

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

### **Decision notice**

**Date:** 16 January 2023

**Public Authority:** HM Land Registry

**Address:** Head Office  
Trafalgar House  
1 Bedford Park  
Croydon  
CR0 2AQ

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

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1. The complainant requested from HM Land Registry (HMLR) information regarding the index of proprietors against [name redacted] and their executors, and a list of registered land that has been adverse possessed since 1934 where the owner was [names of individuals and estate redacted]. HMLR withheld the requested information and cited section 40(2) (personal information) and section 31(1)(a) (prevention and detection of crime) of FOIA.
2. The Commissioner's decision is HMLR was entitled to rely on sections 40(2) and 31 of FOIA to refuse to provide the information requested. Therefore, the Commissioner does not require HMLR to take any steps as a result of this decision.

#### **Request, background and response**

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3. On 19 July 2021 the complainant wrote to HMLR and requested information in the following terms:  
  
"a) Search of the index of proprietors against [name redacted] (My great-great grandfather) and [name redacted] and [name redacted] (My great great-grandfathers' executors)

- b) A full list of registered land that has been adverse possessed since 1934 where the owner was [name redacted] or [name redacted] or [name redacted] or [name redacted]. If you are unable to do this since 1934, then please provide the information from the date on which you are available.”
4. Following the Commissioner’s investigation of HMLR’s response to the request, on 18 October 2022 a decision notice was served. The Commissioner’s decision was that section 31(3) by virtue of section 31(1)(a) of FOIA was not engaged and he considered HMLR was not entitled to neither confirm nor deny (NCND) holding information within scope of the request. Therefore, the Commissioner required HMLR to take steps to ensure compliance with the legislation. This was to issue a fresh response which must confirm or deny whether HMLR holds information within scope of the request, and if held, either disclose the requested information or issue a valid refusal notice compliant with section 17 of FOIA.
  5. On 18 November 2022, HMLR provided the complainant with an updated response to his request – a refusal notice, and confirmed that it holds information within scope of the request. However, HMLR determined it exempt from disclosure under section 40(2) (personal information) and section 31(1)(a) (prevention and detection of crime) of FOIA.
  6. On 5 December 2022 the complainant responded to HMLR and disputed its refusal notice. He outlined that his request and the previous decision notice were in two parts; a) list of registered land in deceased relative’s name, b) list of averse possession for deceased relatives. The complainant asked HMLR to confirm what information within the request it stated is held, as he considered its response was not clear whether the information related to a) and b) or just a) or b) individually. The complainant also contacted the Commissioner to complain about the way his request for information had been handled.
  7. Further to the Commissioner’s involvement, on 6 January 2023 HMLR provided him with its final response regarding its refusal notice.

## **Reasons for decision**

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8. The following analysis focuses on whether HMLR was entitled to withhold the requested information under section 40(2) and section 31(1) of FOIA.

## **Section 40(2) – personal information**

9. Section 40(2) provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
10. Section 3(2) of the Data Protection Act 2018 (DPA) defines personal data as:

“any information relating to an identified or identifiable living individual.”
11. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
12. In this case, the complainant requested information which HMLR holds concerning specific individuals (one of which is said to be the complainant’s relation). The Commissioner accepts that the exemption HMLR cited has not been applied in terms of the deceased individuals referenced but that HMLR applied it to any third party living individuals.
13. The Commissioner acknowledges HMLR holds information relating to both parts of the request – a) and b) and that it cannot confirm whether the information held is that of the deceased relative of the requester. HMLR said in relation to names identified within search results, it cannot distinguish between different persons or organisations that have the same name. HMLR said it “maintains a Register of Title in accordance with the Land Registration Act 2002 for the purposes of proving legal ownership”.
14. HMLR stated that “the disclosure of a title number in this context would allow the requester to access information relating to individuals, including not just those requested by the search, but also other individuals.”
15. The Commissioner recognises that the information requested relates to a search starting with personal identifiers. He is satisfied that the requested information relates to the personal data of a third party and would identify the individuals referenced. He therefore considers the requested information falls within the definition of ‘personal data’ in section 3(2) of the DPA.
16. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on principle (a), which states:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.”

17. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
18. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.
19. The Commissioner considers that in this case, the complainant is pursuing a legitimate interest as the request concerns his relative and their executors and registered land that has been adverse possessed. The Commissioner accepts disclosure of the requested information is necessary to meet that legitimate interest. However, he considers disclosure of the information (a title number) in this context, would allow the complainant to access information relating to individuals, including other individuals, not just those requested by the search.
20. The Commissioner notes that the complainant believes the personal identifiers in this request do not relate to 'living individuals' and therefore is not personal data. HMLR does not maintain any other personal identifiers on the register, such as date of birth or death certificates, which could be used to confirm whether the information relates to a living individual. HMLR said even if the personal identifiers do relate to individuals that are deceased, the information - the title, would reveal third party personal data connected to the adverse possession application. In addition, HMLR is of the view that the information of any deceased individual could fall within the definition of personal data in relation to other living relatives of the deceased.
21. With regard to disclosing details of registered land which had been subject to adverse possession, HMLR said it would reveal information about individuals with current ownership. HMLR explained, even though information regarding property ownership can be said to be in the public domain by other means, “for example by obtaining an official copy of the register of title under the Land Registration Act and Rules, it is not automatically fair or lawful to disclose the information in another context”. HMLR said this is because “HMLR is a property register and is not a register of persons and the payment for each individual register is an essential control ensuring the entire 26 million property registers are not made available en masse with resultant counter fraud implications.”

22. HMLR highlighted to the Commissioner a decision notice<sup>1</sup> in which he considered a similar information request – the results of a search of the 'Index of Proprietors' Names' in respect of a named individual. The Commissioner upheld HMLR's position in this case.
23. Having taking into account arguments from both parties regarding HMLR's reliance on this exemption to the request, the Commissioner has determined there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the third parties referenced. Therefore, he deems that there is no legal basis for HMLR to disclose the requested information and to do so would be in breach of principle (a).
24. The Commissioner's decision is that HMLR is entitled to rely on section 40(2) of FOIA to refuse to provide all of the requested information.

### **Section 31(1) – prevention or detection of crime**

25. 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,"

26. HMLR explained that providing searchable access to property or land information that is or has been registered to a named individual is considered to be exempt by virtue of section 31(1)(a) of FOIA. It said disclosure would prejudice the prevention and detention of crime. Specifically, it would provide fraudsters and criminals with additional means by which to target the properties of at risk individuals or conduct fraudulent activities including property theft.

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<sup>1</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2012/785276/fs\\_50459233.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2012/785276/fs_50459233.pdf)

27. HMLR said allowing any person to search for property registered under a specific name would provide them with the ability to narrow down their chances of targeting a property for the purposes of registered fraud. This applies to properties of living individuals as well as to properties where the registered proprietor is deceased (empty properties are at particular risk of registration fraud). This would be the case, HMLR stated, where an identify theft has already occurred and the criminal uses this name to search for and target other properties registered to individuals with the same name.
28. HMLR said disclosure would result in harm to property owners, HMLR, and other third parties by opening up the chances for fraudulent activities to take place. Knowledge of previous ownership by a registered proprietor would allow questions to be answered by a fraudster around what prior addresses an individual lived at, and the period of ownership which can be relied upon by third parties in relation to credit scoring and for the provision of loans and services.
29. HMLR also said "if the accuracy and integrity of the register is affected, this would increase the risk of more resources being diverted to respond to actual fraudulent activities rather than the proactive activities that enable us to detect and prevent them in advance. It would also increase the risk of financial exposure to HMLR due to the statutory responsibility to pay compensation."
30. HMLR argued that allowing searches by name may place certain individuals at risk, that have structured past applications in the expectation that they would not be subject to searches by name. For example; police, armed services, domestic violence cases, people at risk of harassment from the press or public etc. HMLR summarised that providing open access to registered titles through searches based on personal identifiers would be beneficial to potential fraudsters through greater intelligence for targeting and committing crime. This, HMLR said, would be harmful and damaging to property and land owners, as well as to the public purse. It also places certain individuals at greater risk of identification which could place them and their families at harm.
31. The Commissioner considers that disclosure of the information into the public domain would have a prejudicial affect. He acknowledges that fraudsters could take any opportunity to exploit loopholes. Criminals, fraudsters, and malicious actors may go to extreme lengths to gather intelligence as they target properties in the pursuit of fraudulent activity. The Commissioner also accepts that the ability for criminals to target their activities based on vulnerable properties where the owner is deceased, overseas or where the name can be used following identity theft, would open up their opportunities for committing crime.

32. The Commissioner finds that the chance of prejudice being suffered from disclosure of the requested information is more than a hypothetical possibility; it is a real and significant risk. He also considers that in HMLR's response, it has satisfied all three stages of the prejudice test set out on Hogan<sup>2</sup> and therefore accepts section 31(1)(a) of FOIA is engaged.

### **Public interest test**

33. Section 31(1) is a qualified exemption and is subject to the public interest test set out in section 2(2)(b) of FOIA. The Commissioner has considered whether in all the circumstances of this case, the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.

#### Public interest arguments in favour of disclosure

34. HMLR said it considered the public interest in allowing the public access to view register data through searches of named individuals, and the potential value that can be taken from this data by society for other lawful purposes, such as researching ancestry.

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

35. HMLR is of the view that there is a public interest in protecting society from the impact of crime. It argued disclosure of the information would prejudice the prevention and detection of crime by facilitating or encouraging the possibility of a criminal offence being carried out, i.e. 'registered title fraud'. HMLR said there is a public interest in ensuring its register is secure and its integrity is not breached. Protecting the information from disclosure, HMLR said, minimises the potential financial impact on the UK government and its taxpayers.

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<https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i42/MrCMHoganandOxfordCityCouncilvInfoComm17Oct06.pdf>

36. In response to the complainant's suggestion that there is a public interest in being able to challenge or investigate any land adversely possessed in which they have a legal right to, HMLR said it has processes in place to serve notice of registered land adverse possession applications on interested parties giving them the opportunity to object to the application where appropriate. HMLR believe that this process is proportionate in meeting the public interest in ensuring a proportionate process. HMLR provided a link to its Practice Guide 4<sup>3</sup> which contains further information on adverse possession applications.

#### Balance of the public interest arguments

37. The Commissioner notes that the public can access register data through searches of named individuals, and information can be obtained from this for lawful purposes. He also notes HMLR has processes in place regarding 'registered land adverse possession applications' which allows interested parties the opportunity to object to the application where appropriate.
38. The Commissioner, however, considers there is a greater public interest in preventing potential crime – registered title fraud. He has determined that the release of the withheld information would undermine the wider public interest of maintaining the integrity of the register. Disclosure would be likely to encourage criminal activities which would have an adverse effect on individuals and families.
39. Having considered the arguments on the balance of the public interest test, the Commissioner concludes that maintaining the exemption in this case, outweighs the argument in favour of disclosure.

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

40. The Commissioner is satisfied disclosure of the information requested would be likely to prejudice the prevention or detection of crime. His conclusion is HMLR was entitled to withhold the requested information (regarding searchable access to property/land registered to a named individual) under section 31(1)(a) of FOIA. He considers it necessary to cover both exemptions in this decision notice. Section 40(2) to third party personal data connected to the adverse possession application and section 31(1)(a) to the index of proprietors and list of registered land.

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<sup>3</sup> <https://www.gov.uk/government/publications/adverse-possession-of-registered-land/practice-guide-4-adverse-possession-of-registered-land>



## Right of appeal

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41. 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)

42. 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.
43. 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**  
**Head of Freedom of Information Casework**  
**Information Commissioner's Office**  
**Wycliffe House**  
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