



Neutral Citation number: [2023] UKFTT 952 (GRC)

Case Reference: EA-2023-0030

**First-tier Tribunal
General Regulatory Chamber
Information Rights**

**Heard: On the papers
Heard on: 23 October 2023
Decision given on: 09 November 2023**

Before

**TRIBUNAL JUDGE SOPHIE BUCKLEY
TRIBUNAL MEMBER MARION SAUNDERS
TRIBUNAL MEMBER PAUL TAYLOR**

Between

JONATHAN BOURNE

Appellant

and

**(1) THE INFORMATION COMMISSIONER
(2) HM LAND REGISTRY**

Respondents

Decision: The appeal is Dismissed.

REASONS

Introduction

1. This is an appeal against the Commissioner's decision notice IC-182590-Q6T6 of 13 December 2022 which held that H M Land Registry (the Land Registry) was not entitled to rely on section 21 of the Freedom of Information Act 2000 (FOIA) but was entitled to rely on section 31(1)(a) (prejudice to the prevention or detection of crime).

Factual background to the appeal

2. The UPRN (Unique Property Reference Number) is a unique 12 digit identifier for a single addressable location such as a building, a flat or a house. It is a machine readable common standard identifier that enables communication between different organisations and unification of data.
3. Government Guidance issued in 2020 as part of the open standards for use in government technology states that systems, services and applications that store or publish data sets containing property and street information must use the UPRN identifiers.¹ The open standards are mandated for government use in the relevant projects, programmes and services.
4. A title number is a unique reference the Land Registry allocates when they register a property. Title numbers are generally only available to purchase individually from the Land Registry's register at a cost of £3 per title register. A dataset containing all title numbers for every registered title is not available to access or purchase as a single dataset. The title number does not necessarily correlate with the UPRN.
5. The Land Registry makes some data freely available for public use under the Open Government Licence. This includes 'Price Paid data' which contains the sale prices of properties in England and Wales submitted to HM Land Registry for registration. The dataset includes addresses but it does not include the title number or the UPRN.
6. The Land Registry also provides access under individual licences to datasets including the title number where the registered legal owner is a company or corporate body. One of these datasets is called 'Overseas companies that own property in England and Wales'. This dataset was originally called Overseas companies ownership data (OCOD). It shows freehold and leasehold title registrations held by the Land Registry where the registered legal owner is an overseas company or a corporate body incorporated outside of the UK. The dataset includes title numbers but not the UPRN. It is accessible free of charge subject to agreeing to a data licence.
7. The Land Registry also has datasets that are available under license and subject to a fee. The National Polygon Service includes 3 licenced, chargeable datasets about land and property: the National Polygon dataset, which provides the indicative shape and position of boundaries, the Title Descriptor dataset, which provides the legal interests and class of title and the Title Number and UPRN Look Up dataset which provides title numbers from the Land Registry and the UPRN from Ordnance Survey's AddressBase. The National Polygon Service covers registered properties in England and Wales that have an

¹ <https://www.gov.uk/government/publications/open-standards-for-government/identifying-property-and-street-information>

association to an address containing a UPRN reference. There is a charge for the National Polygon Service of £20,000 per annum and access and use is subject to signing a licence agreement.

8. The licence agreement contains terms which allow the Land Registry to monitor use of the dataset including, for example, a clause that gives the Land Registry the right to have access to the systems of users in order to audit their use of the dataset.
9. The Land Registry states that it is committed to improving its datasets in the coming years by making them more findable, accessible, interoperable and reusable (FAIR) and by releasing more data, supported by UPRNs where resource and funding allows.
10. Mr. Bourne has been researching low-use properties (or empty homes) since 2017. He works in this area in his spare time and publishes academic papers to try and provide support for evidence-based housing policy. He does this because he thinks the UK housing crisis causes real harm throughout the country, particularly to economically vulnerable groups. He states that a significant part of being able to make evidence-based policy is having evidence or data, and the Land Registry is a significant custodian of this data.

Request and Decision Notice

11. Mr Bourne made the request which is the subject of this appeal on 23 February 2023:

I would like the title UPRN lookup table currently sold as part of the National Polygon Dataset to be released under the freedom of information act.

If the Land Registry can provide a clear reason why this is not possible, I would like the lookup table for title numbers and UPRN for Land Registry data that are already in the public domain only.
12. The Land Registry replied on 22 March 2022 withholding the information under section 21 FOIA on the grounds that the information was available from the Department's website <https://use-land-property-data.service.gov.uk>
13. Mr Bourne requested an internal review and the Land Registry upheld its decision on 10 June 2022.
14. Mr Bourne complained to the Commissioner.
15. During the Commissioner's investigation the Land Registry relied in addition on section 31 FOIA.

Decision Notice

16. The Commissioner stated that once the Land Registry had also cited section 21, he did not accept that section 31 was engaged, because the information was, for that very reason, not reasonably accessible to the requestor.
17. The Commissioner concluded that section 31 was engaged. The Commissioner accepted that the actual harm claimed by the Land Registry would be likely to prejudice the prevention and detection of crime if the information were released. He accepted that the Land Registry had demonstrated that there was a causal link between the withheld information and the prejudice the exemption is designed to protect.
18. The Commissioner stated that he could not consider the cost of the licence which is likely to make the information out of reach to many individuals. The Commissioner was persuaded that disclosing the information outside the terms of the licence would make it more liable to fraudulent use. Given the importance of the information, the Commissioner found that the prejudice was real, actual and of substance as it was of great importance to the proper and legal operation of the property market and the wider economy.
19. In relation to the public interest balance, the Commissioner noted that the UPRN information can be obtained outside the licence system, via an Ordnance Survey dataset. Title numbers can be purchased individually on payment of a £3 fee. However, the Commissioner found that this is not the same as being able to have access to all the requested information. Whilst understanding Mr. Bourne's view that the information should be freely available, the Commissioner found that there was a risk in providing it outside of the Land Registry's licence system and bypassing its ability to manage the risk of fraud.
20. The Commissioner's view was that the benefit to individuals or businesses being freely able to access the requested information was secondary to the financial risk it presented of a likely significant increase in fraudulent activity. If the information was disclosed, fraud would increase and claims for compensation from the Land Registry correspondingly increase from victims of fraudulent use. The fact that it could not be audited or monitored is significant. The lack of control poses a risk. The alternative is disclosure without any means of auditing which the Commissioner decided was not in the public interest.

Grounds of Appeal

21. In summary the grounds are that:
 - 21.1. The Land Registry only raised the risk of fraud during the Commissioner's investigation.

- 21.2. The Land Registry have not provided any evidence or a mechanism by which fraud will be enabled or encouraged by the provision of the UPRN data included in the current Price Paid dataset.
 - 21.3. The Land Registry have publicly stated that they will roll out the UPRN throughout their address products. There was no mention of fraud in that blogpost or in the comments.
 - 21.4. The Price Paid dataset is released under an open government licence, so the Land Registry must provide the UPRN data with this dataset in accordance with the mandated standard. It does not.
 - 21.5. Mr. Bourne has been unable to find any public statement from any government body linking the UPRN to an increase in crime.
 - 21.6. The UPRN plays an important part in the public interest in greater transparency of property ownership and related property information.
22. In the box entitled 'Outcome of appeal', Mr. Bourne states:

"I am seeking that the Land Registry is compelled to provide UPRN reference numbers with its address data as it has been required to do since 2021. If it is unable to add the UPRN to the OCOD dataset and the Price Paid Dataset it may use some other convenient method such as providing the two-column lookup table I suggested originally."

The Commissioner's response

23. The Commissioner stands by his decision notice and invites the tribunal to join the Land Registry.

The Land Registry's response

24. The Land Registry notes that there is a discrepancy between the description of the information Mr Bourne requested originally and the description of the information he has referred to in his appeal.
25. The Price Paid Dataset does not contain title numbers and so the release of the Title Number and UPRN Look Up dataset from the National Polygon Service (NPS) will not enable Mr Bourne to link the UPRNs to addresses in that dataset.
26. The Land Registry's concern about fraud relates to the unlicensed release of title numbers, not addresses or UPRNs, and therefore Mr Bourne's arguments about fraud concerns relating to the Price Paid dataset are not relevant. A dataset containing UPRN and Price Paid data, but NOT title number, would not fall within the same fraud risk.
27. The outcome sought by Mr. Bourne is not appropriate:

- 27.1. It falls outside the description of the information originally requested by Mr Bourne.
 - 27.2. It is a request for a dataset not currently maintained by the Land Registry.
 - 27.3. There is already a published dataset (and coding) linking UPRNs to Price Paid data through a study by Urban Big Data Centre (UBDC) at the University of Glasgow (which was funded by Ordnance Survey).
28. In relation to the original information request, the Land Registry maintains that the information requested (Title Number and UPRN Look Up dataset) is exempt for the fraud risks highlighted in its final response to the Commissioner on 22 November 2022. This information provides sufficient description of the risk of fraud without providing the explicit mechanisms which would be a fraud risk in itself.
29. The combination of UPRN and title number is not provided in any of its published datasets, other than under the National Polygon Service, where the risk of fraud is managed within the contractual licence terms described.
30. The Land Registry remains open to informal discussions with Mr. Bourne.

Final written representations from the Land Registry

31. The Land Registry maintains that the information requested on 23 February 2022 is exempt for the fraud risks highlighted in its final response to the Commissioner. The Land Registry understands that this request is the subject of this appeal.
32. The request made in the grounds of appeal relates specifically to the Land Registry's Price Paid dataset. If the original request had been for that information, it would have been refused on the following basis:
- The Land Registry does not hold the information described (Price Paid data and UPRNs) in the form of a dataset. The information is held in separate sources.
 - The information is exempt from disclosure under section 21(1) of the FOIA, being information reasonably accessible to Mr Bourne by other means. This is because the information is accessible via a source that is in the public domain, namely, through Urban Big Data Centre's website where it has published a dataset (and coding) linking UPRNs to Price Paid data following a study by Urban Big Data Centre at the University of Glasgow.

- The Land Registry has already directed Mr Bourne to the website link where this information can be readily accessed and the Land Registry is satisfied that he can reasonably access the information via this route.
33. Fraud concerns do not arise within the context of the Price Paid data, they arise in relation to the unlicensed release of title numbers, not addresses and UPRNs.
 34. The Land Registry does not consider that the outcome sought in the grounds of appeal should be regarded as a FOI request. It appears to be a request for an ongoing enhancement of existing published datasets, which has resource implications not only in the initial compilation but also in the ongoing maintenance. As stated in the Land Registry's Response, it is committed to improving its datasets in the coming years by making them more findable, accessible, interoperable and reusable (FAIR) and by releasing more data, supported by UPRNs where resource and funding allows.

Final written submissions of Mr. Bourne

35. Mr. Bourne sets out why he is interested in the data, which we have set out in paragraph 10 above.
36. Mr. Bourne states that when he first set out to request the UPRN data from the Price Paid dataset, he assumed it was a mistake. It hadn't been included with the data, and it would be almost a formality to get the data included. The government has been quite clear about the role of the UPRN and its inclusion with geographical data. He was not expecting the Land Registry to resist so vigorously attempts to release what appears quite innocuous and reasonable information. Although he offered to discuss it with them, they did not wish to do so until this year, by which point the tribunal process had begun and he didn't want to risk impacting it.
37. Mr. Bourne does not know why the Land Registry is resisting the release of this information, although he does not believe it is due to the risk of crime. He suspects it is due to fear of loss of income or lack of technical ability.
38. In relation to the Land Registry's submission that he has changed his argument Mr. Bourne submits:

"They may be right on a technicality because the Price Paid data has a "transaction unique identifier", not a "property unique identifier". However, to this, I would respond with two points. Firstly, throughout my request, it has been clear that what I am requesting is the ability to match the Price Paid data with other government datasets; I have never varied in this request, even if I made an error in naming; what's more, I have offered multiple approaches to make it easier for HMLR to comply. Secondly, it is hypocritical for HMLR to make the defence that I have

changed my argument when this case is being brought because they changed their own argument completely when they realised they were about to lose their case at the ICO.”

39. Mr. Bourne believes that where a department does not act in accordance with the rules, or fails to work towards an appropriate level of transparency, it should be held to account. He states that he believes in transparent government, holding power to account, and working to make Britain a better and more liveable place for everyone.

The legal framework

40. Section 31 FOIA provides a qualified exemption subject to the public interest test in respect of information relevant to specific areas of law enforcement:

S 31 - law enforcement

(1) Information which is not exempt information by virtue of section 30 [*investigations and proceedings conducted by public authorities*] is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

(a) the prevention and detection of crime,

41. The exemption is prejudice based. ‘Would or would be likely to’ means that the prejudice is more probable than not or that there is a real and significant risk of prejudice. The public authority must show that there is some causative link between the potential disclosure and the prejudice and that the prejudice is real, actual or of substance. The harm must relate to the interests protected by the exemption.

The task of the tribunal

42. The tribunal’s remit is governed by section 58 FOIA. This requires the tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner’s decision involved exercising discretion, whether he should have exercised it differently. The tribunal may receive evidence that was not before the Commissioner and may make different findings of fact from the Commissioner.

Issues

43. The issues we have to determine are:

43.1. If the disputed information, or any part of it, were released, would it prejudice, or be likely to prejudice, the prevention or detection of crime?

- 43.2. If so, does the public interest in maintaining the exemption outweigh the public interest in disclosing it?

Evidence and submissions

44. We have read an open bundle of documents, which we have taken account of where relevant.

Discussion and conclusions

The scope of the request

45. In our view this is a clearly drafted and unambiguous request. Mr. Bourne explicitly asks for the title/UPRN look up table sold as part of the National Polygon dataset:

“I would like the title UPRN lookup table currently sold as part of the National Polygon Dataset to be released under the freedom of information act.”

46. He asks in the alternative for a section of that information, namely the look up table for title numbers and UPRN for Land Registry data already in the public domain:

If the Land Registry can provide a clear reason why this is not possible, I would like the lookup table for title numbers and UPRN for Land Registry data that are already in the public domain only.

47. It is not a request for the Land Registry to provide the UPRN of the properties in their Price Paid dataset. Mr. Bourne states that he has not changed his position. He states that throughout his request, it has been clear that what he is requesting is the ability to match the Price Paid data with other government datasets.

48. Under FOIA, a requestor can only request information, and the tribunal can only order a public authority to provide information. We cannot order a public authority to ‘add the UPRN to the OCOD dataset and the Price Paid Dataset’. We cannot order a public authority to create a document or a dataset that does not already exist.

49. We accept that Mr. Bourne’s intention was to be able to match Land Registry datasets, such as the Price Paid dataset, with other government datasets, and that for this he needed the UPRN of the properties on the Land Registry datasets. The information he chose to request in order to achieve that was the look up table for title numbers and UPRN. It is the disclosure of that information in relation to which we must assess the likely prejudice. We are

not assessing the likely prejudice of the Land Registry adding UPRN numbers to its existing databases.

50. The difficulty is not that Mr. Bourne has 'changed his argument'. The difficulty is that our jurisdiction is limited to considering whether the information that was requested from the Land Registry should have been disclosed or not. We are not entitled to consider the disclosure of any other information specified in the grounds of appeal or otherwise. This is not simply a 'technicality'. It is the whole basis of the FOIA regime. That is why Mr Bourne is not permitted to depart from the scope of his original request at this stage.
51. We note Mr. Bourne's complaint that, in contrast, the Land Registry was allowed to change their argument during the course of the Commissioner's investigation. The short answer is that there is binding authority that confirms that the public authority is allowed, as of right, to raise new exemptions even before the tribunal (see for example **Birkett v Defra** [2011] EWCA Civ 1606). The longer answer is set out in that decision, should Mr. Bourne be interested in the rationale.

Section 31

52. As the first-tier tribunal in **Hogan v Oxford City Council and the Information Commissioner** (EA/2005/0026, EA/2005/0030) observed at para 27, where the specified activity or interest which would be likely to be prejudiced is a public interest, like the prevention or detection of crime, there is an obvious overlap between whether or not the section is engaged and any subsequent application of the public interest test. We have therefore combined our consideration of the two issues, but we bear in mind that although the relevant factors may overlap, the questions that we have to answer are different.
53. The applicable interest in this case is the prevention and detection of crime. It is important to note that s 31(1)(a) is engaged where there would be likely to be prejudice to the prevention and detection of crime. It does not require the public authority to show that disclosure will lead to an increase in crime.
54. When deciding if the section is engaged, we must decide if the public authority has satisfied the evidential burden of showing that some causal relationship exists between the prejudice being claimed and the potential disclosure; if the prejudice is real, actual or substantial; and whether the chance of prejudice is more than a hypothetical or remote possibility i.e. is there a real and significant risk of prejudice?
55. We accept that the use of a licence agreement to access the requested information allows the Land Registry to have full visibility of who is accessing information about the titles registered with them. We accept that this is an essential aspect of how the Land Registry identifies or minimises fraudulent

activity. We accept that the licencing of this dataset is a key tool for preventing, detecting and investigating registered title fraud, because we accept that the information could be used by criminals or fraudsters to target properties to commit registered title fraud.

56. In our view it is not necessary for the Land Registry to identify the precise mechanism by which criminals or fraudsters could use the information to target properties to commit registered title fraud. We acknowledge that UPRN information is freely available, and title numbers are available to purchase on an individual basis, but this information is not otherwise available as a single combined dataset outside of the National Polygon Service.
57. As a matter of common sense, it is likely that uncontrolled access to a single dataset of title numbers of 26 million registered properties, along with the associated UPRN allowing data to be matched with other publicly available data, would make registered title fraud easier to commit.
58. We are persuaded on this basis that there is a causal relationship between the unlicensed release of the look up table for UPRN/title numbers and prejudice to the Land Registry's ability to prevent and detect crime. We find that this prejudice is real, actual and substantial and that the chance of prejudice is more than a hypothetical or remote possibility.
59. Mr. Bourne's arguments questioning whether the Land Registry is, in reality, concerned about fraud, focus on the effect of adding UPRN reference numbers to its databases. The Land Registry makes clear that they do not consider that that, in itself, creates a risk of title fraud. There is already a publicly available dataset which adds the UPRN to the Price Paid dataset. The risk arises from the unlicensed disclosure of a dataset containing title numbers.
60. For the reasons set out above, we find that the release of the list would be likely to prejudice the prevention and detection of crime. We find that section 31(1)(a) is engaged.
61. Turning to the public interest, taking into account our conclusions set out above, we find that there is a very significant public interest in maintaining the exemption. We accept that the release of this information would make it easier for a fraudster to commit registered title fraud, which would lead to losses from the public purse as a result of the indemnity. It would be more difficult for the Land Registry to prevent and detect this crime, because access to the dataset would not be controlled by a licence giving them extensive monitoring powers. We find that this risks undermining the integrity of the land register which is part of the United Kingdom's Critical National Infrastructure.
62. Turning to the public interest in disclosure, the government guidance, which is part of the open standards mandated for government use, states that UPRNs

must be used. The Land Registry is committed to improving its datasets in the coming years and to releasing more data, supported by UPRNs where resource and funding allows. Releasing this information on an open government license would enable UPRNs to be added by the public now to at least some of the datasets published by the Land Registry.

63. As the Land Registry have pointed out, as the Price Paid dataset does not include title numbers, Mr. Bourne would not be able to use the requested look up table to find out the UPRN numbers of the properties in the Price Paid dataset. Further, there is already a published dataset (and coding) linking UPRNs to Price Paid data through a study by Urban Big Data Centre (UBDC) at the University of Glasgow (which was funded by Ordnance Survey). This reduces some of the claimed public interest in disclosure.
64. The tribunal understands that what used to be referred to as the 'OCOD' dataset, mentioned in the outcome section of the grounds of appeal, does include title numbers, and therefore we assume that the requested look up table would enable Mr. Bourne to find out the UPRN numbers of the properties in the 'OCOD' dataset.
65. We accept that there are likely to be benefits for researchers and members of the public in terms of enabling research and comparisons of data without having to pay the £20,000 annual fee for accessing the data. We accept that research in this area is likely to be important for the reasons set out in Mr. Bourne's final submissions. Real harm is caused by housing difficulties, and policies and pressure for change need to be supported by evidence.
66. Further, there is a general interest in transparency in relation to the land register, given its importance and status as part of the Critical National Infrastructure.
67. We note that research can be undertaken by those with access to significant resources, because the dataset is available under licence. Given the level of the annual charge, we do not place very significant weight on this in reducing the public interest in disclosure.
68. For all those reasons we conclude that there is a reasonable level of public interest in disclosure, but we conclude that this interest is outweighed by the very significant public interest in maintaining the exemption.

Conclusion

69. For the reasons set out above the appeal is dismissed.

Observation

70. Both parties had expressed a willingness to engage in informal discussions. Now that the tribunal process has concluded, we hope that the parties will feel able to commence that process.

Signed Sophie Buckley

Judge of the First-tier Tribunal

Date: 6 November 2023