

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 5 April 2020

**Public Authority:** Halton Borough Council  
**Address:** Municipal Building  
Kingsway  
Widnes  
WA8 7QF

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from Halton Borough Council which concerns live business rates accounts with a value greater than or equal to £5,000. The Council has refused the complainant's request in reliance on section 40(2) of the FOIA on the grounds that the information is the personal data of third parties, and also in reliance on section 41(1) of the FOIA, on the grounds that the requested information was provided to the Council in confidence.
2. The Commissioner has decided that the Council is not able to rely on the exemption provided by section 40(2). This is because the recorded information does not satisfy the definition of personal data provided by the Data Protection Act 2018. However, the Commissioner has decided that the Council has correctly applied the exemption provided by section 41 of the FOIA to the requested information.
3. No further action is required in this matter.

#### **Request and response**

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4. On 7 February 2019, the complainant submitted the following request for information to Halton Borough Council via its on-line 'webform':  
  
"In accordance with the provisions specified within the above Act I hereby request the following information.

All information requested relates to Business Rates.

Required Information:- A list of all live business rates accounts within a 2017 list Rateable Value greater than or equal to £5,000.

- Property Reference Number (also known as Billing Authority Reference Number) of the property on which the charge is made. Please note that this is not the Rate Demand or Rate Account Number.
- Current rateable value
- Account holder name
- Property address
- The billing address (where different to the property address), the contact telephone number and email address
- The date the current ratepayer became liable for the business rates – we do not require any historical account liability dates only the current ratepayer's liability start date
- Whether a property is empty or occupied
- Where a property is currently empty please provide the date the ratepayer became liable for empty rates
- Where there is an exemption on the account please provide the start and end date and type of exemption applied (e.g. listed building)
- Where there is a relief on the account please provide the date it was applied and the type of relief (e.g. charity)
- We do not require any personal information or sole traders.

Please provided the information in an electronic spreadsheet format ideally excel."

5. As the Council had not responded to the complainant's request within the twenty working day compliance period, he sent the Council a 'chaser' on 26 March 2019.
6. Following the Commissioner's intervention, the Council sent the complainant its response to his request on 22 May 2019.
7. The Council advised the complainant that the information he has asked for, "...regarding the details of the ratepayers responsible for the premises identified, is considered to be exempt in accordance with sections 40 and 41 of the Act". Additionally, the Council advised the complainant that the information is also exempt under section 31(1)(a) of the Act.
8. On 17 July 2019, the Council wrote to the complainant following its completion of its internal review. The Council confirmed that it holds some of the information the complainant has asked for and advised him

that, "The Council would acknowledge your references with regards to section 31 of the FOIA and concurs with the view that based upon prior decisions of the Information Commissioner this exemption would not be applicable in this case".

9. The Council said, "Whilst the Council acknowledges your comments regarding the actions of other Local Authorities it is not considered that their approach has relevance to Halton Council's protection of personal data and confidential information in this context...", and, "...the Council is unaware of any direction from the Secretary of State requiring publication of the information in accordance with the Local Government Transparency Code issued by the DCLG in 2015".
10. The Council confirmed its application of sections 40 and 41 and provided the complainant with its considerations of the public interest in respect of its application of section 41.
11. Since making this request the complainant submitted a further request to the Council in order to establish how many times during the previous twelve months the Council had disclosed information of a similar sort.
12. The complainant informed the Commissioner that the Council had disclosed that, for the period 1 October 2018 to 30 September 2019:  
  
"The total number of instances where Halton Borough Council have released 2017 List Business Rates related information in the last 12 months – 11. The total number of instances where Halton Borough Council have refused to release 2017 List Business Rates information in the last 12 months – 75 – Relates to the number of instances where information has not been released as exempt from publication."
13. The complainant asserted that the Council has disclosed information relevant to his own request, but it has not made that information publicly available.

### **Scope of the case**

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14. The complainant contacted the Commissioner on 16 April 2019 to complain about the way his request for information had been handled.
15. The Commissioner informed the complainant that the focus of her investigation would be to determine whether Halton Borough Council has handled his request in accordance with the FOIA, and specifically whether the Council is entitled to rely on sections 40(2) and 41 of the FOIA as a basis for refusing to provide the information it is withholding.

## Reasons for decision

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### Section 40 – Personal data

16. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
17. In this case the relevant condition is contained in section 40(3A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data (“the DP principles”), as set out in Article of the General Data Protection Regulation (“GDPR”).
18. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 (“DPA”). If it is not personal data, then section 40 of the FOIA will not apply.
19. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, must the Commissioner establish whether disclosure of that data would breach any of the DP principles.
20. Section 3(2) of the DPA defines personal data as:  
*“any information relating to an identified or identifiable living individual”.*
21. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
22. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
23. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
24. The Commissioner recognises that the complainant has not asked the Council for “any personal information or sole traders”.
25. The Council has provided the Commissioner with a copy of a spreadsheet containing the information requested by the complainant. This spreadsheet is titled ‘NDR Empty’.

26. The spreadsheet has been compiled solely for the purpose of satisfying the Commissioner's enquiry. Normally, the information recorded in the spreadsheet is held in separate parts of the Council's records and it has not been necessary to compile that information for the purposes of the effective administration of business rates accounts and collection of taxation revenue.
27. The Council has confirmed to the Commissioner that parts of the requested information relate to identifiable individuals and their financial affairs in their capacity of sole traders or partnership ratepayers.
28. That being the case, the Council accepts that not all of the withheld information can be categorised as personal data, but says, "it has no reasonable and practical means by which personal data can be identified and redacted with a sufficient degree of accuracy from the totality of the information that has been requested.
30. The Council also accepts that the withheld information does not contain special category or criminal offence personal data.
31. The Commissioner has examined the withheld information contained within the Council's spreadsheet. She notes that there are 2,470 properties which have a rateable value of £5000 more and it is these properties which fall within the terms of the complainant's request.
32. For the majority of these properties, the party listed as being liable for business rates is a company, school, nursery, public house, etc., and not an identifiable person. Consequently, that information does not satisfy the definition of personal data.
33. The Commissioner has therefore decided that the Council is not able to rely on section 40(2) of the FOIA to withhold information which relates to companies, schools, nurseries, public houses, etc.
34. The remaining properties with rateable values greater than £5000 are those which relate to persons 'TA' (trading as), to sole traders or to persons operating a business such as day nurseries, doctors' surgeries or public houses. Given the complainant does not require personal data or information relating to sole traders, those properties fall outside the terms of the request and the Commissioner does not need to consider them further.

#### **Section 41 – Information provided in confidence**

35. In addition to its reliance on section 40(2) of the FOIA, the Council also seeks to rely on section 41(1).
36. Section 41(1) provides that –

“(a) Information is exempt information if 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.”

37. For section 41(1)(a) to be met, the withheld information must have been provided to the public authority by a third party.
38. For section 41(1)(b) to be met, disclosure of the withheld information must constitute an actionable breach of confidence. The Commissioner considers that the following characteristics are required for an actionable breach to exist:
  - The withheld information has importance to the confider which should not be considered trivial;
  - The information was communicated in circumstances importing an obligation of confidence; and
  - Unauthorised disclosure of the information would cause a specific detriment to the party which provided it or any other party.
39. The Council notes that the withheld information concerns the status of individual ratepayer accounts and includes the name, property and billing address, periods of liability, contact telephone numbers, and whether exemptions and reliefs might have been applied to those accounts.
40. The Council argues that this information was given to the Council with an expectation of confidence. It says that the withheld information is more than trivial in nature and is not accessible to the public by other means.
41. The information was given to the Council in recognition of the Council's duty to collect council tax and as such the Council considers that it owes a duty to the providers of that information not to use it for purposes other than that for which it was provided.
42. To corroborate its position, the Council has provided the Commissioner with a copy of the privacy notice which is sent to persons having liability for business rates. This notice advises businesses that their data is collected for the purpose of assessing and collecting business rates and that this is done under the provisions of the Local Government Finance Act 1992.

43. The Council's privacy notice advises businesses that their data will be shared between other departments within the Council and with the following organisations:

Jacob's Enforcement Agents Ltd.  
Her Majesty's Court and Tribunal Service (HMCTS)  
Her Majesty's Revenues and Customs (HMRC)  
Department of Work and Pensions (DWP)  
Police and Fire Authorities  
Critiqom Ltd. (mailing house)  
Mag:Net Solutions Ltd.  
Liberata Ltd.  
Other Local Authorities

44. The Council asserts that the general common law principle of confidentiality is consistent with the meaning of section 41(1) of the FOIA and, in this instance, the taxpayer's identity is used in conjunction with other of the requested data to determine an individual ratepayers liability. The Council considers that the exemption provided by section 41(1) should be applied to the whole of the request.
45. In this case, the Council believes an actionable breach of confidence would arise should it release the withheld information into the public domain without the consent of individual account holders. It says, "it would be wholly impractical for the authority to seek consent from individuals, who may have a rates liability at any given point in time, for such information to be released into the public domain".
46. Having considered the Council's representations, the Commissioner finds that the requirements of the section 41 are met and therefore the exemption is engaged.
47. Section 41 is an absolute exemption and is not subject to consideration of the public interest test under the FOIA. There is however a recognised defence to an actionable breach of confidence which requires the public interest to be considered. The Commissioner has therefore set out below those factors which she considers to be relevant to the potential disclosure of the requested information.
48. The Commissioner will always give necessary weight to the public interest where disclosure of information provides accountability and transparency for decisions taken by public authorities. In the Commissioner's opinion, this helps to maintain confidence and trust in those public authorities.

49. In this case the Commissioner acknowledges the public interest which lies in knowing that the Council is properly collecting and administering its business rates.
50. Likewise, the Commissioner recognises the legitimate public interest associated with the possible promotion of economic activity within the Council's area by making public the locations and rateable values of properties which are vacant business premises. This public interest is somewhat diminished by the fact that the Council promotes economic development in its area through the direct provision of support to local and potential businesses, as part of its engagement within the Liverpool City Region Combined Authority and Local Enterprise Partnership.
51. The Commissioner must also acknowledge that accessible information relevant to the complainant's request currently exists through the active marketing of properties by their owners. Potential businesses are already able to use internet search engines and property websites to find properties which might be suitable for their future needs. The Commissioner therefore considers that the promotion of economic development opportunities can be achieved through means other than the publication of the information the complainant has asked for.
52. The Commissioner recognises that the requested information might be of commercial value to third parties and she understands that information relevant to the complainant's request is available from alternative sources, such as the Valuation Office Agency and Companies House. The availability of this information weakens the public interest associated with making that information available under the FOIA.
53. According to the Council, to date, there has been no suggestion on the part of a third party that there has been any impropriety or inadequacy on the Council's part in relation to its administration of business rates. Consequently, the public interest in knowing that the Council is administering and collecting the business rates of individual properties is somewhat diminished.
54. Whilst the complainant asserts that the Council has disclosed information relevant to his request, the Council says it has no evidence of this. Whilst the Council has received numerous requests of the same or similar type to that of the complainant, it assures the Commissioner that it has not released such information into the public domain.
55. That said, the Council has confirmed that it has responded to requests for business rate related information in previous years where the information request was for statistical information or where it has been limited in nature.



56. The Commissioner has considered the public interest associated with the disclosure of the information requested by the complainant. The Commissioner is mindful of the Council's privacy notice given to business rate payers which she considers establishes a reasonable expectation that the requested information would only be used for the purpose of the Council meeting its legal obligations. She accepts that there would be no expectation on the rate payers' part that information concerning their individual accounts would be placed into the public domain.
57. The Commissioner accepts that, should the requested information be placed into the public domain, businesses may receive unwarranted and unsolicited attention from third parties concerning their status and that of the properties for which they are the responsible.
58. She also accepts that publishing details of empty properties would likely expose individuals to a risk of fraud where third parties might purport to be acting on behalf of the Council.
59. On balance, the Commissioner considers that there is insufficient public interest to warrant the disclosure of information which has been provided to the Council with the expectation of confidence. The Commissioner' has therefore decided that Halton Borough Council is entitled to rely on section 41 of the FOIA to withhold the detailed information requested by the complainant.

## Right of appeal

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60. 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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

61. 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.
62. 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**  
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**Cheshire**  
**SK9 5AF**