

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

### **Decision notice**

**Date:** 27 September 2022

**Public Authority:** His Majesty's Land Registry

**Address:** Head Office  
Trafalgar House  
1 Bedford Park  
Croydon  
CR0 2AQ

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

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1. The complainant has requested information from His Majesty's Land Registry ("HMLR") relating to the Property Alert Service and the monitoring of their property.
2. The HMLR have withheld the information requested under section 31(1)(a)(prejudice to prevention or detection of crime) of FOIA.
3. The Commissioner's decision is that HMLR was entitled to rely on section 31(1)(a) of FOIA to withhold the requested information.
4. The Commissioner does not require any steps to be taken in relation to this notice.

## Request and response

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5. On 14 November 2021, the complainant made the following request to HMLR under FOIA:

“How can I find out if anyone else, other than myself, is monitoring my property through the Property Alert Service?”
6. HMLR responded on 1 December 2021. HMLR explained that to release any information about who was registered under the Property Alert service for any property would impact on the prevention and detection of crime, citing section 31(1)(a) of FOIA.
7. On 11 January 2022, the complainant requested an internal review. They queried how providing the answer to the question would impact on the prevention or detection of crime.

“1. Is there, or is there not, anyone other than myself that is monitoring my property through the Property Alert Service? I’d like identities, but I understand you may not release this information.

2. In what way(s) could the release of the information I FOI requested prejudice the prevention of crime?”
8. HMLR responded on 3 February 2022 and advised the following:

“We are unable to provide this information as disclosure is likely to cause harm to HMLR as the information when combined with other available information could be used by fraudsters to commit registered title fraud. This would both affect the accuracy of the register and increase the risk of financial exposure to HMLR due to its statutory responsibility to pay compensation.”

The HMLR continued to uphold their initial decision to withhold the information under Section 31(1)(a) of FOIA.

## Scope of the case

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9. The complainant contacted the Commissioner on 13 February 2022, to complain about the way their request for information had been handled. They advised they did not agree with HMLR and could not understand why a simple “yes” or “no” answer would be withheld.
10. The scope of this case is therefore to consider whether the exemption at section 31(1)(a) was cited correctly in respect of this request.

## **Reasons for decision**

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### **Section 31(1) - the prevention and detection of crime**

11. Section 31(1)(a) states:

“(1) 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.”

### **Is the exemption engaged?**

12. In order for a prejudice-based exemption such as that contained within section 31(1)(a) 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 were 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 relation 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.

13. Consideration of section 31(1)(a) of FOIA is a two-stage process; even if the exemption is engaged, the information must be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

### **The withheld information**

14. The withheld information is whether anyone else has registered to monitor the complainant's address under the Property Alert service run by HMLR.

### **Applicable interest within the exemption**

15. The first criterion in considering whether this exemption is engaged is to address whether the prejudice predicted by the public authority is relevant to "the prevention or detection of crime."
16. HMLR stated that the disclosure of information from the Property Alert service would be likely to prejudice the prevention or detection of crime as it could lead to the facilitation of fraud.
17. HMLR explained to the Commissioner that there are over 26 million titles on their register relating to 88% of land in England and Wales. Anyone buying or selling land must apply to register the following:
- Unregistered land or property
  - Any new owner of registered land or property
  - Any interest that affects registered land or property such as a mortgage, a loan or right of way.
18. The authority explained that the Property Alert service is a key asset in identification of fraud and is advertised as a citizen aimed counter fraud product on their website. <sup>1</sup>
19. The Commissioner accepts that the arguments made by HMLR directly address a prejudice which is relevant to the "prevention or detection of crime."

### **The nature of the prejudice**

20. When considering the second step as set out in the Hogan case, the Commissioner must be persuaded that the nature of the prejudice is "real, actual or of substance" and not trivial or insignificant. He must also be satisfied that some causal relationship exists between the potential disclosure and the stated prejudice.

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<sup>1</sup> [HM Land Registry - Property Alert: terms of use](#)

21. HMLR advised of the following to illustrate that the nature of the prejudice in this case would be significant:

"Property Alert is a key asset for preventing, identifying, and investigating registered title fraud. Making information held about this service available publicly would be likely to prejudice the prevention or detection of crime by undermining our ability to fully exploit this intelligence.

Our register is part of the United Kingdom's Critical National Infrastructure. The integrity and security of the register is therefore of national importance. Critical National Infrastructure is a term used to describe processes, systems, facilities, technologies, networks, assets, and services essential to the nation's health, safety, security or economic wellbeing and the effective functioning of government. This status provides certain expectations and requirements as to how we will protect our register.

The integrity of the register is critical to the financial interests of HM Land Registry and in turn the United Kingdom government and economy. Disclosure is likely to cause harm to HM Land Registry, and other third parties, for example, land and property owners who could be the victims of fraud, as the information could be used by criminals or fraudsters to target properties to commit registered title fraud."

### **Likelihood of prejudice**

22. A prejudice-based exemption such as section 31 must be engaged on either the basis of 'would' or 'would be likely to'. These terms have separate and distinct meanings in this context.
23. The lower threshold of prejudice applied by HMLR in this case, is defined in the Commissioner's guidance as 'there must be more than a hypothetical or remote possibility of prejudice occurring; there must be a real and significant risk of prejudice, even though the probability of prejudice occurring is less than 50%".
24. HMLR considers disclosure of the withheld information "would be likely" to have a prejudicial effect by opening the register to potential fraud and criminal activity if information was shared under FOIA.
25. The complainant questions how the prejudicial effect would occur by just providing a yes or no answer to an individual. However, the request is made under FOIA and if released would be made to the world at large.

26. The HMLR provide an explanation as follows:

"If we disclose the information held for this title, into the public domain under FOIA, we would then be obliged to consider disclosure for any request received for any registered title. There would likely be potential for fraudsters to submit requests en-masse to identify properties that do not have an alert set up and to then target those properties to commit registered title fraud.

There is also the potential that fraudsters would be likely to submit requests for properties that do have an alert in place. With that information they could then cross reference with information available via our open public register to determine if the registered proprietor has an alternative address for service to the actual address of the registered property. Where there is an alternative address for service this may indicate that the property is empty or rented out. These are two factors that we state publicly (on the Gov.uk website) that may place a property more at risk."

27. The Commissioner accepts HMLR's arguments, which were also supported by some confidential information provided to the Commissioner and is therefore in agreement that the prejudice test is met.

**Is the exemption engaged?**

28. It is not sufficient for the information to relate to an interest protected by section 31(1)(a) of FOIA. Its disclosure must also be at least likely to prejudice that interest.

29. The Commissioner considers it is also relevant to consider in this case that the prejudice test is not limited to the harm that could be caused by the requested information on its own. Account can be taken of any harm likely to arise if the requested information were put together with other information. This is commonly known as the 'mosaic effect.' The mosaic effect considers the prejudice that would be caused if the requested information were combined with information already in the public domain.

30. Having viewed the withheld information and having duly considered the rationale set out by HMLR in its response to the complainant and in its submissions to the Commissioner, he finds that section 31(1) is engaged at the lower threshold of prejudice. He finds that the chance of prejudice being suffered from disclosure of the requested information is more than a hypothetical possibility; it is a real and significant risk.

31. Since the Commissioner has established that the exemption is engaged, he will move on to consider the balance of the public interest arguments.

### **The public interest test**

30. As the exemption under section 31(1)(a) is a qualified exemption, it is subject to a public interest test. In accordance with that test, as set out in section 2(2)(b), the Commissioner must consider in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information.

### **Public interest considerations favouring disclosure**

32. The complainant argues that the information relates to their own property and to disclose the information would be a simple yes or no answer.
33. HMLR advise that they consider the information provided on their website about the Property Alert service demonstrates their accountability and transparency about their systems. They provide two additional links to this information below.<sup>2 3</sup>
34. The information contained in these links clearly identify the Property Alert service as being set up as a service to counteract potential fraud and prevent crime.

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

35. HMLR considers that the public interest in avoiding prejudice to the prevention of crime far outweighs the public interest in disclosure in this case.
36. They advise the following in relation to their views on public interest in relation to disclosure:

“We have considered the public interest argument that property owners and other legitimate parties should have access to information that identifies who else is monitoring ‘their’ property, so that they can individually assess and alert potential suspicious activity. However, we consider that permitting this release of information would jeopardise

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<sup>2</sup> [HM Land Registry - Property Alert: terms of use](#)

<sup>3</sup> [Protect your land and property from fraud - GOV.UK \(www.gov.uk\)](#)

and damage the very purpose that the Property Alert service is set up to achieve.

The information relates to a property first and foremost, and whilst alerts may also contain reference to data subjects with legitimate claims over that property, any risks posed to individuals are considered to be low. Since Property Alert service was introduced in 2014 there have been no known cases where non-disclosure has resulted in harm to an individual.

There are no identified public interest arguments for allowing a disclosure of information concerning property alerts that would be readily accessible to those with fraudulent intent. We do not consider that any personal interests should outweigh the overarching public interest arguments for keeping this information confidential for crime prevention purposes; the identity and motive of the applicant is generally considered to be irrelevant under Freedom of Information disclosures."

37. Additionally, HMLR point out that if such disclosures were made any subsequent losses caused by fraudulent activity would be sought to be recovered from HMLR. This could cause considerable loss to the public purse.
38. The Commissioner considers that there is a strong public interest inherent in section 31(1)(a), which in this case is avoiding prejudice to crime prevention. He also considers that there is a strong public interest in preventing the impact of crime on individuals.
39. In addition to the above, the Commissioner recognises that there is public interest in reducing the impact of crime on the public purse and in protecting the availability of public resources, such as the police, which would otherwise be used in the handling of fraud cases. The Commissioner accepts the view of HMLR that any loss caused by disclosure of information is likely to lead to claims for indemnity through their compensation scheme.

### **Balance of the public interest arguments**

40. As stated above, the Commissioner recognises that there is always some public interest in the disclosure of information, particularly as in this case when the complainant clearly considers the information to relate only to their property. However, as HMLR has set out, release under the FOIA to one individual in relation to a service set up to prevent fraud could have far reaching consequences.
41. In favour of maintaining the exemption, the Commissioner recognises that there is an inherently strong public interest in avoiding likely



prejudice to the prevention of crime. In this case the crime would be registered title fraud. HMLR have provided additional withheld information to the Commissioner to demonstrate how fraudsters could use any disclosed information provided to commit fraud. The Commissioner is therefore satisfied that HMLR have clearly evidenced the exemption is engaged and the public interest in avoiding prejudice to the prevention of crime outweighs the public interest in disclosure.

**The Commissioner's view**

42. The Commissioner is satisfied HMLR were entitled to rely upon section 31(1)(a) to withhold the information requested and requires no further steps.

## Right of appeal

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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: 0203 936 8963

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)

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 .....**

**Phillip Angell**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**