

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **15 February 2018**

Public Authority: **London Borough of Ealing Council**

Address:
Perceval House
14-16 Uxbridge Road
Ealing
London
W5 2HL

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 Ealing Council. The council applied section 31(1)(a) stating that it would prejudice the prevention and detection of crime to disclose the information because it would provide details which would facilitate those wishing to commit certain types of crime in vacant properties. It also applied the exemptions in section 40(2) (personal data) and 21 (information available by other means). The complaint to the Commissioner however only relates to the application of section 31.
2. The Commissioner's decision is that the council was not correct to apply section 31(1)(a), 31(1)(d) and section 31(2) 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 26 April 2017. It provided the majority of the information however it withheld information on whether properties were occupied or not under sections 31(1)(a), section 31(1)(d) and section 31(2) (law enforcement). It also withheld information under Section 40 in respect of properties where the ratepayer is not an individual and under section 21 it withheld the billing authority reference numbers and rateable values as it argued that this information is available on the Valuation Office Agency website.
7. A review of the decision was sent to the complainant on 25 May 2017. The council maintained its position as regards the application of these exemptions to withhold the requested information.

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 to the information. The complainant did not complain about the application of sections 21 or 40(2) to withhold sections of the information.
9. The Commissioner considers that the complaint is that the council was not correct to apply the exemption in section 31(1)(a), 31(1)(d) and 31(2) of the Act to the withheld information.

Reasons for decision

10. Section 31(1)(a) and 31(1)(d) 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...*
- (d) *the assessment or collection of any tax or duty or of any imposition of a similar nature"*

11. Section 31(2) provides that:

"The purposes referred to in subsection (1)(g) to (i) are-

(a) the purpose of ascertaining whether any person has failed to comply with the law,

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 requested information about empty properties:

- would (or would be likely to) prejudice the prevention of crime, and
 - would (or would be likely to) prejudice both the assessment of liability for, and collection of, Non-Domestic Rates, and
 - would (or would be likely to) prejudice the Council’s ability to ascertain whether or not a person had complied with relevant legal obligations to supply accurate and truthful information to the Council in relation to business properties, and in relation to liability for non-domestic rates (“NNDR”).
- In its internal review letter to the complainant it also highlighted the possibility that a disclosure of the information could facilitate

terrorist activities. It did not however expand upon this argument further in its response to the Commissioner.

14. It argues there is a risk to crime prevention by disclosing that a commercial property is unoccupied in the public domain. It says that the arguments surrounding the use of s31 in this context are well rehearsed. It argues that a disclosure of the information would be likely to prejudice its ability to prevent crimes such as:
 - Unauthorised occupancy and crimes associated with this
 - Theft
 - Flytipping
 - Using the address as part of creating a false identity to facilitate crime
 - NNDR (business rates) evasion
 - Using the property to commit sexual assaults/rape
 - Illegal raves, and,
 - Ancillary crimes, vandalism, nuisance and creating a risk to the public
15. Assessment and Collection of NNDR – the council argues that the publication of the requested information could assist criminals to target, and contact, the owners of empty properties, and to suggest a conspiracy to defraud the Council.
16. Ascertaining compliance with relevant legal obligations – The council argues that the publication of the requested information could assist criminals to help the owners of empty properties to avoid compliance with their legal obligations. The fact that experienced criminals are able to contact such business owners and to offer sophisticated techniques for avoiding detection makes it more difficult for the council to detect the non-compliance.
17. The council said that it had received information from the Metropolitan Police regarding crimes in empty properties within the borough. The police said that they had serious concerns about the risks associated with the risk of disclosing information on empty properties into the public domain, particularly given the nature of the crimes being perpetrated. Criminals could use publicised information to target specific premises and so there is a risk of increased criminal activity as a result.
18. The council argues that a further concern relates to the use of empty properties by the police for conducting authorised surveillance. If empty property information is circulated more widely this could have the potential to undermine serious investigations.

19. These arguments follow, and expand upon arguments submitted to the Commissioner outlined in previous decision notices. The Commissioner issued a Decision Notice FS50628943 to Cornwall Council, (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> in 2017. 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.
20. The arguments also expand upon 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. The council argues that in these cases the Tribunal accepted that it was logical that the disclosure of such information provides an easy way to identify empty properties and that there is as causal link between the disclosure of the information and the prevention of crime.
21. 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)(a) 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

22. 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 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.

Further arguments regarding harm

23. The following arguments support 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. The information, if disclosed, 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. Money lost to the council via NNDR fraud is money which could otherwise be used to pay for other council functions.
 - j. Estate agents/letting agents advertise properties on websites, adverts etc but not all properties they advertise would indicate whether they are vacant.
 - 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

- I. 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).
24. The Commissioner notes however that the Voyias decisions related primarily to residential properties rather than commercial premises. She considers that there is a significant difference between these two types of property insofar as whether individuals are able to identify whether the property is vacant or not without reference to the withheld information.
25. 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 Ealing are different, to the point that the exemption is applicable to the information in its case.
26. 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 criminal activity if this information were to be disclosed.

The likelihood of prejudice

27. The council argues that it is widely recognised that a number of crimes occur in vacant commercial properties and that if it were to disclose the requested information it would make it widely available and this would be likely to assist people in committing crimes. It refers to the view of the Metropolitan Police that disclosing the information would be likely to increase the likelihood of crimes of the nature described occurring. Therefore it argues 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.
28. The council argues that the statistical data provided by the complainant is not strong. It said that it is inherently difficult for the Council to produce statistical data for all of the criminal activities connected with empty properties. For example, where a cache of stolen goods is discovered, the fact that the handlers were not the lawful occupants of the property that was being used for storage will not necessarily be recorded as a separate crime (and indeed squatting in commercial property is not, in itself, a crime).

29. Further to this it argues that in terms of causal links, the Council does not accept that it is useful to try to compare crime reports in those boroughs which do release the requested empty property information with those boroughs which do not do so. Crime reports are, by their nature, selective, and do not fully describe all criminal activity, or indicate whether each crime described does, or does not, involve an empty business property.

Conclusions

30. The Commissioner has therefore considered the three criteria he has outlined above as regards the application of section 31.
- 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), 31(1)(d) and section 31(2) are 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.
31. The Commissioner therefore considers that the exemption is engaged. She 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

32. The council said that it had taken the following public interest arguments into account in favour of maintaining the exemption:-
- While it is possible that there is some public interest in statistical data about vacancy rates being available, it is not self-evident that there is a strong public interest in publication of the exact addresses of empty properties. The arguments in favour of upholding the exemption are stronger.
 - The information is, in the main, relating to private businesses. It has come into the Council's possession as a result of the fact that property owners (and occupiers) have legal obligations to supply this data to the Council. The complainant has produced no evidence to suggest that representatives of business owners are generally in favour of this information being released, and the Council is not aware that business owners generally would prefer to have the information published.
 - The expense of additional security measures and insurance premiums do not benefit the owners of the empty properties. Owners and occupiers of properties near to the sites of crimes at empty properties can also suffer financial loss, physical damage, or personal injury as a direct result of the crimes mentioned above.
 - The overall effect of increased crime in an area can damage a business's income, or the value of the properties in the area.
 - The Council is a public body with a limited budget. Each pound that the Council loses by way of a successful attempt to fraudulently evade NNDR is a pound which could otherwise have been spent on providing services to the public, and/or is a pound which the Council might have to generate by increasing its charges to honest council tax payers or NNDR payer.
 - The Council, as with all public bodies, has a duty to seek to safeguard public funds, and to minimise the opportunities for dishonest people to profit at the expense of honest people.
 - There is a strong public interest in keeping NNDR fraud to a minimum, and to avoid making things any easier for criminals than they already are.
33. The Commissioner can take into account the 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.

34. The council argues that the main public interest rests in the prevention of crime. It has highlighted the Metropolitan Police's statement that crimes have occurred in vacant commercial premises in its borough recently and argues that the public interest rests in protecting the public from the effects of crime. It argues that disclosing the information would be likely to increase the levels of crime in the area. It therefore considers that the public interest in withholding the information outweighs the public interest in the information being disclosed.
35. The council refers to the public interest tests carried out in the *Voyias* case and in the other previous cases mentioned above. Essentially this point argues that both the Tribunal and the Commissioner have previously identified that the public interest in the exemption being maintained on the basis that a disclosure is likely to aid squatters includes:
 - a. The inherent public interest in the prevention of all crimes (even those where the damage caused may be limited or the chances of securing a conviction problematic);*
 - b. The cost of securing properties vulnerable to squatting and repairing damage resulting from it, whether that cost falls on the private or public purse;*
 - c. The cost of evicting squatters;*
 - d. The potential detrimental impact on those directly affected by criminal damage;*
 - e. The impact on the community in the vicinity of a squatted property;*
 - f. The problems faced by Council staff having to deal with squatting and its consequences;*
 - g. The impact on police resources;*
 - h. The direct financial cost caused by property stripping"*
36. The council's argument is that withholding this information prevents crime in that it makes vacant non-residential premises less easy to find. It therefore lessens the possibility of crime taking place.
37. The Commissioner considers that there will always be individuals or groups intent on committing crimes, and some vacant commercial properties will be affected by the crimes that these individuals carry out. The council's argument is that disclosing the lists widens the information available to potential criminals and will aid them in carrying out their activities. It provides information which criminals will use as an easy list of properties which they can use to identify potential targets. Its point is that crime will be easier to commit if the information is disclosed.

The public interest in the information being disclosed

38. 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, but this consideration cannot take into account the private interests of the complainant.
39. 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.
40. As stated, the Commissioner is not able to take into account of the private interests of the complainant in her decision. She is however is able to take into account the wider consequences of a disclosure of the information, and any usage of that data for the purposes outlined by the complainant, either by him or any other organisation able to offer similar services, and consider the public benefits to businesses and communities this would create.
41. The complainant has previously argued 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."

42. 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.
43. Some public authorities therefore provide advice to businesses which are hoping to set up within their area in the same way that the complainants

service does. 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. As regards the public interest in the information being disclosed it said that it took in to account: "*The Council considered disclosure on the basis that releasing the information would be of commercial value to developers and businesses looking for sites. It could enable the regeneration of areas or stimulate business growth*".

44. 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 publicly 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."

Conclusions

45. The council has argued that it recognises that some information is already in the public domain and that this in itself does not prevent the exemption from being engaged. It argues that:
 - The fact that criminals might have alternative means of obtaining information about *some* empty properties does not mean that section 31 is not engaged.

¹

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

- The fact that criminals might use other sources of information in addition to the requested information (if it is published) does not mean that section 31 is not engaged.
 - The fact that not all premeditated crime involving empty properties would be thwarted by non-disclosure of the requested information does not mean that section 31 is not engaged.
46. The Commissioner accepts the council's arguments in this respect and has agreed that the exemption is engaged in this case. However where balancing the public interest arguments in support of an exemption applying, the Commissioner can take into account the, severity, frequency 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.
47. The complainant has outlined how the information withheld by the council can be established for many properties already from information already in the public domain.
48. The Commissioner notes that the *Voyias* decision highlighted by the council primarily related to domestic, rather than commercial properties. The Commissioner notes that there is a significant difference between unoccupied domestic properties and between non-residential properties. It is relatively easy to take steps to make a domestic property look occupied, whereas this cannot be said to be the case for the majority of non-residential properties. Commercial properties will be closed and potentially shuttered, industrial properties are likely to be locked and appear empty from the outside, and office buildings are likely to be empty of equipment and locked up during normal business hours. The Commissioner's decision notice in the cases of Cornwall and RBKC noted as part of the arguments that vacant commercial properties can often be evident from the nature of the premises – steel shutters on windows and doors, whitewashed windows or the absence of activity such as parked cars on the properties car park etc.
49. Further to this, the complainant has demonstrated that the information he has requested is often available from estate agents, the Land Registry, Companies House, the Valuation Office Agency and other sources. As an example, he researched and provided the Commissioner with details of 3 properties in a London borough where he had obtained all of the information he had requested through research over the internet using publicly available sources. He argued that it had taken him approximately 20 minutes of research to determine the entirety of the information he had requested from another authority for 3 properties. 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 could visit these to determine whether they are or not. The Commissioner notes however that estate agents will often state that commercial properties are 'available immediately', which is a strong indication that they may be vacant.

50. 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. Effectively, providing a business address and a business name allows an individual to use other sources of information to research the current status of the company, telephone it, visit it, or seek information on its accounts, thereby building a picture of its current status. Further research using other publically available information can then provide further information on the company, such as checking that information against media stories and estate agents listings.
51. The complainant does not argue that all vacant non-residential properties are identifiable from the internet alone. His argument is that a significant amount of vacant non-residential properties can be identified from the internet, and other means such as visiting properties to identify their occupancy. If a significant amount of properties can be identified, criminals intending on carrying out activities in non-residential properties will be able to identify targets with or without the lists. Withholding the information would not therefore prevent or reduce crime from occurring. For the vast majority of non-residential properties visiting a property will establish whether it is occupied or not.
52. Whilst the necessary information may not be available from the internet for the majority of properties, the Commissioner stands by her reasoning in the Cornwall and RBKC decision notices that the occupancy of commercial properties is more visible than domestic properties; if nothing else, it will generally be evident whether they are occupied or not by visiting to the property. Organised stripping gangs, those intent on organising raves, and potentially squatters are likely to visit a property prior to breaking in to establish whether they are vacant or not and to establish what security arrangements are in place before they take the further actions which may amount to, or lead to criminal activity.
53. 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."

54. The appeal went to the Upper Tribunal and was remitted back to the First-tier Tribunal. It was subsequently decided through a consent order relating to other matters. The statement of the Tribunal quoted above was not however in question in these further appeals.
55. The Commissioner therefore notes the Tribunal's view that the occupation of commercial premises may generally be in the public domain because people will be able to see who is (or isn't) occupying it. In the same way it is also evident whether a property is occupied or not as people can visit the property and see whether it is or not.
56. The Commissioner recognises that the council's argument is not that crime will not occur; it is that disclosing the lists would be likely to widen the list of potential properties which criminals are aware of and the number of potential targets of crime will therefore increase.
57. The Commissioner considers it important to consider that those intent on committing organised crime would find opportunities simply from visiting an area, looking on commercial estate agents websites, investigating an area of low occupancy and go ahead with their plans in any event. Withholding this information will not prevent this sort of crime from taking place. Criminals can already obtain this information for some properties as demonstrated by the complainant. They are likely to commit crime regardless of whether the list is published as empty commercial properties can be identified regardless of the publication of the lists by the council. The Commissioner considers that these facts significantly weaken the council's argument that disclosing the requested information would be likely to be prejudicial to its ability to prevent crime.

58. Whilst the lists may be used for purposes such as identifying potential targets the evidence from the complainant, and from the fact that so many authorities already provide or publish this information, is that the likelihood, severity, and or frequency of the prejudice caused by a disclosure of the lists must be fairly low to local authorities who do actively publish it. This does not detract from the fact that the Commissioner fully accepts the council's argument that crime occurs in empty non-residential properties and that they are a draw to squatters etc. The point is that this would be likely to occur anyway, and the disclosure of the lists could not facilitate this to the degree that the council fears as vacant properties can already be identified. This weakens the public interest in the information being withheld. The Commissioner does recognise 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.
59. The Commissioner considers that it is much harder to disguise the fact that a non-residential property is vacant. Those intent on crime are likely to do so anyway. In this sense a disclosure of the lists is not likely to increase levels of crime, and nor will it make such activities easier to carry out. Organised criminals are likely to visit properties prior to taking action to determine what security measures are in place, and will as a result also determine whether the buildings are occupied or not in any event. In short, they are likely to visit properties prior to taking action regardless of the lists being published or not. Opportunist crimes are not generally pre-planned, but based on the actions of the individuals at the time that they note the opportunity, or shortly after that point. They are not therefore likely to refer to lists prior to taking action.
60. 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 mentioned taking place.

Section 31(1)(d) and section 31(2)

61. The Commissioner has also noted the argument that a disclosure of the lists would facilitate fraud using business rates payments (NNDR). The Commissioner has noted that the issue is not limited to this council, and that the cases he has looked at previously extend across many counties. The issue has also been recognised by the government, which published the results of a consultation review in December 2014 regarding the

issue. This is available at
<https://www.gov.uk/government/consultations/business-rates-avoidance-discussion-paper>.

62. Whilst the issue of NNDR fraud has been noted as being a growing issue amongst public authorities very few have raised this as an issue in relation to the disclosure of the information requested in this case. It appears therefore that the arguments submitted by the council in this case have not been noted as an issue by the majority of other authorities. This does not mean that the arguments are not valid as it is possible that other local authorities have not been affected by this issue or have yet to discover that this is an issue within their areas.
63. The Commissioner notes that such schemes occur regardless of whether the requested information is disclosed or not. A disclosure of the information in question may be of benefit to those wishing to identify vacant properties with this intention in mind, and from this they might then seek to contact the business liable for NNDR in order to arrange and facilitate false NNDR claims or statements.
 - a. It is noted, however, that the ways of defrauding using the NNDR system is for property owners who would otherwise be liable to pay their full liability for the property to pass off the liability for that property and so not be liable for payments during that period. This generally will require an agreement with another organisation to nominally occupy the property, potentially with that organisation able to claim exemptions or dispensations for the amount of NNDR payable to the council. Alternatively, the owner can claim that the property is occupied for a time, then claim the exemption on payment for a period of months when the property is then designated as vacant again.
 - b. Secondly, there may be individuals who seek to defraud the council by making false claims for NNDR repayments which are due. This might occur where, for instance, a business has moved properties and is now due to pay a lower rate of NNDR, or where a reduction in the NNDR liability has been made following a further valuation of the property concerned. The council may then be due to make repayments of the difference between the liability initially forecast and the actual liability where money has already been paid. Where this has not been paid a fraudster may make false claims that they are representing the business and claim the money.
 - c. Thirdly, fraudsters have previously sought to obtain payments directly from owners.

64. The Commissioner agrees with the council that a disclosure of the information could be used by such organisations to identify relevant properties and to contact their owners and that this would make such agreements easier to occur in principle. She also notes that business rate fraud can be a significant cost to local authorities. She acknowledges therefore that there is a significant public interest in the council being able to identify and protect itself against such claims.
65. The question for the Commissioner is whether the public interest in protecting this information from disclosure outweighs the public interest in the information being disclosed. If the likelihood or frequency (and/or the level of harm) which might occur is significant then this strongly weighs in favour of the exemption being maintained. If however the harm would be insignificant, unlikely or infrequent this minimises the weight of the public interest in the exemption being maintained.
66. The Commissioner must make her decision based upon the evidence presented to her. With the application of section 40(2) to the information taking out of consideration information relating to sole traders and partnerships, the information remaining relates most generally to charities, limited companies, companies limited by guarantee, and public authorities. The council has disclosed details of the property owners where they are not individuals. The only information which has either not been disclosed or may not be publicly available therefore is whether the properties relating to these businesses are occupied or not.
67. The Commissioner's opinion is that vacant properties can already be established. If an individual is able to identify a vacant property owned by a business it would not be difficult to obtain contact information for some owners/directors of the business from publicly available sources such as Companies House or other publicly available data. It should also be borne in mind that attempts of this nature could potentially be initiated by property owners themselves rather than by third parties as they would benefit from this through reducing or negating their NNDR liability. Withholding the lists in this scenario has no effect whatsoever in preventing the attempted fraud from occurring.
68. Even if the occupation status of all vacant properties cannot be established, with knowledge of a percentage of these the fraudsters have enough information to be able to take steps to try to defraud the council in the manner described above.
69. Similarly the complainant has demonstrated to the Commissioner that other types of fraud on business rates liability are also already available

to potential fraudsters based upon information already available in the public domain.

70. Effectively therefore, withholding the lists would not prevent this type of fraud from occurring. The Commissioner considers that the council's public interest 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 identified by those intent on committing crimes.
71. As stated above, the council's argument is not that withholding the information will prevent crimes altogether – it is that a disclosure of withheld information will widen the information available to potential criminals in order to plan their activities. This is the level of prejudice which needs to be balanced against the strong public interest benefits which a disclosure of the information would result in.
72. 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 issues which occur when large numbers 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.
73. The Commissioner's decision is that the council was not correct to apply section 31(1)(a), 31(1)(d) and 31(2) in this instance.

Right of appeal

74. 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

75. 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.
76. 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
Principal Adviser
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Wycliffe House
Water Lane
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SK9 5AF