

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 October 2022

Public Authority: Vale of Glamorgan Council

Address: FoiUnit@valeofglamorgan.gov.uk

Decision (including any steps ordered)

1. The complainant requested various information in respect of Houses in Multiple Occupancy (HMO's) for the Bridgend, Vale of Glamorgan and Cardiff Council areas, and in particular electronic versions of their respective registers as an excel workbook. The Vale of Glamorgan Council ('the Council') informed the complainant that it does not send out the full information requested, citing section 31(1)(a) (law enforcement) FOIA to withhold the registers on the basis that it would be likely to prejudice the prevention or detection of crime. During the course of the correspondence with the complainant, the Council also cited section 12 FOIA (cost of compliance exceeds the appropriate limit) in respect of information relevant to the request, but not captured on the registers. Following the Commissioner's investigation, the Council added section 21 (information accessible to the applicant by other means) and section 40(2) (personal information) in respect of the registers.
2. The Commissioner's decision is that the Council was entitled to refuse the request regarding the register by virtue of section 21 FOIA. The Commissioner also accepts that in respect of information not held on the registers, that the Council was entitled to rely on section 12 FOIA.
3. The Commissioner does not require the Council to take any steps to ensure compliance with the legislation.

Request and response

4. On 17 June 2021, the complainant wrote to the Council and requested the following information:

"Please could you provide me with the following for each licensed "House in Multiple Occupation" (HMO) in Bridgend, Vale of Glamorgan

and Cardiff Council areas, from HMO registers that you have prepared or associated information:

- Licence identifier/number
- Licence issue date
- Licence expiry date
- First line of the address of the property
- Postcode of the property
- Name of licence holder,
- If the licence holder is a company, partnership or trust, their registration number
- Whether the licence holder is the owner of the property
- Names of any other owners of the property
- Rent Smart Wales registration number of the landlord of the property, if known
- Whether the licence holder "has control" of the property
- Name of the manager/managing agent/letting agent of the property, if it is not the licence holder
- Rent Smart Wales licence number of the manager/managing agent/letting agent of the property if known
- Maximum number of occupants

And the following if held:

- Unique property reference number (UPRN)
- Easting and Northing, or Latitude and Longitude
- Type of property (e.g. "Flat in multiple occupation" or "A purpose built block of flats")
- Type of building (e.g. "End of terrace house" or "Semi-detached")
- Age of the building/when it was originally built (e.g. "1946-1964")
- Total number of bedrooms/shower rooms

-Total number of toilets (including toilets in bathrooms/shower rooms if these are captured – separately from standalone toilets)

-Total number of kitchens

-How many storeys the property has (it is expected that this will include ground floor, basements etc)

I would be grateful if you could provide this as an Excel workbook (XLSX file) or CSV file.

I am happy to discuss refining the request if this would ensure that responding to it does not exceed the cost limit. If you have concerns about the release of personal data – although the public nature of HMO registers and the Rent Smart Wales register should assuage these – I'm happy to discuss suppression of non-corporate (e.g. company) names for some items."

5. The Council responded on 18 June 2021. It refused to provide full copies of the information and stated that it is not required under the Housing Act 2004 to make all of the information publicly available online. It cited section 31(1)(a) (law enforcement) FOIA to withhold the names and addresses of businesses on the basis that disclosure of the information would be likely to prejudice the prevention or detection of crime. It did however inform the complainant that some limited information was available online and included the relevant link.
6. The complainant requested an internal review as they did not accept that section 31(1)(a) was engaged.
7. Following an internal review the Council wrote to the complainant on 8 September 2021. It upheld its original decision to refuse to supply the information on the basis of section 31(1)(a).
8. The Council sent a further response on 23 September 2021 which stated it had been advised that certain information within the scope of the request was not held.
9. There followed significant post internal review correspondence between both parties which included the Council informing the complainant that it may be possible to arrange for a paper copy of the register to be sent to them outside of the provisions of FOIA, but that a charge would apply.
10. In respect of information relevant to the request, but not captured on the registers, the Council stated that it did not hold some of that information, and cited section 12 in respect of other information.

Scope of the case

11. The complainant contacted the Commissioner on 12 September 2021 to complain about the way their request for information had been handled. They did not agree with the Council's reliance on section 31(1)(a), to refuse to provide electronic copies of the registers, that providing some of the information not captured on the registers would be outside of the appropriate limit, or that it did not hold relevant information in respect of certain items of their request.
12. Following the Commissioner's investigation, the Council provided information to the complainant it had previously stated was not held. Additionally, as specified in paragraph 1 of this notice, the Council now cited sections 21 and 40(2) FOIA in respect of the registers.
13. The Commissioner notes that during the extensive post internal review correspondence between both parties, the complainant received electronic copies of the registers for both Bridgend and Vale of Glamorgan Council, (albeit in error). The Commissioner has not therefore included these within the scope of his investigation.
14. The Council has cited section 12 for some of the information not captured on the register. As the Commissioner considers that the section 12 exemption was correctly applied to this information, then it will apply to the entirety of the request, and there is no requirement for the Commissioner to consider whether the section 21 exemption was correctly applied by the Council. However, as the Council did not apply section 12 to the whole request and its reliance on 21 applies solely to the register, the Commissioner has made an exception in this case and included an analysis of section 21.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

15. Section 12 of the FOIA states that:

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

16. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the 'Regulations') sets the appropriate limit at £450 for the public authority in question. Under these Regulations, a public authority can charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.
17. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:
 - (a) determining whether it holds the information,
 - (b) locating the information, or a document which may contain the information,
 - (c) retrieving the information, or a document which may contain the information, and
 - (d) extracting the information from a document containing it.
18. The Council has applied section 12 to the following information:
 - Whether the licence holder is the owner of the property
 - Whether the licence holder is a company, partnership, trust and their registration number

Whether the licence holder is the owner of the property

19. The Council has informed the Commissioner that at the time of the request, there were around 2,302 licensed HMO's. In order to find this information, the individual application forms for each of the licenced HMO's would need to be reviewed. The Council has further explained that the ownership element of an application is contained within the first three pages of an application and compared with the licence holder. This would effectively mean reviewing 4,604 or 6,906 pages of data.
20. As part of its supporting evidence, the Council provided a blank copy of an application form and the Commissioner can confirm that this is correct.
21. The Council has further explained that even the process of cross-checking the licence holder and property owner information on each application would not be sufficient by itself as the decision as to who holds the licence is a decision of the Council, and therefore the application form would need to be compared with the HMO database to confirm the identity of the licence holder.

22. The Council has estimated all of this would take in excess of 115 hours to consider. It has not however provided any details of how it reached this figure. It appears that it has used the three pages of the application form (6,906) x 1 minute giving 1623.3 minutes or the equivalent of 115 hours.
23. Having considered the blank application form and the Council's confirmation that there were approximately 2,302 licensed HMO's at the time of the request, the Commissioner accepts that one minute per application is a reasonable, if not a somewhat conservative estimate. The Commissioner is therefore satisfied that the Council was entitled to rely on section 12(1) (FOIA) to refuse the information in respect of whether the licence holder is the owner of the property.

Whether the licence holder is a company, partnership, trust and their registration number

24. The Council has confirmed that the application form does ask if the requester is an individual, sole trader, company, partnership, charity or trust, and having sight of a blank application, the Commissioner can verify that this is correct. However, the Council has further stated that this section of the application is optional and therefore not always completed, adding that even when it is on the application form, it is not recorded on the HMO register itself.
25. Similarly, sometimes a company registration number may be recorded on the database, but not always on the register.
26. The Council has therefore stated the process of determining whether the above information is held would be identical to that outlined in respect of whether the licence holder is the owner of the property in paragraphs 19 to 23 of this notice.
27. Based on the above, the Commissioner is satisfied that the Council has provided a reasonable estimate that the task of even determining whether this information is held would exceed the appropriate limit and that the information is therefore exempt by virtue of section 12(2) FOIA.

Section 21 – Information accessible to the applicant by other means

28. Section 21 FOIA provides an exemption for information which is reasonably accessible to the applicant otherwise than under section 1 of the FOIA. The purpose of the section 21 exemption is to ensure that there is no right of access to information via FOIA if it is available to the applicant by another route. Therefore, unlike most exemptions, the circumstances of the applicant can be taken into consideration.

29. Although the information may be available elsewhere, a public authority will need to consider whether it is actually 'reasonably accessible' to the applicant before it can apply section 21. Defining 'reasonably accessible' is open to interpretation, however it generally applies to the following:
 - Information available via the public authority's publication scheme will be reasonably accessible to an applicant.
 - There is another existing, clear mechanism by which the particular applicant can reasonably access the information outside of FOIA. For example, under the Access to Health Records Act 1990.
30. Section 21 is an absolute exemption which means that where the exemption is engaged, a consideration of the public interest test is not necessary.
31. The Council informed the Commissioner that it is the lead authority for a Shared Regulatory Service (SRS) between the Councils of Cardiff, Bridgend and Vale of Glamorgan, and that HMO's fall within the remit of the SRS.
32. As noted previously, during the course of the Commissioner's investigation, the Council amended its response in respect of the registers it had originally withheld on the basis of section 31(1)(a) to include section 21 FOIA. To be clear, based on the scope of the Commissioner's investigation outlined in paragraph 13 of this notice, the analysis below relates solely to the register for Cardiff County Council.
33. The Commissioner will therefore consider whether in this particular case, the register for Cardiff County Council was 'reasonably accessible' to the applicant.
34. The Commissioner notes that in its original response the Council provided a link to some limited information in respect of the HMO registers for the various councils subject to this request. He also notes that the complainant was informed they could book appointments to view the full public registers in accordance with section 232(4) of the Housing Act 2004 at the authority's premises.
35. In their request for an internal review, the complainant informed the Council that the physical register was not 'reasonably accessible' particularly under the conditions of the ongoing Covid-19 pandemic. However, the complainant did not provide any additional details in relation to why they considered it was not 'reasonably accessible'.

36. Whilst the Commissioner is mindful of the physical restrictions in relation to viewing information at the premises of public authorities resulting from the pandemic, at the time of the request (June 2021), the restrictions had eased significantly. It would therefore have been possible for the complainant to view the Cardiff register at the Council's head office within normal office hours and a time convenient to the complainant.
37. The Commissioner has also considered the geographical proximity of the complainant's home address to the relevant head office and notes that they live within a 5 mile radius of the office, which in his view, is geographically 'reasonably accessible'.
38. In the absence of further details of any specific personal constraints on viewing the public register on Council premises which may be relevant to the complainant, the key point is that the information requested is publicly available and easily accessible. The Council has explained to the complainant how they can access it.
39. The Commissioner also notes that in accordance with section 232(5) of the Housing Act 2004, the complainant was given the opportunity to purchase paper copies of the register.
40. The Commissioner therefore considers that the relevant provisions of the Housing Act 2004, represents another, existing clear mechanism by which the applicant can reasonably access the information outside of FOIA.
41. Based on the factors outlined in paragraphs 21 to 27 of this notice, the Commissioner accepts that the information is reasonably accessible to the applicant by other means and that the Council was therefore entitled to rely on section 21 FOIA in respect of the register. There is no need to consider the public interest test as 21 is an absolute exemption. Since the Commissioner has decided that section 21 is engaged, he has not gone on to consider the Council's application of either sections 31(1)(a) or 40(2) FOIA.

Right of appeal

42. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

43. 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.
44. 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

Catherine Dickenson
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF