

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

### **Decision notice**

**Date:** 9 June 2022

**Public Authority:** Westminster City Council  
**Address:** Westminster City Hall  
64 Victoria Street  
London  
SW1E 6QP

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

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1. The complainant has requested information from Westminster City Council ("the Council") regarding ratepayers and Expanded Retail Relief. The Council refused to disclose the requested information, citing sections 31(1)(a) and 41 of FOIA as a basis for non-disclosure.
2. The Commissioner's decision is that the Council has correctly applied section 31(1)(a) to the requested information. As the Commissioner considers that section 31(1)(a) applies to the entirety of the requested information, he has not considered the Council's application of section 41.
3. The Commissioner therefore requires no steps to be taken by the Council.

## **Request and response**

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4. On 30 March 2022, the complainant wrote to the Council and requested information in the following terms:  
  
"Under the freedom of information act, can you please email me a list of all ratepayers that have been awarded Expanded Retail Relief for the financial years 2020/21 & 2021/22. I am only asking for the names of Ltd companies, Corporates and not individuals and I am not asking the billing authority to disclose the rate payers address."
5. The Council responded on 9 April 2022. It stated that it would not disclose the information and cited sections 31(1)(a) of FOIA (prevention or detection of crime) and 41 (information provided in confidence) as a basis for non-disclosure.
6. Following an internal review the Council wrote to the complainant on 6 May. The reviewer upheld the original decision.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 7 May 2021 to complain about the way his request for information had been handled.
8. The Commissioner has considered the Council's handling of the complainant's request, in particular its application of section 31(1)(a) of FOIA to the requested information.

## **Reasons for decision**

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9. Section 31(1) 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
10. Section 31 is a prejudice based exemption and is subject to the public interest test. This means that not only does the information have to prejudice one of the purposes listed, but also that it can only be withheld if the public interest in the maintenance of the exemption outweighs the public interest in disclosure.
11. In order for section 31 to be engaged, the following criteria must be met:

- the actual harm which the public authority claims would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption (in this case, the prevention or detection of crime);
  - 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,
  - it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.
12. 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. The Commissioner considers that the higher threshold places a stronger evidential burden on a public authority to discharge. The chances of the prejudice occurring should be more probable than not.

### **The Council's view**

13. The Council informed the Commissioner that it is responsible for the administration, billing and collection of £2.2 billion in National Non-Domestic Rates (NNDR) which equates to 8% of the national NNDR debt.
14. Further the Council issues approximately 9000 refunds annually which total around £165 million. The number and value of these refunds is significantly more than any other local authority due to the size of Westminster's NNDR database. It is therefore more of a target for fraudsters.
15. The Council considers that making the requested information available to the world at large would render these funds vulnerable to fraudulent activity, and would thereby prejudice the prevention of crime.
16. The Council has established that putting any of this information that is asked for during the telephone verification process, including details of the companies, into the public domain would prejudice the efficacy and success of the security process. As a direct result, accounts, refund payments and financial information would be at increased risk of fraudulent activity and disclosure would thereby prejudice the prevention of crime.

17. The Council stated that it had previously sought guidance from the Metropolitan Police, who have confirmed that by placing this information in the public domain the risk of a fraud being committed is significantly increased.
18. The Council considers that there is a real and significant risk that fraud would be made easier by the disclosure of any such information to the world at large in response to a request.

The complainant's view

19. The complainant is of the view that disclosure of the requested information would not increase the risk of fraud being committed. He stated in his request for internal review:

*"The only information I have requested is for the Council to disclose names of the ratepayers which have been awarded retail relief. I have not asked for any personal information such as the address where the bills are being sent to, their account number, their bank details or any information which could be used to fraudulently pass your security and access information of a ratepayer."*

20. In response to this, the Council states that it holds detailed financial information relating to the NNDR account holders and, by confirming the above data items, the Council is opening itself up to fraudulent activity. When dealing with enquiries about a particular account, the Council has only limited ways of ensuring that the person who contacts the Council is actually authorised to discuss and deal with the account.
21. In most cases the enquirer can be asked to confirm the account reference number, however where that is not available other information can be checked, such as the name of the account holder the period of liability and the occupation status of the property. By providing information such as the name of the occupier and the period of occupation to the "world at large" the Council's ability to protect any confidential information, such as bank account details or other financial information would be significantly decreased.

### **Is the exemption engaged?**

22. The Commissioner recognises, in his published guidance<sup>1</sup>, that section 31(1)(a) will cover all aspects of the prevention and detection of crime. He accepts that the exemption can be used to withhold information that could make anyone more vulnerable to crime.
23. In light of the subject matter of the request in this case, the Commissioner is satisfied that the prejudice the Council envisages is relevant to the particular interests that this limb of the exemption is designed to protect.
24. The Commissioner is also satisfied that the Council has demonstrated a causal relationship between the disclosure of the requested information and the prejudice that sections 31(1)(a) is designed to protect.
25. With respect to the likelihood of prejudice, his guidance<sup>2</sup> states:

“If an authority claims that prejudice would occur they need to establish that either:

  - the chain of events is so convincing that prejudice is clearly more likely than not to arise. This could be the case even if prejudice would occur on only one occasion or affect one person or situation; or
  - given the potential for prejudice to arise in certain circumstances, and the frequency with which such circumstances arise (ie the number of people, cases or situations in which the prejudice would occur) the likelihood of prejudice is more probable than not”.
26. Having duly considered the arguments put forward by the Council, the Commissioner’s view is that the Council has demonstrated sufficiently that prejudice ‘would’, as opposed to ‘would be likely to’, be caused by disclosure.
27. He therefore finds the exemption engaged in relation to the information withheld by virtue of section 31(1)(a).

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<sup>1</sup> <https://ico.org.uk/media/for/organisations/documents/1207/law-enforcement-foi-section-31.pdf>

<sup>2</sup> [https://ico.org.uk/media/for/organisations/documents/1214/the\\_prejudice\\_test.pdf](https://ico.org.uk/media/for/organisations/documents/1214/the_prejudice_test.pdf)

### **The public interest test**

28. Section 31 is a qualified exemption, which means that the authority must also consider the public interest arguments in favour of both disclosure and maintaining the exemption.

### **Public interest arguments in favour of disclosure**

29. The Council recognises that there is an inherent public interest in transparency and openness in relation to the procedures and decision making of public authorities.

### **Public interest arguments in favour of maintaining the exemption**

30. The Council states that the main public interest in the exemption being maintained relates to the potential for large amounts of money to be lost to the public purse through fraud if the information were to be disclosed.
31. The Council has outlined the levels of money which is involved in its business rates which are clearly significant. Any danger of increasing the likelihood of successful fraud risks significant damage to the public purse.
32. The Council argues that it would be more difficult to prevent fraud occurring if the requested information were to be disclosed; it uses part of the requested information in its verification process prior to making payments to the relevant ratepayers.

### **Balance of public interest factors**

33. The Commissioner will always accord significant weight to the public interest in transparency and accountability regarding the decision-making processes and procedures of public authorities, particularly when it involves large amounts of public funds.
34. However, the Commissioner has taken into account the Council's arguments that disclosure of the information would make it more difficult to prevent fraud occurring.
35. The Commissioner accepts that anything which increases the potential for fraud and ultimately damage to the public purse should not be disclosed lightly. He considers that there would have to be highly strong and significant countervailing public interest factors in favour of disclosure, in order to outweigh the public interest in fraud prevention.

36. As the Tribunal in the similar decision *Westminster City Council v The Information Commissioner*<sup>3</sup> found that the “limited public interest in disclosure is outweighed by the very significant public interest in maintaining the exemption” the Commissioner has also reached that conclusion in the current case. Therefore the Commissioner considers that the public interest arguments in favour of maintaining the exemption, when balanced against those in favour of disclosure, significantly outweigh the latter in all the circumstances of the case.

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<sup>3</sup> EA/2018/0033

## Right of appeal

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37. 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)

38. 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.
39. 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 .....**

**Deirdre Collins**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**