commissioner, the Council said that release of the requested information could encourage criminal activity. It explained that it could lead to fraudulent applications being made. If released, an individual could identify from the information, businesses that are still entitled to claim grants, and it would allow them to illegally obtain those funds.

28. 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 criterion of the three part test outlined above is met.

*The nature of the prejudice*

29. 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. In her view, disclosure must at least be capable of harming the interest in some way, i.e. have a damaging or detrimental effect on it.
30. With regard to the second criterion, having viewed the withheld information and considered the context of this case and in conjunction with the Council's arguments, the Commissioner is satisfied that the information relates to details of Covid-19 disbursements. If disclosed, this could promote criminal activity such as fraud. This could have a detrimental effect on the prevention or detection of crime.
31. The Commissioner is satisfied that the resultant prejudice can be correctly categorised as real and of substance. Furthermore, she 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*

32. With regard to the third criterion, the Council confirmed to the Commissioner that disclosure of the requested information "*would be likely*" to prejudice the prevention or detection of crime. 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?*

33. In a case such as this, 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.
34. The Commissioner accepts the Council's arguments that releasing the information would be likely to incite criminal behaviour. The information could be used to target organisations, an individual could set up a bank account to make fraudulent claims to receive a Covid-19 payment.

35. 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.
36. 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. She considers that the exposure of the names of organisations that received a Covid-19 payment, and the possibility of fraudulent claims being made, would be more likely than not to occur and the exposure of organisations to crime is a real possibility. Consequently, disclosure of the withheld information would prejudice both the prevention and detection of crime.
37. 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**

38. 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*

39. The Council recognises that there is a public interest in disclosing information that holds the Council to account and increases transparency about how it performs its functions, particularly in relation to public funds.
40. The Council accepts that transparency regarding the administration of these grants could be of benefit to those organisations that are eligible for a grant but have somehow failed to receive the notifications that this is available to them.
41. The Council said that disclosing the information would enable the public to understand government and council decision-making about factors which affect their lives.
42. The Council said that it recognises that the economic factors concerning Covid-19 are a matter of considerable public interest both locally and nationally.

43. The Council accepts that knowing businesses are receiving funding that is due to them, will help communities understand how they are being supported by the government and aid transparency regarding the allocation of funding.
44. The Council believes that it will also enable the wider public to understand how government grant schemes are assisting local business during such economic hardship, including where and in what sectors.

*Public interest arguments in favour of maintaining the exemption*

45. The Council believes that combating fraud from the public purse must take priority, especially at a time of national crisis.
46. The Council stated that claims that are made fraudulently would require resources, time and money to investigate. This would result in removing funds from other service areas.
47. Disclosure of the requested information, the Council argued, would result in the need to implement additional, disproportionate verification steps and also additional expense to the public purse in order to counter an increased fraud risk that does not currently exist. Additional verification processes would be likely to slow down the processing of claims. This would be detrimental to genuine claimants. The Council said that these additional processes would be likely to be disproportionate to any benefits gained from disclosure.
48. The Council further argued that there is a public interest in ensuring that monies from the public purse are not fraudulently claimed, and that it is not easy for fraud to be committed.

*Balance of the public interest arguments*

49. 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.
50. 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.
51. The Commissioner considers that it is important that the general public has confidence in the Council awarding these Covid-19 disbursements to organisations. Accordingly, there is a general public interest in disclosing information that promotes accountability and transparency in order to maintain that confidence and trust.



52. The Commissioner understands that the information – the names of recipient organisations is of possible interest to individuals or companies, particularly those that were not awarded payment. 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.
53. 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 businesses. She has taken into account the argument that release of the 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 also taken into account here that this outcome would be counter to the public interest.

### **The Commissioner's conclusion**

54. The Commissioner determines that the public interest in protecting the Council's ability to detect crime outweighs the public interest in transparency. Therefore, the Commissioner's decision, having considered all the arguments in this case, 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

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55. 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)

56. 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.
57. 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**  
**Wycliffe House**  
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**SK9 5AF**