

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 February 2018

Public Authority: London Borough of Greenwich
Address: The Woolwich Centre
35 Wellington Street
Woolwich
SE18 6HQ

Decision (including any steps ordered)

1. The complainant has requested information on a complete and up-to-date list of all business (non-residential) property rates data held by Greenwich Council. The council applied section 31(1)(a) to the information stating that it would prejudice the prevention and detection of crime to disclose the information because it would provide details which would facilitate the commission of fraud against the council.
2. The Commissioner's decision is that the council was not correct to apply section 31(1)(a) or section 38(1)(b) to the information as the public interest in the disclosure of the information outweighs that in the exemptions being maintained.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To disclose the information to the complainant
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 30 March 2017 the complainant made the following request for information under the FOIA for:

"In terms of the Freedom of Information Act of 2000, and subject to section 40(2) on excluding personal data, could you please provide me with a complete and up-to-date list of all business (non-residential) property rates data for your local authority, and including the following fields:

- Billing Authority Reference Code (linking the property to the VOA database reference)*
- Firm's Trading Name (i.e. property occupant)*
- Full Property Address (Number, Street, Postal Code, Town)*
- Occupied / Vacant*
- Date of Occupation / Vacancy*
- Actual annual rates charged (in Pounds)*

If you are unable to provide an absolute "Occupation / Vacancy" status, please provide the Exemptions and / or Reliefs that a particular property may be receiving.

We recognise that you ordinarily refuse to release these data in terms of Regulation 31(1)(a) [sic]. In November 2016, we appealed this class of refusal - specifically as it relates to this request - to the Information Commissioner's Office and they issued a Decision Notice (FS50628943 - <https://ico.org.uk/media/action-weve-tak...>, and FS50628978 - <https://ico.org.uk/media/action-weve-tak...> on 28 February 2017 finding that "it is not correct to withhold this information under Regulation 31(1)(a)"[sic], and that "the public interest in the information being disclosed outweighs that in the exemption being maintained".

*Note that these Decision Notices supersede *Voyias v Information Commissioner and London Borough of Camden Council* (EA/2011/0007) and Decision Notice FS50538789 (related to Stoke on Trent Council).*

Please provide this as machine-readable as either a CSV or Microsoft Excel file, capable of re-use, and under terms of the Open Government Licence.

I'm sure you get many requests for business rates and we intend to update this national series every three months. Could we request that - as more than 30% of local authorities already do - you update and release this dataset via a dedicated page on your local authority

website or on an open data service. You should find that this reduces the time and cost of this request process."

6. The council responded on 28 April 2017. It disclosed the majority of the information but withheld information on whether properties were occupied or not. It said that that information was exempt under section 31(1)(a) as a disclosure of the information would prejudice the prevention and detection of crime. It also applied section 40(2) (personal data) and section 38(1)(b) (health and safety).
7. Following an internal review the council wrote to the complainant on 16 May 2017. It confirmed its position that the information was exempt under section 31(1)(a) and section 38(1)(b).

Scope of the case

8. The complainant contacted the Commissioner on 6 June 2017 to complain about the way his request for information had been handled. He believes that the council was not correct to apply section 31(1)(a) and section 38(1)(b) to the information.
9. The complainant's request had specifically excluded any information caught within the scope of section 40(2) of the Act. The Commissioner has not therefore considered the application of this exemption further within this decision notice.
10. The Commissioner considers that the complaint is that the council was not correct to apply the exemption in sections 31(1)(a) and 38(1)(b) of the Act to the withheld information.

Reasons for decision

Section 31(1)(a)

11. 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..."

12. In order for a prejudice based exemption, such as section 31, to be engaged the Commissioner considers that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- Secondly, 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
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold 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. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.

The harm which would be caused

13. The council argues that a disclosure of the information on empty non-residential properties in the borough would place the properties at a higher risk of burglary, stripping, vandalism and is likely to lead to squatting and other criminal activity in and/or around these properties. It provided a list of criminal activity which it has already noted as regards empty commercial and residential properties in the borough and argued that a disclosure of the lists is likely to make information which facilitates the carrying out of such crimes more available to criminals, thereby prejudicing the prevention of crime.
14. It said that it does not currently disclose this information to the public and that it manages its properties of its own vacant stock by making the properties not stand out from the neighbouring properties rather than advertising that they are vacant by the use of steel security which it considers attracts vandalism and break-ins. It considers that changing this behaviour would very likely result in a return to the situation that it had previously, where void properties were easily identifiable and were regularly damaged, costing the council tens of thousands of pounds per annum in unnecessary repairs and endangering the safety of residents and tenants.

15. The Commissioner considers, however, that the majority of the council's arguments in this respect relate to domestic housing rather than the information actually requested; details of vacant commercial properties. The Commissioner considers that there is a significant difference between residential properties and non-residential, primarily the ease with which non-residential properties can be established as being vacant.
16. The council provided examples of crimes which have been found to have occurred on empty properties within its area. It highlighted a site in Woolwich which had been occupied by travellers in November 2015 and had subsequently been found to have been used for fly-tipping. It provided the Commissioner with photographs showing the extensive damage to the site and outlined the costs of dealing with this. It also highlighted issues of squatting where damage had been caused to the properties, but again these referred to residential rather than commercial properties.
17. Its argument is that disclosing the information will facilitate these sorts of crimes being carried out as details of empty properties will be available from the council to those intent on such activities. A disclosure of the information would therefore be likely to prejudice the prevention of crime.
18. Its arguments follow a number of previous tribunal cases related to empty domestic property lists, for instance, *Voyias v Information Commissioner and London Borough of Camden Council (EA/2011/0007)* ('Voyias') wherein the First-tier Tribunal found that a disclosure of lists of empty properties would be likely to increase the likelihood of crime. The Tribunal concluded that the exemption in section 31(1)(a) applied and that the public interest rested in the exemption being maintained.
19. The Commissioner has also considered a similar case previously in a decision notice relating to *Stoke on Trent Council; Decision Notice Reference FS50538789*. In that case she accepted that details of empty commercial properties could be withheld under section 31(1)(b) and section 40(2) (personal data).

The complainant's arguments

20. Since those decisions the complainant has collated and provided to the Commissioner statistical evidence which he considers demonstrates that a disclosure of unoccupied commercial premises does not increase the levels of crime.
 - a. He said that 66% of local authorities either already make the information available, or made it available after the receipt of an

FOI request. Whilst the Commissioner has not checked whether this figure is accurate she is aware that a large number of authorities have provided the data to the complainant in response to his request.

- b. He has made FOI requests to a number of police forces regarding the levels of crime in unoccupied commercial premises. Out of 44 police services, only two are actually able to provide data on incidents in empty commercial properties. The two who have are Thames Valley Police and North Wales Police. The remaining police services do not specifically collect such data and have no way of knowing what the incident rates are.
- c. In North Wales, there is an average of 1,780 crimes a year in occupied properties, and 26 crimes a year in unoccupied properties that largely have to do with theft, vandalism or arson (note that squatting in commercial property is not a crime and so unrecorded).
- d. There are about 45,000 commercial properties in North Wales and vacancies range from 15% to 25%.
- e. The complainant therefore argues that the ratio of crimes in occupied vs empty commercial properties is almost 70:1, compared with an actual occupied vs empty ratio of 6:1 (i.e. an occupied commercial property is ten times more likely to experience an incident of crime than an unoccupied one).
- f. He gave an example of how publication of the information he had requested has had no effect upon crime levels in specific areas

In 2015 Oxford had 4,038 commercial properties and suffered 2 cases of empty commercial property crime at a cost of £1,259. In comparison, they had 3,133 cases of crime committed in occupied business premises, at a cost of £507,956.

By comparison, Reading, with 5,659 commercial properties suffered 2 empty commercial property crimes that caused no damage at all.

Oxford refuses to publish under Section 31(1)(a) while Reading publishes regularly.

- g. He argues that the data provided are unequivocal. Incidents of crime in empty properties are exceedingly rare, and there is no

variation in the incidence rate between local authorities who do publish, and those who do not publish data on empty properties.

21. The Commissioner issued 2 decision notices providing similar arguments to Greenwich council on 28 February 2017. She issued a Decision Notice FS50628943 to Cornwall Council ('Cornwall'), (available from <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2013577/fs50628943.pdf>), and FS50628978, the Royal Borough of Kensington and Chelsea Council (RBKC) available at <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2013576/fs50628978.pdf>.
22. Both of these decision notices found that the application of section 31(1)(a) by both authorities was correct under the circumstances of the case however the public interest in the information being disclosed outweighed that in the exemption being maintained. The Commissioner therefore required the disclosure of the information in those cases.

The council's arguments

23. The council argues that each individual case needs to be considered on its own merits, looking the particular circumstances in the area concerned. The Commissioner agrees that this is the correct approach to dealing with this request.
24. It said that it has never disclosed this information into the public domain in order to ensure that it can comply with Section 17 of the Crime and Disorder Act 1998. This imposes a duty on local authorities to prevent crime and disorder. It said that releasing the information gives opportunist criminals a greater chance of success and therefore it is more likely that they will attempt to do so. It argues that this clearly constitutes a real and substantial risk of prejudicing the prevention of crime.
25. Further it points to the British Institute of Facilities Management (BIFM) 'Good Practice Guide to Vacant Property Management', published in 2012 which provides the following evidence regarding the risks to vacant buildings:

"According to insurance company Aviva, £2 Billion of damage is done to property in the UK through vandalism and arson, with 25 per cent of this relating to empty properties. There are other costs. Not only do landlords with empty properties lose out on rental income, they may pay increased insurance premiums (unless strict stipulations are adhered to). They may also have to pay substantial repair bills if the property is broken into and vandalised...Empty shops, offices and other commercial buildings can also be a target for squatters and criminals.

Due to their often central location, they are also more exposed to fly posting and an accumulation of junk mail, which poses a fire risk. Empty industrial buildings are also at risk. Usually located in secluded factory estates, they are more exposed to arson, vandalism, theft of fixtures and fittings, and they can be used for illegal raves. They can also be vulnerable to fly tipping and can be illegally occupied by squatters as well as itinerant travellers seeking shelter from bad weather. Other problems are more rare but no less devastating. Heavy, and unexpected snowfall on a roof, for example, would be noticed and quickly cleared in an occupied building, but in an empty property it could result in the roof caving in an substantial interior damage."

The council also provided further information from Aviva identifying issues with vacant properties.

26. The council also noted that the House of Commons Library produced Briefing Paper Number 2012 on 9 June 2017 (after the request had been made), entitled 'Empty Housing (England)', in which the introduction to the report states:

"High levels of empty properties are recognised as having a serious impact on the viability of communities. As the number of empty properties within an area increases, so can the incidence of vandalism, which acts as a further disincentive to occupation."

27. In essence therefore the council argued the following in support of the exemption from previous cases:
- a. A disclosure of the information may facilitate or encourage criminal activity.
 - b. There is a clear public interest in protecting society from the impact of crime and avoiding damage to property.
 - c. The victims of crime can be both individuals and organisations.
 - d. The impact of crime is not confined to its immediate victims. A request for the addresses of empty properties provides the opportunity to consider the wider repercussions of crime in more detail, for example, fraud, criminal damage, illegal occupation, risk of the theft of electricity, unlawful practices, arson attacks etc. The list could be used to target properties. Buildings could be stripped of valuable materials and fixtures.
 - e. As well as the financial costs of crime, there are also social costs, criminal damage reduces the quality of life in the area; neighbours would live in fear of further crime being committed.

- f. Information could be used by squatters and could make properties more vulnerable to illegal activities or antisocial behaviour and not be in the interests of owners/residents nearby.
 - g. It is also appropriate to take into account the cost of removing those illegally occupying properties.
 - h. There are potential financial costs to local taxpayers arising from such crime.
 - i. The information can be used to facilitate fraud; criminals may use the information as a false address for making loan claims.
 - j. Estate agents/letting agents advertise properties on websites, adverts etc but not all properties they advertise would indicate whether they are vacant (National Fraud Intelligence Unit warning in January 2017)
 - k. The ICO previously supported Stoke-on-Trent City Council decision to use this exemption on the same data requested. https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1042144/fs_50538789.pdf
 - l. In case law, in *Yiannis Voyias v Information Commissioner and the London Borough of Camden (EA/2001/0007 23 January 2013)* the First Tier Tribunal upheld the council's decision to withhold the addresses of empty houses under section 31(1)(a).
28. The council accepted that the decision notices in the cases of Cornwall and Kensington and Chelsea found against the application of the exemption in those cases, however it considers that its circumstances are different in its area, to the point that the exemption is applicable to the information in its case.
29. The council argues therefore that the prejudice which the council envisages would be likely to occur if the withheld information were disclosed, and this relates to the prevention of crime which section 31(1)(a) is designed to protect.

The causal relationship

30. The council argues that there is a causal relationship between the disclosure of the addresses of vacant commercial properties and prejudice to the prevention of crime.
31. It argues that there is evidence that London is a target for squatters and there has been an increase in squatting in London due to high rental

costs and high unemployment. It provided further arguments pointing out that insurance group Aviva have seen insurance claims relating to squatters and repairing damage after squatting having doubled in recent years.

32. Other councils have previously highlighted that stories in the media have quoted industry experts as stating that squatters are becoming more organised, working in groups and using social media to share details of potential targets, and coordinating moves:
<http://www.telegraph.co.uk/finance/property/news/9320756/Squatting-rises-as-eurozone-crisis-drives-migrants-into-London.html>.
33. It also argues that the media has reported that the criminalisation of squatting in residential properties in 2012 may have led to an increase in squatting in commercial premises.
34. It further argues, following the councils arguments in other cases, that there is evidence that squatters use online resources to identify vacant properties to occupy, and that they are becoming more organised in their approach. For instance, the Advisory Service for Squatters (ASS) provides advice on squatting in commercial properties on it's website:
<http://www.squatter.org.uk/for-new-squatters/squatting-made-less-simple/>
35. Paragraph 26 of the judgement in the remitted First-tier Tribunal's decision in Voyias states that the Tribunal were "provided with sufficient evidence, in particular in material published by the ASS...to satisfy us that squatters do check available lists of empty properties and that the release of such a list by another council in response to a freedom of information request in the past had led to an increase in squatting". The finding of the Tribunal in this respect carries significant weight.
36. Further to this, the council points to the decision in Voyias as evidence that both the Tribunal and the Commissioner have previously accepted the likelihood that a disclosure of such information would lead to an increase in squatting and criminal activity in residential properties.
37. The ASS website did previously advise that lists of non-residential properties might be available on request from local authorities, and it provides legal and practical advice as to how to move in to non-residential premises without breaking the law. However as regards finding properties which are empty it now advises:

"FINDING A PLACE

There are thousands of empty properties, including many that are non-residential, some of which are more obvious than others. Normally you will have to keep an eye on a place to make sure it is empty. It is best to research a place thoroughly before you squat it.

The local council's Planning Department has a register of all planning applications and decisions which you can see online. This will tell you who, if anyone, has made an application or got permission.

The Land Registry records ownership of most places. You can get the details for a particular place at landregistry.gov.uk. It costs £3 per place (with a credit or debit card). If there is both a freehold and leasehold owner registered, the leaseholder is the one with rights to the place and can evict you. Don't assume that if you can't find an owner, or if the owner is dead or bankrupt that you are automatically safe. Dead owners have executors and bankrupt companies have administrators.

Once you are inside you will find more useful information in the mail and any documents left around. Keep them all carefully."

38. Although the complainant's arguments suggest that the impact would be low, if not negligible, there is no specific level of prejudice required which must be reached in order for the exemption to be engaged. The Upper Tribunal in *Voyias* accepted that certain crimes are associated with squatting, and ASS website provides advice to squatters regarding squatting in non-residential properties, including how to identify and enter such properties. From this the Commissioner concludes that there must therefore be a degree of prejudice to the prevention of crimes associated with squatting.
39. The council also noted the arguments accepted by the First-tier Tribunal in the *Voyias* case (at para 35) regarding the likelihood of stripping on building sites is likely to correlate more with some (larger) residential properties (which might have significant air conditioning, water and heating units). Clearly the same arguments are applicable with larger non-residential business units. These will contain (in some instances) larger heating units and air conditioning which may provide more valuable material from a single property than a residential home would be likely to.
40. The council argues that the evidence shows that there is a causal relationship between the disclosure of the addresses of vacant commercial premises and prejudice to the prevention of crime. The evidence shows that there is a real and actual risk that people intending to enter vacant premises for activities leading to crime would be likely to use lists of vacant properties to identify suitable premises and that it is

widely accepted that London is a target for squatters. Therefore it argues that by making this information available to the public it would be likely to increase the risk of these properties being targeted, which would be likely to prejudice the prevention of crime.

Would disclosure be likely to result in prejudice the prevention of crime?

41. The council argues that prejudice would be likely if the information were to be disclosed. It provided a number of links to media reports regarding crimes occurring in vacant properties in the borough.
42. Its argument is essentially that disclosing the information widens the list of potential properties which might be used for criminal purposes. It is clear that such lists are used by organised squatting organisations and others and the lists would provide further information which would allow them to further their activities.
43. The Commissioner agrees that there is evidence that the ASS has previously recommended the use of lists to identify potential properties, and its website clearly refers potential squatters to the use of lists for these purposes. However as regards other criminal's identifying vacant properties through such lists this appears to be a more speculative, although the Commissioner does recognise the clear possibility that that could be the case.
44. Many councils have also sought the views of local police forces or local fire authorities, who have generally supported a view that the information should be withheld as disclosure would be likely to facilitate crime. The Commissioner notes the complainant's counter argument to this is that he made a request for figures in relation to empty properties to all police forces and only two held recorded relevant figures. His position on this is that if the relevant police force does not hold specific data on this then any views the do provide are mere supposition or opinion. He argues that in order for the exemption to be engaged an evidential basis needs to be demonstrated.

Conclusions

45. The Commissioner has therefore considered the three criteria outlined above as regards the application of section 31(1)(a)
 - With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice which the Council envisages would be likely to occur if the withheld information was disclosed, and this relates to the interests which the exemption contained at section 31(1)(a) is designed to protect.

- With regard to the second criterion, the Commissioner accepts that it is clearly logical to argue that the disclosure of a list of empty properties would provide those intent on committing crimes associated with such properties an easy way to identify them. She therefore accepts that there is some causal relationship between disclosure of the withheld information and the prevention of crime. Moreover, the Commissioner is satisfied that the resultant prejudice which the Council believes would occur is one that can be correctly categorised as one that would be real and of substance.
 - In relation to the third criterion, the Commissioner acknowledges that a number of other local authorities have disclosed similar information without any apparent impact on the prevention of crime. However, in the particular circumstances of this case, given the examples of crimes involving empty properties that the Council has identified in its borough, the Commissioner is persuaded that identification of vacant non-residential premises falling within the scope of this request represents more than a hypothetical risk of harming the prevention of crime. Rather, disclosure of this information would present a real risk.
46. The Commissioner has therefore decided that the council was correct to apply the exemption in section 31(1)(a). The Commissioner has therefore gone on to consider the public interest test required by section 2(2)(b) of the Act. The test is whether the public interest in the exemption being maintained outweighs the public interest in the information being disclosed.

The public interest in the exemption being maintained

47. The Commissioner can take into account the frequency, severity and likelihood of the prejudice identified, and this in turn will affect the weight attached to the public interest arguments for the exemption being maintained.
48. The council argues that the main public interest rests in the prevention of crime. It points to numerous examples of issues where crime has occurred in vacant commercial premises in its borough and argues that the public interest must rest in protecting the public from the effects such crime brings.
49. It notes the findings in the Cornwall and RBKC cases, however it argues that it has significant experience of actual incidents at vacant commercial premises in its area these decision notices (and the complainant's statistics in those cases) are distinguishable from the risk posed to its area.

50. It argues that the evidence it has produced in its response to the Commissioner, demonstrating illegal activities in vacant commercial premises, show that this is a real, ongoing problem in its area and therefore something which is likely to happen.
51. The council submits that the likelihood of harm arising and the consequences of disclosing the information are significant and serious and that it is therefore clearly in the public interest for the information to be withheld.
52. Further to this, as pointed out in paragraph 27 above, the council also points to the costs to the community, to landowners and upon police resources having to deal with the consequences of such crime. It argues that it is therefore clear that the balance of the public interest must lie in withholding the information in order to prevent that prejudice occurring.

The public interest in the information being disclosed

53. The central public interest in the information being disclosed relates to the benefits which would derive from a disclosure of the information. This includes use of the information which the complainant has explained that he would use it for. This consideration cannot take into account the private interests of the complainant, but it can take into account the public benefits which would occur should the information be disclosed. This includes the wider consequences of a disclosure of the information, either by the complainant or any other organisation able to offer similar services, and consider the public benefits to businesses and communities this would create.
54. The complainant runs an organisation which, working with other organisations, provides information to business users on empty business properties. Effectively he wishes to provide statistical data and advice on the viability of types of businesses in particular properties within particular areas. The complainant says that this is partly funded by a grant from the EU Open Data Incubator to develop this service.
55. The complainant has previously said to authorities he has requested information from that:

"I would ask that you consider that the public interest in economic development and improving opportunities for independent businesses and entrepreneurs far outweighs any concern that the release of data which can identify empty business properties may cause crime.

Unemployment and economic deprivation are often key to reducing the potential for crime. Our intention is to support local economic development initiatives through the use of these data."

56. Outside of the direct intentions of the complainant there is a public interest in this information being available. A list of vacant commercial premises within an area will be of use to companies looking to develop their businesses within that area. Higher rates of occupation by businesses in an area aid in the areas economic development (and redevelopment). It will be beneficial to the economic health of that, and surrounding areas. It raises employment levels, reduces crime by making the opportunities for squatting etc lower, lessens the possibility of crimes such as fly-tipping within vacant properties, and also heightens the sense of security for neighbouring properties and people visiting the area.
57. Some public authorities therefore provide similar advice to businesses which are hoping to set up within their area. The council has not said whether it provides any similar form of service. The council itself does however recognise the public interest in the information being made available to business users in this manner but is concerned that disclosing the information will facilitate crime within its area.
58. The complainant has also pointed out research: '*British High Streets: from Crisis to Recovery? A Comprehensive Review of the Evidence*¹' by Neil Wrigley and Dionysia Lambiri of the University of Southampton on behalf of the Economic & Social Research Council which argues that there is a lack of open data on town centre/high street structures which affects research into the area as well as local government's response to retail issues on high streets. The complainant argues that this request is a step towards making open data on this available. The research (at page 4) states:

"In part, these difficulties reflect the dominance of proprietary research on topics which have considerable commercial value, and its consequences in terms of a resulting lack of visibility of the true spectrum of available research and findings. But, more widely, it also reflects: the long slow demise of publically accessible open data'; the rise and importance of 'commercial data' on town centre/high street

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http://www.riben.org.uk/Cluster_publications_&_media/BRITISH%20HIGH%20STREETS_MA_RCH2015.pdf

structures, and the constraints that having to fund use of commercial data imposes on research."

59. The complainant has demonstrated to the Commissioner that a large amount of information is already in the public domain if individuals are willing to put the time and effort into the necessary research. He demonstrated how he had obtained all of the information he had requested for three properties simply through research over the internet, using sources such as the Valuation Office Agency, Companies House and estate agents. He argued that it had taken him approximately 20 minutes of research to determine all of the information he had requested from another authority for the three properties, including whether the properties were vacant.
60. A large number of properties are advertised by estate agents, (although the Commissioner accepts that this will not include all properties). Whilst this is not a guarantee that they are vacant, potential criminals would be able to visit the properties or do further research to determine whether they are or not. The Commissioner also notes that estate agents will often state that commercial properties are 'available immediately', which is a strong indication that they may be vacant.
61. In the case of *London Borough of Ealing v IC (Appeal No: EA/2016/0013)*, at paragraph 13 the First-tier Tribunal considered whether details of occupancy of commercial premises could be considered confidential. It found that it could not be confidential as generally this would be evident:

"The only relevant confidential information relied on by the Council is the identity of the occupier and the start date and end dates of the account. Although this information may be supplied to the Council by ratepayers we do not think that it is confidential in the required sense because the identity of an occupier and the dates of its occupation of a property are likely to be matters of public knowledge in that the public are generally able to see who is occupying commercial premises and when. This is in contrast to the position with other forms of taxation (like income tax) where many of the details held by HMRC relevant to a taxpayer's liability will come entirely from the taxpayer and not be in the public domain. We therefore reject the Council's case on section 41."

62. The appeal went to the Upper Tribunal and was remitted back to the First-tier Tribunal and decided on other matters. The statement of the Tribunal quoted above was not in question in those further appeals. The Commissioner therefore notes the Tribunal's view that the occupation of

commercial premises may generally be ascertained by observation of the property concerned.

63. The Commissioner notes that although it would not always be possible to determine whether a property was vacant or not purely from an estate agents advertisement, put together with the other sources of information which the complainant has mentioned this information will already be available in a lot of cases, providing an individual is willing to carry out the necessary research. In cases involving organised criminals, they would be likely to do the necessary research and may also visit the property to identify whether, and what security measures are present, whether or not the lists are available and demonstrate that the property is vacant.
64. Whilst the necessary information may not be available from the internet for the majority of properties, the Commissioner stands by her arguments and decision in the Cornwall and RBKC cases; the occupancy of commercial properties is more visible in business properties than in the case of domestic properties. Even where information on a particular property is limited on the internet, it will generally be evident whether they are occupied or not by visiting to the property. Although this may not always be the case, the Commissioner considers that that would be the case for the majority of commercial properties.

Conclusions

65. When considering the public interest arguments in support of an exemption being applied, the Commissioner can take into account the, severity and likelihood of prejudice identified, and this in turn will affect the weight attached to the public interest arguments for the exemption being maintained. The complainant has outlined how the information withheld by the council can be established for many properties already from information in the public domain.
66. The Commissioner considers that the public interest arguments in favour of disclosure are relatively strong, particularly when combined with the fact that so many other local authorities, including many London boroughs with similar issues to this council have either provided this information in response to similar requests or proactively publish it. She considers that the fact so many other authorities disclose this data is also a strong indicator that the impact and the prejudice which the council considers will occur is not so great as to cause concern amongst other authorities to the extent that they withhold the requested data. The Commissioner recognises however that different areas will have different levels of crime, and the likelihood of crimes, such as those

highlighted by the council, may be different for each council dependent upon the demographics and geography of the area concerned.

67. The complainant has provided evidence that other London boroughs disclose the information. These include Croydon, Hammersmith and Fulham, Harrow, Havering, Redbridge and Sutton. Other councils have sought to counter this by demonstrating that crimes of the sort they have associated with the disclosure of this sort of information do take place in these areas and provided links to media stories to demonstrate this in each of the areas concerned.
68. As stated, there is a balance to be made between the prejudice identified by the council and the public benefits identified. On the one hand the council may recognise the benefits disclosing the information might bring, on the other it has strong concerns that disclosing the information will prejudice its ability to prevent the crimes it has highlighted taking place.
69. The Commissioner must make her decision based upon the evidence presented to her. The Commissioner notes the opportunity to identify whether a property is vacant or not without reference to the requested information. This significantly weakens the council's argument that a disclosure of the information might be substantially prejudicial to its ability to prevent crime.
70. The council has produced a wide number of media stories demonstrating that fly-tipping and squatting already occur, and demonstrating the social and economic costs of this to the community, police and council. The Commissioner considers however that these examples also demonstrate that the sorts of crime described by the council take place in spite of the fact that the council does not disclose this information. Empty commercial properties of the size envisaged are already visible or identifiable; withholding the requested information does not prevent this from occurring.
71. A disclosure of the information would inform which premises are empty, but this information can, to an extent, be obtained from other sources. Individuals' intent on organised crime would generally research whether a property is vacant prior to beginning to use a site for their purposes. Even with access to the withheld information the organisers would, in all likelihood need to visit the property first to ensure it is able to be used for their purposes and to establish what security measures were in place on the site.
72. Opportunist crime is not based on prior organisation, and opportunist criminals are unlikely to refer to lists prior to carrying out their crime. These sorts of crime relate to individuals noting that a property is empty

and taking action at that point, or shortly afterwards, with little forward planning.

73. Whilst the requested information may be used for purposes such as identifying potential targets, the evidence from the complainant, and from the fact that so many authorities continue to disclose the information, is that the likelihood, severity, and or frequency of any prejudice caused by this disclosure must be fairly low. The Commissioner considers that those intent on crime will do so anyway, and vacant commercial properties can already be identified even if not all properties can be identified from research on the internet alone.
74. The Commissioner therefore considers that the council's arguments are significantly weakened by the fact that withholding this information would not prevent these types of crimes from occurring, and would not prevent empty properties from being relatively easy to identify by those intent on either breaking and entering, squatting, fly-tipping or running illegal events such as raves or warehouse parties.
75. The council's argument is not that withholding the information will prevent crimes altogether – it is that it will widen the information available to potential criminals which they can use to plan their activities. This is the level of prejudice which needs to be balanced against the public interest in the disclosure of the information and the benefits that that would result in. The Commissioner has not however been persuaded that any prejudice from disclosing this information is likely to be severe, or to cause any greater harm than would be likely to occur in any event because that information can be established through other means, and because crime of the sort envisaged would be likely to occur anyway.
76. The Commissioner has considered the economic advantages such a disclosure might bring about, the fact that many prospective business owners may benefit from a disclosure of the information as compared to the economic deprivation which can occur when a number of commercial properties lay empty. She notes the statement in parliament regarding the problems with high levels of empty properties outlined in paragraph 26 above. The disclosure of this information would provide useful information which could aid in bringing back properties into use, and potentially aid in preventing such areas occurring.
77. When balancing this against the level of prejudice identified to the prevention and detection of crime which she has described above the Commissioner considers that the balance of the public interest, in the particular circumstances of this case, rests in the disclosure of the information.

78. The Commissioner's decision is that the council was not correct to apply section 31(1)(a) in this instance.

Section 38

79. The council also applied section 38(1)(b) (Health and safety). Section 31(1) provides that:

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

- a) endanger the physical or mental health of any individual, or*
- b) endanger the safety of any individual."*

80. The council provided examples of situations where injuries had occurred through breaking and entering onto vacant premises, including highlighting where flooding had occurred in a block of flats following the theft of pipes, and where a marijuana production system had been set up on a vacant floor in residential flats, and threats had been issued to those living on other floors. Both examples provided by the council related to residential blocks rather than commercial residences, however the Commissioner does take the point that vacant buildings may attract individuals, and that this may be a health and safety threat to both them and those living around the premises.
81. The council argues that it is common sense to consider that if the lists are disclosed, the list being available to the world at large would be likely to endanger the safety of individuals; particularly in light of the local examples of people's lives being endangered when empty properties/partially empty properties have been broken into and used for criminal purposes. Similarly it argues that the council could be at fault if a person were to injure themselves when carrying out criminal activities such as stealing lead if it were to disclose the information.
82. The Commissioner firstly notes that both examples relate to residential properties rather than the non-residential, which the complainant has asked for.
83. Secondly she considers that the examples above occurred without the council publishing the information which has been requested in this case. Again this fits into the argument that such issues arise regardless of the publication of vacant property lists.
84. Further to this, the application of the exemption in this instance relies upon the same reasoning as that provided by the council for the application of section 31; that individuals will use the information to

identify potential targets for their activities, and as a result may either endanger themselves or others in the process of using the property.

85. As noted above, the Commissioner considers that there are significant weaknesses with this argument which led her to decide that the public interest in section 31 being maintained did not outweigh the public interest in the information being disclosed. Where section 38 is applied the application of the exemption is again relatively weak for the same reasons. Incursions into vacant properties are likely to occur anyway, both unplanned and organised. Health and safety issues will occur as a result. The council's argument does not demonstrate a substantial likelihood that crimes (which would not otherwise be committed) would take place with any significant additional degree of likelihood or frequency if the information were to be disclosed. Particularly as local knowledge, and the ability to identify vacant commercial properties, already exists to a relatively high degree.
86. Therefore, for the same reasons as applied in the case of the application of section 31, the Commissioner considers that the public interest in protecting health and safety through withholding this information is outweighed by the public interest in the disclosure of the information.

Right of appeal

87. 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@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

88. 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.

89. 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

**Gerrard Tracey
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Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF**