

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

### **Decision notice**

**Date:** 6 April 2023

**Public Authority:** East Suffolk Council  
**Address:** Riverside  
4 Canning Road  
Lowestoft  
NR33 0EQ

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

---

1. The complainant has requested East Suffolk Council (ESC) provide a full list of all businesses in both Ipswich and Felixstowe that qualify to pay the BID levy along with their rateable values, addresses and landlord details if the premises are vacant.
2. ESC refused the request citing the exemptions section 40 (Personal Information), section 31(1)(a) (Law enforcement) and Section 41 (Information provided in confidence) of FOIA as its reasons for doing so.
3. The Commissioner's decision is that ESC has correctly relied on section s31(1)(a) (Law enforcement) of FOI to withhold all information within the scope of the request
4. The Commissioner does not require ESC to take any further action.

#### **Request and response**

---

5. On 12 October 2022, the complainant wrote to the public authority and requested information in the following terms:

"Please provide a full list of names of all businesses in both Ipswich and Felixstowe that qualify to pay the BID Levy.

Please include their rateable value and also their address.

If there is not currently a business in the premises, please also provide the landlord details, their addresses and their rateable value."

6. ESC responded on 18 October 2022. It stated that

"We do not hold the information you have requested and do not cover the BID in Ipswich.

We have two Business Improvement Districts within East Suffolk. Lowestoft Vision and Felixstowe BID. We would recommend contacting them directly with your requests for the information. You can contact them using the links located below.

[Contact - Lowestoft Vision](#)

[Felixstowe BID Ltd - Felixstowe, Suffolk - Contact Us"](#)

7. Following an internal review ESC wrote to the complainant on 8 December 2022. It confirmed that it did not hold information in relation to the BID levy for businesses within the Ipswich area but did hold information for businesses in Felixstowe areas. ESC was relying on section s40 (Personal Information), s31(1)(a) (Law enforcement) and s41(Information provided in Confidence) of FOI to withhold all information within the scope of the request.

## Scope of the case

---

8. The complainant contacted the Commissioner on 8 December 2022 to complain about the way his request for information had been handled. The complainant had requested the same or similar information from other public authorities and had received responses with redactions for personal information and believed that ESC should disclose the information on this basis.
9. The Commissioner notes that the complainant has not pursued the "information not held" position of ESC for BID Levy information related to the Ipswich area in any later correspondence with the PA. The Commissioner has proceeded on the basis that the complainant is now only disputing the use of exemptions, rather than the extent of the information held.
10. The Commissioner therefore considers the scope of his investigation to be to establish whether the public authority is entitled to withhold the requested information under section 40(2), Section 31(1)(a) and section 41 of the FOIA.

## Reasons for decision

---

### Section 31(1)(a) – Law enforcement

11. The following analysis sets out why the Commissioner has concluded that the public authority was entitled to rely on section 31(1)(a) of FOIA in this particular case.
12. Section 31(1)(a) of FOIA states that:

“Information .... is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

  - (a) the prevention or detection of crime,”
13. ESC argued in its responses to the complainant that the release of business rate information would be likely to enable fraud and thus prejudice the prevention and detection of crime.
14. ESC considered that there are a number of different areas where the risk of crime was likely to increase if business rate information is disclosed such as
  - Physical property crime or civil disorder (e.g. arson, vandalism, squatting)
  - Fraud targeting empty property
  - Fraud against ESC, using the business details
  - Fraud against other public bodies using the business details
  - Fraud against third parties (such as customers, creditors or suppliers) using the business details
15. ESC considers the release of this information into the public domain would enable criminal fraudsters to identify and therefore target a business at a specific address, and reduce the effectiveness of fraud prevention and identification techniques that use this business information, such as those used when administering national and local grant schemes.
16. The Commissioner accepts that the potential prejudice described by the Council clearly relates to the interests which the exemption contained at section 31(1)(a) FOIA is designed to protect.

### **Public interest test**

17. 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.
18. There is a general public interest in promoting transparency and accountability, which in turn promotes public engagement and understanding by showing how public authorities are delivering their responsibilities.
19. ESC acknowledged in its correspondence with the Commissioner that several other public authorities routinely publish information within the scope of the request on their websites but that this is not universal and is ultimately a decision that will be made by each authority after consideration of several factors specific to their local knowledge and experiences. Business rate information was published by ESC up to February 2020 but has since been removed and is no longer publicly available.
20. ESC accepts that there are potential benefits in that individuals with local knowledge are able to provide corrections if any listed ratepayers are no longer occupying a property and is beneficial to ensure correct taxes are paid.

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

21. ESC stated that there is a general public interest in preventing crime, this includes preventing access by criminals to information that could be used to assist them in their crimes.
22. ESC argued that the requested information is unlikely to be available elsewhere in a reliable format. Although some information may already be in the public domain (or derivable from publicly available data), not all of it is. This acts as a deterrent to fraudsters since, without existing complete dataset, the time it would take to collate an approximation of the withheld information from existing sources is significant and likely to result in incomplete data.
23. However, it is noted that businesses who place information into the public domain are able to control that information and the associated risk of fraud. Not all businesses choose to publish information over and above what they are required by law to publish.

24. ESC has also provided the Commissioner with a specific example of an attempted identity fraud which involved the use of information obtained from an information source equivalent to the withheld information.
25. ESC additionally stated that the sums of money involved in national business and economic regeneration grant schemes are significant, and loss of these funds due to fraud would be a loss to the public purse.
26. ESC additionally argued that disclosure of the information requested does not advance the general public interest in this type of information. It is, ESC added, information which each owner would already know about their business.
27. In addition to the arguments above, ESC also referred to a number of decision notices in which the Commissioner concluded that the exemption had been correctly engaged in respect of equivalent requested information.

### **Balance of the public interest arguments**

28. In relation to the public interest, the Commissioner recognises that there is a general public interest in openness and transparency in relation to the way in which public funds are collected and used.
29. The Commissioner also recognises that it is for individual public authorities to decide how to handle requests for information. However, he acknowledges that, where a public authority is claiming that harm is likely to arise from the disclosure of information similar public authorities already make available, those arguments about harm should be the subject of greater scrutiny.
30. In this case the complainant has argued that other authorities have disclosed the same information which is being withheld by ESC. The level of risk will vary between local authorities depending on the nature of the schemes and businesses each one oversees. He therefore considers that this argument carries limited weight and ESC has put forward specific arguments to demonstrate why the harm applies in this case..
31. Moreover, the Commissioner is not convinced that there is a particularly strong public interest that would be served by disclosure.
32. The Commissioner also considers that there is a very strong public interest in protecting the law enforcement capabilities of public authorities.

33. When considering the public interest in preventing crime, it is important to take account of the consequences that can reasonably be anticipated and to which ESC has already identified as occurring.
34. Having considered the arguments on the balance of the public interest test, the Commissioner concludes that maintaining the exemption at section 31 (1)(a) in this case, outweighs the argument in favour of disclosure.
35. In reaching his conclusions in this case the Commissioner has referred to the decision notices cited by the council and to other decision notices in which section 31(1)(a) has been applied to requests for equivalent business rates information. He considers that the conclusions reached in those cases are transposable to this case<sup>1</sup>
36. The Commissioner is satisfied disclosure of the information requested would be likely to prejudice the prevention or detection of crime. His conclusion is that the Council was entitled to withhold the information requested under section 31(1)(a) of FOIA.
37. As he has concluded that the council correctly applied section 31(1)(a) to withhold the information, the Commissioner has not gone on to consider its application of section 40 or section 41.

---

<sup>1</sup> See: <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022981/ic-171054-h6z6.pdf>; <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4020956/ic-137696-l7b4.pdf>

## Right of appeal

---

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

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

39. 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.
40. 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 .....**

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