

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **4 March 2020**

Public Authority: **Cornwall Council**

Address: **New County Hall
Treyew Road
Truro
TR1 3AY**

Decision (including any steps ordered)

1. The complainant has requested information relating to the business rates payable, and actually paid, by the liable parties on a particular property. The council initially applied section 40(2) to withhold the information. In its internal review it changed its decision. It provided details of the payable rates to the complainants, and withheld the actual rates paid by the parties under section 43(2) (commercial interests). During the Commissioner's investigation, the council also applied section 41(1) (information provided in confidence) to withhold the information.
2. The Commissioner's decision is that the council was correct to apply section 41(1) to withhold the information from disclosure. She has not therefore found it necessary to consider the application of section 43(2).
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 21 June 2019, the complainant wrote to the council and requested information in the following terms:

"I would like to request the rates paid (not payable, but actually paid) on connection with [address redacted]."
5. The council on 15 July 2019 refused the request on the basis that section 40(2) (personal data of third parties) applied.
6. The complainant provided further clarification of the request on 8 August 2019:

"In response to your request for further information in connections with the rates paid for [address redacted], I would like:

- *The Business Rates paid from 14th September 2016 to date; and*
 - *Both owners – previous and current during the above period."*
7. The council provided an internal review on 20 August 2019 in which it revised its position to provide information in respect of the payable rates for the properties for each of the two companies concerned. However, it withheld information on the rates actually paid by the companies, applying section 43(2) of the Act to withhold the information.

Scope of the case

8. The complainant contacted the Commissioner on 11 September 2019 to complain about the way her request for information had been handled.
9. Her complaint was that the council only partially responded to her request for information.
10. During the course of the investigation the Commissioner questioned the council further about its application of section 43(2) as she had not been convinced by its arguments for the exemption applying. The council reconsidered its position and applied section 41, in addition to retaining its reliance upon section 43(2), to withhold the information.

11. The Commissioner has therefore considered whether the council was correct to apply section 41 to withhold the information from disclosure. Given her decision on the application of section 41 she has not found it necessary to reach a decision as to whether section 43(2) was applied correctly.

Reasons for decision

Section 41- information provided in confidence

12. Section 41(1) of the FOIA states that:

"Information is exempt information if –

- a) it was obtained by the public authority from any other person (including another public authority), and*
- b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person."*

Was the information obtained from another person?

13. The information was provided to the council by the organisations concerned in that they either paid specific amounts to the council to meet their business rates liabilities, or they did not. The Commissioner is therefore satisfied that the information was provided to the council by another person.

Would disclosure constitute an actionable breach of confidence?

14. In considering whether disclosure of information constitutes an actionable breach of confidence the Commissioner will consider the following:

- whether the information has the necessary quality of confidence;
- whether the information was imparted in circumstances importing an obligation of confidence; and
- whether disclosure would be an unauthorised use of the information to the detriment of the confider

Does the information have the necessary obligation, and the necessary quality of confidence?

15. Under the common law there are specific relationships where information confided by one party to another is considered to be confidential. For instance, it is generally considered that employers owe a duty of confidentiality to their employees as regards some information which they obtain, doctors are considered to owe a duty of confidence to information provided by their patients regarding their health issues, and lawyers are considered to hold their clients information under a duty of confidence.
16. In the tribunal decision on appeal EA/2018/0055¹ the First-tier Tribunal considered whether information provided to authorities in respect of business rates could be confidential for the purposes of section 41. At paragraph 128 the Tribunal found that:

"128. We accept Mr Knight's submissions that there is a general common law principle of tax payer confidentiality: see R (Ingenious Media Holdings plc and another) v Revenue and Customs Commissioners [2016] UKSC 54 ('Ingenious Media') at para 17: 'where information of a personal or confidential nature is obtained or received in the exercise of a legal power or in furtherance of a public duty, the recipient will in general owe a duty to the person from who it was received or to who it relates not to use it for other purposes.'"

17. The case in question before the Tribunal was a request for information relating to business rates for businesses. The Tribunal therefore specifically raised the principle of taxpayer confidentiality as regards business rates.
18. The Tribunal therefore considered that the general public would expect information which it has to provide to an authority in the furtherance of a public duty is information which is provided in confidence.
19. Extrapolating this to the current case, information on the payment of rates, and how much an organisation has paid to the council in rates, is therefore considered to be information with the necessary obligation of confidence. The parties concerned would consider that the information is being passed to them in a situation which gives rise to the common law principle of taxpayer confidentiality.

¹

[http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2566/Sheffield%20Council%20EA.2018.005%20\(03.12.19\).pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2566/Sheffield%20Council%20EA.2018.005%20(03.12.19).pdf)

20. At paragraph 131 the tribunal went on to say:

"131. We accept that information provided to a local authority for the purposes of calculating rates or reliefs is information that a reasonable person would regard as confidential.

132. We accept that it is relevant to consider whether the disputed information is already in the public domain, but given the difficulty of finding most of the disputed information we do not accept that it is generally accessible such that it cannot be regarded as confidential.

133. For these reasons we accept that the disputed information carries the necessary obligation of confidence."

21. The Commissioner therefore notes that the Tribunal considers that information provided to public authorities for the purposes of calculating rates or reliefs is information which the general public would expect to be information provided in confidence. She also notes that the tribunal also considered that the information has the necessary quality of confidence. The information is not trivial and is not otherwise in the public domain.
22. Extrapolating this to the current case, the Commissioner is satisfied that information on the rates *paid* by an individual has both the necessary obligation, and the necessary quality of confidence.
23. The Commissioner considers that the case for this is particularly strong as regards details of payments made by an organisation to cover their tax liabilities.

Would disclosure be an unauthorised use of the information to the detriment of the confider

24. An unauthorised disclosure of the information would provide details of the payments made by the organisations to the council in terms of business rates.
25. Whilst the council has not provided any specific arguments as to the detriment that may be caused should the information be disclosed, it is clear that a disclosure of this sort of information would provide details of the payments which the companies have made, and potentially details about any reliefs which the companies have successfully claimed. It would also provide details of financial payments being made by the companies in association with their tax obligations.
26. In general, if information were to be disclosed demonstrating that a company had not paid the rates that they were liable to pay then the general public, or the company's creditors, might infer that they are

struggling to pay their debts. The Commissioner is not aware whether the organisations in this case have fully paid their business rate liabilities; neither the complainant nor the council has raised this as a potential issue. The Commissioner has therefore only placed weight on this argument as regards its wider, general application; that a disclosure of unpaid liabilities would affect *any* company in such a way if it became clear that they had not paid business rates which they were liable to pay.

27. The Commissioner is therefore satisfied that a disclosure of the information would be of detriment to the companies concerned. Even where the rates have been paid, a disclosure of the information would undermine the general expectation of confidence which the companies might otherwise expect to be in place. This would not only affect the companies in question; it would affect the degree of confidence and trust of all companies who pay business rate that their information will be retained in confidence.
28. The Commissioner is therefore satisfied that if the information were to be disclosed it would be in breach of a duty of confidentiality which the council owes to companies liable to pay business rates to it.
29. Although section 41 is an absolute exemption and so there is no requirement for an application of the conventional public interest test under section 2 of the Act, a disclosure of confidential information where there is an overriding public interest is a defence to an action for breach of confidentiality.
30. The test is whether the public interest in the disclosure of the information outweighs that in the protection of the duty of confidence in this instance.

Is there a public interest defence for disclosure?

31. In the appeal considered in case EA/2018/0055 the First-tier Tribunal considered the public interest in the disclosure of information relating to business rates information. It found that:

"For the reasons set out in our consideration of the public interest balance in relation to s31(1)(a) above we have concluded that there is only a limited public interest in disclosure of this information, and consequently we conclude that there is insufficient public interest in disclosure to outweigh the importance of the general common law principle of taxpayer confidentiality."

32. The Tribunal found that the public interest in having access to the rates liabilities information in that case was limited. In the current case, the information which has been requested is the amounts paid by the

companies concerned. The complainant did not highlight any specific reasons why she requested the information, however there is a public interest in knowing the amounts paid by businesses are appropriate and correct; the payments contribute directly to the public purse. A disclosure of the information would demonstrate that the council is actively administering the process and collecting the funds it has a duty to collect.

33. The Commissioner accepts that there is likely to be a stronger public interest in details of the overall unpaid business rates being disclosed by a relevant council. Details of this would enable the public to determine whether a public authority was carrying out its duty to collect taxes appropriately. This is not however what has been requested in this case. The request only relates to two specific companies, and one particular property. This weakens any public interest in the disclosure of the information.
34. A disclosure of information which is otherwise considered to be confidential would be concerning to businesses as it would be a disclosure of information relating to the company's tax payments when there would be no prior expectation that that might occur. The disclosure may be prejudicial to its interests and it would undermine the general expectation that details of their tax affairs will be retained in confidence by public authorities.
35. More widely, there would be an increase in concern by taxpayers that information on their legitimate tax affairs might be disclosed into the public domain, undermining the general principle of confidentiality surrounding a person's tax affairs.
36. The Commissioner recognises that there will be situations where the public interest does lie with the disclosure of information on tax payments of individuals or organisations. This will be on a case by case basis, however, and will be based specifically on the circumstances surrounding each particular case.
37. Where business rates are not paid by a liable party, the council can take a case before the magistrate's court to obtain the payments which are due. Information about prosecutions for non payments will generally be considered by the courts when this occurs, and so a degree of information on the council's response to underpayments or non-payment of business rates will therefore be available to the public.
38. In weighing the above public interest arguments for and against disclosure, the Commissioner has been mindful of the wider public interest in preserving the common law principle of confidentiality. The Commissioner recognises that the courts have taken the view that the grounds for breaching confidentiality must be valid and very strong

since the duty of confidence is not one which should be overridden lightly. Whilst much will depend on the facts and circumstances of each case, a public authority should weigh up the public interest in disclosure of the information requested against the wider public interest in preserving the principle of confidentiality, and the impact that a disclosure of the information would have on the interests of the confider. It needs to take into consideration the wider public confidence that information relating to tax payments can be confided in local authorities without it being subsequently disclosed without good cause.

39. As the decisions taken by courts have shown, significant public interest factors must be present in order to override the strong public interest in maintaining confidentiality, such as where the information concerns misconduct, illegality or gross immorality. To the Commissioner's knowledge, there is no suggestion in this case that the information concerns such matters.
40. The Commissioner is therefore satisfied that the public interest in the disclosure of the information is weak as compared to the public interest in protecting the principle of tax-payer confidentiality in this case.
41. The Commissioner has therefore decided that the council was correct to apply section 41 to withhold the information.

Section 43(2) – prejudice to commercial interests

42. As the Commissioner has decided that section 41 was applied correctly to withhold the information, she has not gone on to consider its application of section 43(2).

Right of appeal

43. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

44. 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.
45. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF