

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 February 2018

Public Authority: London Borough of Camden Council
Address: Town Hall
Judd Street
London
WC1H 9JE

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 the council. The council disclosed the majority of the information but applied section 31(1)(a) to information on whether properties were occupied or not. It argued that disclosing this information would prejudice the prevention and detection of crime as it would provide details which would facilitate criminal activity.
2. The Commissioner's decision is that the council was not correct to apply section 31(1)(a) to the information.
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 21 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.
7. Following an internal review the council wrote to the complainant on 4 May 2017. It confirmed its position that the information was exempt under section 31(1)(a).
8. It did however subsequently disclose some further statistical data, namely the first part of the postcode and the numbers of vacant commercial premises in that postcode area to the complainant in an effort to be transparent and to seek informal resolution.

Scope of the case

9. 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) to the information.
10. The Commissioner considers that the complaint is that the council was not correct to apply the exemption in section 31(1)(a) of the Act to the withheld information.

Reasons for decision

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 could be used by criminals and squatters wishing to find properties to move into. It has highlighted that it has a particular issue with illegal 'raves' or warehouse parties taking place in its area.
14. 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') in which the First-tier tribunal found that a disclosure of lists of empty residential 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.
15. 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) as disclosing the information would be likely to facilitate crime on vacant non-residential properties.

The complainant's arguments

16. Since these 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. The complainant therefore argues that any other forces which provide arguments supporting the application of the exemption are essentially providing an opinion based upon supposition rather than specific evidence.
 - 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.
17. The Commissioner issued 2 decision notices providing similar arguments to Camden 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>.
18. 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 regarding harm

19. The council provided the following arguments in support of the exemption applying:
- a. The 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. If disclosed, the information could be used by squatters and could make properties more vulnerable to illegal activities or antisocial behaviour which is not 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. Estate agents/letting agents advertise properties on websites, adverts etc but not all properties they advertise would indicate whether they are vacant.
 - j. 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-notice/2014/1042144/fs_50538789.pdf
 - k. 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 residential properties under section 31(1)(a).
20. The council accepted that the decision notices in the cases of Cornwall and RBKC found against the application of the exemption in those cases. However it considers that the circumstances in Camden are different, to the point that the exemption is applicable to the information in its case.
21. The council said that it shares many of the concerns that were raised by the councils in Voyias, Stoke on Trent, Cornwall and RBKC but in addition the Council also submits that there is a significant and serious risk that vacant commercial premises would be targeted for breaking and entering and holding illegal gatherings. It cited numerous media reports to the Commissioner seeking to demonstrate that vacant commercial premises within the borough are a target for large-scale illegal raves and 'warehouse' parties. It argues that these have a significant impact on the local community and the police, as well as potentially serious consequences for those attending these gatherings.

22. The council argues that it is widely recognised that a number of crimes occur in vacant commercial properties and that if the Council were to disclose the addresses of such properties it would make information widely available which would be likely to assist people in committing these crimes. Therefore 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

23. 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.
24. 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 says 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>.
25. 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.
26. It further argues 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/>
27. Paragraph 26 of the judgement in the remitted First-tier Tribunals 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.
28. 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.

29. 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."

30. Although squatting in non-residential premises is not in itself illegal, in the Upper Tribunals judgement in the Voyias case (EA/2011/0007), prior to the Tribunal remitting the decision back to the First-tier Tribunal, it decided that squatting has specific crimes which are associated with it, such as criminal damage which therefore needs to be taken into account when considering the application of the exemption.
31. The Commissioner also notes the arguments accepted by the First-tier Tribunal regarding the likelihood of stripping on building sites is likely to correlate more with some (larger) non-residential properties (which might have significant air conditioning, water and heating units) than with residential properties. In the Voyias decision, at paragraph 35 the First Tribunal's remitted decision it found that;

"35. The guidance provided to us by the Upper Tribunal is to the effect that, just because criminals have in the past targeted building sites rather than empty properties from which to steal metal and other materials, it does not follow that they will not change the pattern of their behaviour once aware of publicly available lists of empty properties. The Council's own evidence on this type of possible criminal activity is thin. However, its case is again supported to some extent by the Appellant's own evidence. This included transcripts of conversations with certain police officers. They acknowledged that, while building sites are likely to be the most common target, knowledge that a property was empty would make it a "softer" target worth considering stripping, provided that it was also evident that it contained a certain amount of valuable material. This would include, in particular, a multiple occupancy building that was being renovated as this would include, for example, separate heating system for every flat, each including a certain amount of copper pipe and heating equipment.

32. 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.
33. The council also points to information provided by the London Borough of Richmond upon Thames Council at https://www.richmond.gov.uk/council/open_richmond/freedom_of_information/empty_properties_foi_requests which says:

"We have previously made enquiries to the Metropolitan Police which indicate the release of this type of information where buildings are situated, would increase the potential for:

- Buildings to be targeted by squatters*
- Buildings to be targeted by criminals or terrorists intent on hiding or depositing proceeds of crime or terrorist materials*
- Premises to be identified as short-term hiding places by criminals or terrorists*
- Premises to be targeted by vandals or street artists"*

34. 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 recorded relevant figures. His position on this is that if the relevant police force does not hold data relevant to this then any statement it might give is simply supposition or opinion. He argues that in order for the exemption to be engaged an evidential basis needs to be demonstrated.

35. 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 occupy vacant premises for activities leading to crime, use lists of vacant properties to identify suitable premises and that it is widely accepted that London is a target for squatters and illegal public gatherings. 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.
36. Although the complainant argues that the impact would be low 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 the ASS website provides advice to squatters regarding squatting in non-residential properties, including how to identify and enter such properties. The Commissioner also accepts the evidence from the council that it has an issue with raves and warehouse parties in its area which might be facilitated by the disclosure of this information. From this the Commissioner concludes that there must therefore be a degree of prejudice to the prevention of crimes associated with squatting.

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

37. 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 of Camden as well as other London boroughs.
38. Its argument is not that disclosing this list will lead to crimes being committed in the area; it is that disclosing the information widens the list of information on potential properties which might be used for criminal purposes. It argues that the lists would provide further information which would allow individuals to further such activities.
39. The Commissioner agrees that there is evidence that ASS has previously used lists to identify potential properties, and its website clearly refers potential squatters to use 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 and does acknowledge that the other issues the council has raised are an issue.

Conclusions

40. 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.
41. 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

42. 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.
43. 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.

44. 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 the London Borough of Camden. It further argues that Camden is an inner London borough with a history of crime, and that the effects of a disclosure of this information could magnify this.
45. 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.
46. It says that the number of media reports of illegal gatherings in vacant premises in London is significant, and refers to illegal gatherings of hundreds, to thousands of individuals in attendance, with crimes such as public disorder, drug dealing and criminal damage taking place. It also points to the risk of personal injury, and even fatalities where individuals use vacant premises for these purposes.
47. 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.
48. Further to this, as pointed out in paragraph 19 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

49. 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.

50. 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.

51. 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."

52. 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 a specific area. Clearly such information will be useful to business owners and higher rates of occupation by businesses in an area aid in the areas economic development (and redevelopment). Companies moving into an area are generally going to 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.

53. 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 recognises 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.

54. The complainant has also pointed out research: '*British High Streets: from Crisis to Recovery? A Comprehensive Review of the Evidence*' (http://www.riben.org.uk/Cluster_publications_&_media/BRITISH%20HIGH%20STREETS_MARCH2015.pdf) 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 structures, and the constraints that having to fund use of commercial data imposes on research."

55. The complainant has also 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 to the Commissioner how he had obtained all of the information he had requested 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 3 properties, including whether the properties were vacant.
56. A large number of properties are advertised by estate agents, (although the Commissioner accepts that this will not include all properties), and although this is not a guarantee that they are vacant, potential criminals would be able to visit these 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.
57. 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 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."

58. 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 through observation of the property concerned.
59. 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.
60. Whilst the necessary information may not be available from the internet for the majority of properties, the Commissioner stands by her 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

61. When considering the public interest arguments in support of an exemption applying, 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.
62. 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 some inner London boroughs, have provided this information in response to the request 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.

63. 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.
64. 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 exists 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.
65. The complainant has provided evidence that other London borough disclose the information. These include Croydon, Hammersmith and Fulham, Harrow, Havering, Redbridge and Sutton. The council counters 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.
66. The council has produced a wide number of media stories demonstrating that large scale raves etc 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 Camden 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.
67. Those intent on organising largescale illegal warehouse parties and raves are presumably organised. They need to bring in sound and will presumably need to have advance knowledge of the layout of the building prior to setting up and arranging the site for use. They may therefore need to visit the building before considering using it for their purposes (or they will already have local knowledge of it). A disclosure of the information would inform which premises are empty, but this information, to an extent, can be obtained from other sources, particularly by viewing the property. Even with access to the withheld

information the organisers would need to visit the property first to ensure it is able to be used for their purposes. As noted above, the ASS has itself also listed some means by which those considering squatting might obtain the information they require which are already publically available.

68. Whilst the 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.
69. 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.
70. 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 is likely to be severe, or to cause any greater harm than would be likely to occur in any event.
71. 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 occurs when a number of commercial properties lay empty. When balancing this against the level of prejudice which she has identified to the prevention and detection of crime she has described above the Commissioner considers that the balance of the public interest rests in the disclosure of the information.

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

Right of appeal

72. 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

73. 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.

74. 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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Wycliffe House
Water Lane
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