

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

### **Decision notice**

**Date:** 19 May 2022

**Public Authority:** Copeland Borough Council

**Address:** The Market Hall  
Market Place  
Whitehaven  
CA28 7JG

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

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1. The complainant has requested information from Copeland Borough Council ("the Council") relating to Covid-19 grants for a small business. The Council disclosed some of the requested information but refused to disclose the remainder ("the withheld information"), citing section 31(1)(a) of FOIA as a basis for non-disclosure.
2. The Commissioner's decision is that the Council has correctly applied the above exemption to the withheld information.
3. The Commissioner requires no steps to be taken.

#### **Request and response**

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4. On 1 March 2021, the complainant wrote to the Council and requested information in the following terms:

"Could you please assist with the following information.

I am not asking for information about credits on accounts. I am not asking for personal information subject to Section 40 I am asking about an individual business account, not a sole trader or partnership. This is about an individual account which is occupied

and has received SBRR rate reliefs and RHLGF. A freedom of information reply on the 27 November 2014 provided a full NNDR list of business in receipt of Small Business Rate Relief - <https://www.whatdotheyknow.com/request/s...> This confirms that an account listed as : 19S175S01B TRUSTEES E AND E FOXHOUNDS SWORD HOUSE ESKDALE CA19 1TT Rateable Value 1350 SBRR = Yes This shows that this business were in receipt of SBRR in 2014 and until 20/21 The NNDR documents also confirms the occupied status.

Further FOI releases in later years confirms rate revaluation and that SBRR is still applied to the stated account. The most recent NNDR release confirms this SBRR is ongoing. It also confirms liability from 1/4/2004 Could you please provide by a table the following information relating to this account. Itemised by year since any relief was provided and the amount in this format please. I will use the 2016/7 & 2020/21 NNDR return as examples. Year... SBRR .. Discretionary. .. Transitional.. other ...amount paid 2016/17 -653.40 2020/21 -1018.76

1. Please provide any Small Business Rate Relief (SBRR) made to this account for the period 1st April 2006 to 1st March 2021.
2. Please confirm if any discretionary reliefs have been applied to the account at any time since 1/4/2004.
3. Please confirm any other rate reliefs provided.
4. Confirm by yes or no if any grants were made such as the Retail, Leisure, Hospitality Grant to this account.
5. Confirm the amount of any Grant PAYMENTS made under the RLH Grant Fund Scheme. Please note that item 3 & 4 are different requests. It does appear that provided the correct multiplication factor for the year is used the rate relief information is available as shown by the 2016/17 document.

Will you confirm the yearly payments by confirmation of the actual amounts please."

5. The Council responded to the complainant's request on 29 March 2021, disclosing information in relation to parts 1, 2 and 3 of the complainant's request and refusing to disclose the information requested in parts 4 and 5 of that request, citing section 31(1)(a) (disclosure would, or would be likely to, prejudice the prevention or detection of crime) of FOIA as a basis for non-disclosure.

6. The complainant sought an internal review of the Council's decision on 29 March 2021. The complainant received a response to that internal review request on 28 April 2021 in which the Council provided further detail regarding the likely prejudice which would be caused, in its view, by disclosure of the information requested in parts 4 and 5 of the complainant's request.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 28 April 2021 to complain about the way his request for information had been handled.
8. The Commissioner has considered the Council's handling of the request, in particular its application of section 31(1)(a) of FOIA to the withheld information.

### **Reasons for decision**

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9. Section 31(1) of the 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,
10. The exemption can be engaged on the basis that disclosing the information either "would" prejudice the regulatory function, or the lower threshold that disclosure only "would be likely" to prejudice that function. For the Commissioner to be convinced that prejudice "would" occur, he must be satisfied that there is a greater chance of the prejudice occurring than not occurring. To meet the threshold of "would be likely to" occur, a public authority does not need to demonstrate that the chance of prejudice occurring is greater than 50%, but it must be more than a remote or hypothetical possibility.
11. The Commissioner's approach to the prejudice test is based on that adopted by the Information Tribunal in *Christopher Martin Hogan and Oxford City Council v the Information Commissioner*<sup>1</sup>. This involves the following steps:

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<sup>1</sup> EA/2005/0026 and 0030

- Identifying the “applicable interests” within the relevant exemption
- Identifying the “nature of the prejudice”.

This means:

- Showing that the prejudice claimed is “real, actual or of substance”;
- Showing that there is a “causal link” between the disclosure and the prejudice claimed.
- Deciding on the “likelihood of the occurrence of prejudice”.

### **The complainant’s view**

12. The complainant is of the view that all the information he has requested related to grants or schemes that had been closed for many months. If anyone further tried to apply for these grants or funds they would be refused because the schemes were no-longer supported by any application to any Councils in the UK. The application would be refused; therefore no-one could make a fraudulent application.

### **The Council’s view**

13. The Council explained to the Commissioner that it applied section 31(1)(a) in this instance, as there have been many attempts to fraud the Council under the various grant schemes available.
14. The Council explained that local authorities are required to administer various forms of grants and the expectation from government is that they are distributed at pace to eligible businesses. The need to process applications at speed is a consideration, however the internal processes adopted by Councils is not preventing the fraud from occurring. Fraudulent applications can take many forms, but examples experienced at the Council are:

- Applications for grants businesses are not entitled to
- Misrepresentation of businesses to apply for grants - individuals disguising themselves as the business who would qualify for a grant but have not yet applied
- Claiming a current empty property is in use by the fraudster to apply for grants – also committing fraud against the owner of the empty property

15. The Council has informed the Commissioner that many attempts to commit fraud have occurred without the information being in the public domain. Unfortunately, sophisticated methods are used and many local authorities have paid out significant sums to criminals misrepresenting businesses. This is also re-affirmed in regular notifications received from the National Anti-Fraud Network (NAFN). These alerts heighten awareness regarding the scale of fraudulent activity in relation to the COVID Grant schemes.
16. COVID grant schemes have supported similar sector-specific businesses since the start of the pandemic. The Council considers that the use of section 31 (1) (a) in this instance is appropriate, as the release of grant recipients into the public domain would allow the fraudsters highlighted above to use the information to make fraudulent applications, based on the real details of the grants awarded. The information could also be used to identify organisations that have yet to apply for support and allow fraudulent applications to be made in their name. Furthermore, fraudsters can also use the information to pose as the Council in a bid to trick businesses into handing over money to them. The council is aware of local businesses being contacted in this way during the pandemic.
17. As the country was no longer in a national lockdown at the time of the request and, with the exception of a discretionary grant scheme that was available until March 2022, continuous mandatory financial support was not being made to businesses. However, at the time of the request, as the Council was preparing for winter, there was a real possibility that the need for distributing continuous financial support may occur again. Providing historical grant data into the public domain would have provided the fraudsters with the information needed to defraud future grant schemes. The less of this information in the public domain, the less chance there is for unscrupulous individuals to commit fraud.
18. The Council has provided aggregated information about funds to requestors, and the information is available to both internal and external audit.

### **The Commissioner's view**

19. The Commissioner accepts that the Council has shown a clear causal link between disclosure of the withheld information and harms occurring which are of substance.
20. The Commissioner is aware that, particularly at the start of the pandemic, there was an emphasis on ensuring that support funds and

grants were distributed as quickly as possible to those that needed them. Schemes that would normally have taken months to design and implement had to be ready in a matter of days. The need for speed unfortunately meant that the usual checks and counter-measures against fraud were not implemented to the same extent. This appears to have been a conscious decision by the Government to prioritise speed of support and local authorities have been asked to retain that speed, even at the higher risk of fraud.

21. Unfortunately, a small number of individuals have attempted to gain from the pandemic by fraudulently obtaining funds meant to help struggling local organisations. That threat is real, and it is confirmed by the evidence the Council provided in support of its position.
22. Given the relatively few details collected by the Council in order to process grant applications, the Commissioner is satisfied that the withheld information would not only be of use to fraudsters but would hamper the Council's ability to take effective counter-measures to prevent the fraudulent use of public funds. Given the relatively scarce information that appears to have passed between the Council and the grant recipients, the less of that information that is in the public domain, the less chance there will be for unscrupulous individuals to use that information to commit fraud.
23. The Commissioner is satisfied that the chance of such harms occurring is clearly more than hypothetical and thus meets the lower threshold of likelihood (would be likely to prejudice).
24. The Commissioner is therefore satisfied that the exemption was engaged at the time of the request.

### **Public interest test**

25. Whilst he is satisfied that section 31(1)(a) is engaged, because it is a qualified exemption, the Commissioner must still consider whether the public interest might require the Council to disclose the withheld information.
26. When conducting a public interest test in respect of a prejudice-based exemption, the Commissioner considers that there will always be an inherent public interest in preventing the identified prejudice from occurring – how much weight that will carry will depend on the severity of the prejudice and the likelihood of it occurring.
27. In this particular case, the Commissioner has determined that it is the lower bar of "would be likely to" cause prejudice that is engaged and

this carries less weight in the public interest test that prejudice which "would" occur.

### **Public interest arguments in favour of disclosing the withheld information**

28. The Council considered the public interest test before applying the exemption and accepts that it is in the public interest to be open and transparent about the use of public funds.

### **Public interest arguments in favour of maintaining the exemption**

29. The Council considered the following factors:-

- The prevention of criminal activity in relation to fraud, disclosure would result in monies being fraudulently claimed.
  - The Council would remain liable to the legitimate rate payer for an equivalent amount, raising the prospect of paying out twice; and be faced with the cost (legal and incurrance of internal management time) of seeking to recover the funds wrongly paid to the fraudster.
  - Disclosure of the requested information would result in the need to implement disproportionate steps and additional expense to the public purse to counter an increased fraud risk.
  - The protection of public funds.
30. On balance, the Council did not consider that the public interest in transparency outweighed the need to protect against the risk of criminal acts being committed if the Council were to disclose the withheld information.
31. The Commissioner recognises that there will almost always be a public interest in transparency for its own sake and for the accountability of public bodies in the way that they spend taxpayers' money.
32. In this particular case, the Commissioner accepts that the public interest in transparency is stronger than normal – precisely because the usual checks and balances have been either weakened or done away with entirely. The Council is concerned that it might be defrauded, but the opposite is also possible – at least in theory. If the Council is allowed to distribute funds with little or no checks, there is a danger that the Council might use those funds to curry political favours or to enrich friends and colleagues.
33. The Commissioner wishes to stress that he is aware of no credible allegations that the Council has acted in this way – he is merely noting the potential risks of a lack of transparency.

34. Disclosing the withheld information would enable others to look at the way that the Council had distributed funds to decide whether it had been done in a fair and equitable manner.
35. However, whilst the public interest in disclosure is stronger than it might usually be, the Commissioner also considers that there is a stronger than usual public interest in maintaining the exemption.
36. The Commissioner notes that the Council has disclosed aggregated information about the funds that have been distributed without publishing individual awards. He is also aware that the precise sums awarded will be available to both the Council's internal and external auditors to guard against potential fraud. This will somewhat weaken the public interest in disclosure to the world at large.
37. Furthermore, the Commissioner is aware that the emphasis on speed was one that came from central government. Had the Council or other local authorities attempted to use the more bureaucratic (but less risky) processes they would normally use, it is likely that they would have faced considerable public and political pressure for failing to support organisations in need.
38. The Commissioner is therefore satisfied that, whilst there may be a significant public interest in disclosure of this information, this is outweighed by a stronger interest in maintaining the exemption. There will always be an inherent public interest in protecting a public authority and other organisations from crime. In the circumstances of this particular case, the Commissioner considers that the public interest in maintaining the exemption outweighs the public interest in disclosure.
39. The Commissioner therefore accepts that section 31(1)(a) of the FOIA is engaged in respect of this information and that the public interest favours maintaining the exemption.
40. By way of interest, the Commissioner recently contacted the Council to see if its position had changed due to the passage of time since the initial request. The Council stated that the situation has changed but only in so far as that the Council has been given another mandatory grant scheme to administer – The Omicron, Hospitality and Leisure Grant - which demonstrates that the reasons for withholding the information remain. The Council still does not consider that the public interest in disclosure outweighs the need to protect against the risk of criminal acts being committed if the Council released this information.



## Right of appeal

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41. 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)

42. 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.
43. 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 .....**

**Deirdre Collins**

**Senior Case Officer**

**Information Commissioner's Office**

**Wycliffe House**

**Water Lane**

**Wilmslow**

**Cheshire**

**SK9 5AF**