

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 July 2024

Public Authority: London Borough of Hillingdon
Address: Civic Centre
High Street
Uxbridge
Middlesex
UB8 1UW

Decision (including any steps ordered)

1. The complainant has requested information relating to applications for relief in business rates liability under Section 44A of the Local Government Finance Act 1988. The London Borough Council of Hillingdon (the council) disclosed some of the information but refused to disclose the remaining information citing section 31(1)(a) of FOIA (Law enforcement) and section 41(1) of FOIA (Information provided in confidence) as its basis for doing so.
2. The Commissioner's decision is that the council was correct to rely on section 31 of FOIA to withhold the information and the public interest lies in maintaining the exemption.
3. The Commissioner does not require further steps to be taken.

Request and response.

4. On 10 August 2023 the complainant wrote to the council and requested information in the following terms:
 - "Details of awards made under Section 44A Local Government Finance Act 1988 since 1st April 2017 in excel format including: Name of business receiving award (personal data redacted)

Address of property receiving relief Period of Award Rateable
Value of property Rateable Value of unoccupied area.

- Details of unsuccessful applications for relief under Section 44A Local Government Finance Act 1988 received since 1st April 2017 in excel format to include: Name of business submitting application (personal data redacted) Address of property subject to application Reason for refusal.
 - Please also provide details of the Council's Policy for making these awards.”
5. The council responded on 7 December 2023 and refused to provide the requested information citing sections 31, 38 and 41 of FOIA. The complainant requested an internal review, and the council provided its response on 14 February 2024. It disclosed information relating to the third point of the complainant’s request. However, it withheld information relating to points 1 and 2 on the basis of sections 31 and 41 of FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 15 February 2024 to complain about the way their request for information had been handled.
7. The Commissioner considers that the scope of his investigation is to determine whether the council was correct to rely on section 31(1)(a) and section 41(1) of FOIA to withhold the remaining information.

Reasons for decision

Section 31 -Law enforcement

8. Section 31(1) states: “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”
9. Section 31 is a prejudice-based exemption and is subject to the public interest test. This means that not only does the information have to prejudice one of the purposes listed, but that it can only be withheld if the public interest in the maintenance of the exemption outweighs the public interest in disclosure.

10. In order to be engaged, the following criteria must be met:

- 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 (in this case, the prevention or detection of crime),
- 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 alleged resultant prejudice must be real, actual or of substance; and,
- it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. 'would be likely' to result in prejudice or 'would' result in prejudice.

Applicable interests

11. The Commissioner must first consider whether the arguments provided by the council relate to the relevant applicable interests, namely the prevention and detection of crime.
12. The withheld information in this case relates to applications for relief in business rates liability. The council has explained that section 44A of the Local Government Finance Act 1988 enables a business to apply for a reduction in their business rates liability where part of the premises is unoccupied for a short time only.
13. It says that if it were to disclose the names of businesses that were successful or unsuccessful in their section 44A applications in relation to specific premises, it would be disclosing to the whole world that those premises are partially occupied.
14. It says that in the period of January to March 2024 it received eight reports of instances of criminal activity/ antisocial behaviour on unoccupied business premises. These included drug and alcohol misuse, rough sleeping, vandalism, criminal behaviour, and noise nuisance.
15. The council has emphasized that the fact that if a business premise is partially unoccupied it will not generally be apparent from the street. It says that publicising this information means that such premises will become more vulnerable to criminal activity.
16. It says that it has high levels of antisocial behaviour and criminal activity in the area and would not want to risk adding to these levels by

disclosing information relating to partially occupied premises which are vulnerable to criminal activity.

17. Having considered the above and some of the withheld information, the Commissioner is satisfied that the harm specified by the council relates to the prevention and detection of crime.

The nature of the prejudice

18. Having concluded that the harm specified by the council properly relates to the exemption specified, consideration of whether there is causal relationship between the disclosure and the withheld information and the prejudice that section 31(1)(a) is designed to protect is also necessary.
19. The disclosure must at least be capable of harming the interest in some way. As outlined above, the Council considers that disclosure of the information would prejudice the prevention and detection of crime as disclosure of the withheld information could result in the targeting of the premises for anti-social behaviour.
20. On the basis of the argument before the Commissioner, he is satisfied that this prejudice is real and of substance and that there is a causal relationship between the disclosure of the withheld information and the prejudice which the exemption is designed to protect.

Likelihood of prejudice

21. It is not sufficient for the information to merely relate to an interest protected by section 31(1)(a). Disclosure must also be likely to prejudice those interests, with the onus being on the public authority to explain how the prejudice would arise and why it is likely to occur.
22. The council has not stated which likelihood of harm would be applicable to the interest protected by section 31(1)(a). The Commissioner's guidance¹ states that where a public authority has not specified the likelihood of prejudice, the Commissioner will apply the test for 'would be likely' unless it is clear that the public authority's position is 'would' prejudice.
23. The Commissioner has considered the reasons provided and has found that the likelihood of prejudice was valid and accepts that disclosure of

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/the-prejudice-test/>

the information in this case could result in the targeting of business premises for anti-social behaviour. He is therefore satisfied that section 31(1)(a) is engaged in respect of the withheld information.

24. As section 31 is a qualified exemption, the Commissioner must now consider whether in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure.

Public interest test

The complainant's argument

25. In their argument in favour of the disclosure of the information, the complainant emphasized that the information they seek relate to properties partly occupied and that the council's reasons for withholding the information and its reference to unoccupied properties, do not justify its reliance on the exemption. They also stated that as the properties are partly occupied, the council's arguments referring to criminal activity taking place in such properties is irrelevant.
26. They also argued that relief is only awarded where part of the property is unoccupied for a short period only. Therefore, in their view, their request cover properties that are now wholly occupied and not significantly at risk of illegal activity.

The council's argument

27. The council has argued that there is no public interest in disclosing the information requested as it understands the complainant is a specialist in business rates relief who is looking to generate sales lead.

The Commissioner's view.

28. When balancing the opposing public interests, the Commissioner must decide whether it serves the public interests better to disclose the requested information or to withhold it. If the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure, the information in question must be disclosed.
29. The Commissioner accepts that there is a presumption running through the FOIA that openness is in itself, to be regarded as something which is in the public interest. Transparency and accountability of public authorities is an essential component of democracy.
30. The Commissioner also recognises the importance of the public having confidence that public authorities tasked with issuing reliefs for non-

domestic properties are following the required regulations and standards implemented for managing those applications.

31. The Commissioner must remind the council that FOI requests are purpose blind. Therefore, while it may be clear the intended use of the requested information by the complainant, the Commissioner has disregarded this aspect of the council's public interest argument.
32. The Commissioner has however agreed with the council that the disclosure of the information would be likely to encourage anti-social activities in those properties.
33. The Commissioner is of the view that the public interest is met through the council's proactive publication of information relating to relief in business rates liability on its website.
34. Having given due consideration to the arguments set out above, together with the withheld information, the Commissioner has concluded that the balance of the public interest is weighted in favour of maintaining the exemption.
35. As the Commissioner has found that the council was correct to apply section 31(1)(a) to withhold the information from disclosure, he has not found it necessary to go on to consider the application of section 41(1) of FOIA.

Right of appeal

36. 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

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

37. 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.
38. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF