

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

### **Decision notice**

**Date:** 29 September 2014

**Public Authority:** Stoke-on-Trent City Council

**Address:** Civic Centre  
Glebe Street  
Stoke-on-Trent  
ST4 1HH

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

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1. The complainant submitted a request to Stoke-on-Trent City Council (the Council) for addresses and rateable values of empty commercial properties and the names and addresses of the owners of those properties. The Council initially withheld all of the requested information. During the course of the Commissioner's investigation the Council provided part of the requested information but sought to withhold the remainder relying on the exemptions contained in sections 31, 38 and 40 of FOIA.
2. The Commissioner's decision is that:
  - The addresses of the empty properties are exempt from disclosure on the basis of section 31(1)(a) and that in all the circumstances of the case the public interest favours maintaining the exemption.
  - The names and addresses of individuals responsible for empty properties are exempt from disclosure on the basis of section 40(2).
  - The Council did not breach section 16(1) in dealing with this request.
  - The Council did however breach section 10(1) by failing to provide the information that it ultimately decided was not exempt from disclosure within 20 working days of the request.

## Request and response

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3. The complainant submitted the following request to the Council on 3 February 2014:

*'Please can you provide me with the following information under the Freedom Of Information Act 2000:-*

*(a) addresses and rateable values of empty Commercial properties with a current rateable value greater than £20,000 that are within Stoke-on-Trent LA area; and*

*(b) the names and addresses of the owners of those properties referred to in (a)'*

4. The Council responded to this request on 24 February 2014 and explained that it considered the requested information to be exempt from disclosure on the basis of section 31 (law enforcement) of FOIA.
5. The complainant contacted the Council on the same day in order to ask for an internal review of this decision.
6. The Council informed the complainant of the outcome of the internal review on 17 April 2014. The Council clarified its position by explaining that it did not hold the requested information *'in full'*. This was because although the Council's business rates database contained information about commercial property owners who have applied for empty property business rates relief, it only conducted bi-annual reviews of all empty properties and also relied on owners to inform the Council of any changes in occupancy. Therefore, some of the properties detailed on the database as receiving rate relief would have been occupied on the date of the request and thus the information on the database is not an accurate representation of what is *'currently empty'*.
7. However, with regard to the information falling within part (a) of the request that it did hold, the Council argued that this was exempt from disclosure on the basis of section 31(1)(a) and section 38(1)(b) (health and safety) of FOIA. It also argued that the information falling within the scope of part (b) of the request was exempt from disclosure on the basis of section 40(2) (personal data) of FOIA. The Council also directed the complainant to the part of its website where Council owned commercial properties were being marketed for sale and to let, albeit it noted that it could not confirm whether such properties were currently empty.

## Scope of the case

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8. The complainant contacted the Commissioner on 22 April 2014 to complain about the Council's refusal to provide him with the information he requested.
9. Upon considering the nature of this complaint, the Commissioner contacted both parties in order to clarify the nature of the information that had been requested and the nature of the information held by the Council. The Commissioner noted that the Council's comments in the internal review that it only holds some of the requested information obviously presented a practical problem in terms of determining what information actually fell within the scope of the request. This is because it would appear that the Council has no obvious or easy way of actually establishing whether or not addresses listed on the business rates database as receiving rate relief are still actually empty. Furthermore, the Commissioner understands that the business rates database is the only systematic method that the Council would have to locate information it may hold about empty commercial properties. That is to say it does not separately record details of properties that are empty but have not applied for business rates relief.
10. Therefore, the Commissioner proposed that for the purposes of this complaint, the request was interpreted as seeking the addresses and rateable values of commercial properties with a rateable value greater than £20,000 that are listed on the business rates database as receiving empty business rates relief. The Commissioner acknowledged that although this information did not equate directly to a list of empty properties, it appeared to be the most practical way forward in the circumstances given that the Council cannot establish, at least with ease, whether particular properties are actually empty.
11. Both the complainant and Council agreed to this interpretation. However, the complainant raised concerns with the Commissioner that the Council should have proactively contacted him to discuss the interpretation of his request in line with its duty under section 16 of FOIA.
12. During the course of the Commissioner's investigation, the Council provided the complainant with the following parts of the requested information: either the name of a property (e.g. 'Comet Ltd') or part of the address of a property which would reveal the general area of the property (e.g. 'Scotia Business Park'), the rateable values for each property and the addresses for correspondence with the property owner if this is not an individual's address and not the same as the actual address of the empty property. However, the Council remained of the

view that the addresses of the actual empty properties were exempt from disclosure on the basis of sections 31(1)(a) and 38(1)(b) of FOIA. It also remained of the view that the names of any individuals (as opposed to companies) who owned or were responsible for the empty properties and their private addresses for correspondence were exempt from disclosure on the basis of section 40(2).

13. The complainant confirmed to the Commissioner that he was dissatisfied with the Council's decision to withhold the remaining information. He explained that he also wished the Commissioner to consider the Council's initial decision to withhold the information that it had now disclosed.
14. With regard to this latter category of information, in respect of any information that is disclosed during the course of his investigation, the Commissioner will not reach a formal decision as to whether a public authority was correct to initially withhold such information. Rather, the Commissioner will simply find that the public authority breached section 10(1) of FOIA by failing to provide that information to the requester within 20 working days.

## **Reasons for decision**

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### **Addresses of empty properties**

#### The Council's position

15. The Council sought to withhold the addresses of the empty commercial properties falling within the scope of this request on the basis of section 31(1)(a).
16. This section states that information is exempt if its disclosure would, or would be likely to prejudice the prevention or detection of crime.
17. The Council acknowledged that other local authorities have disclosed similar or the same information under FOIA. However, it explained that the city of Stoke-on-Trent has experience of an actual incident where an empty commercial property was deliberately set on fire and two homeless people sleeping rough in the building both died as a result.<sup>1</sup>

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<sup>1</sup> <http://www.stokesentinel.co.uk/Arson-trial-background-Brothers-identified-arsonists-early-investigation/story-12550816-detail/story.html>

<http://news.bbc.co.uk/1/hi/england/staffordshire/7847426.stm>

The Council also highlighted that a number of other arson attacks had taken place in empty properties:

<http://www.stokesentinel.co.uk/Rough-sleeper-saved-blaze/story-12483521-detail/story.html>

<http://www.stokesentinel.co.uk/Arsonists-blamed-starting-blaze-care-home/story-12552224-detail/story.html>

<http://www.stokesentinel.co.uk/Arsonists-blamed-Edensor-Technology-College/story-20817211-detail/story.html>

18. Consequently, the Council argued that as it had actual evidence that empty properties were being targeted for crime, such as arson and this had led to the endangerment and even the death of two people, it believed that this information should be withheld. This was because to provide the information into the public domain would enable properties to be identified much too easily and this increased the risk of such properties being targeted for criminal activity, including arsons, metal theft etc.

#### The Commissioner's position

19. In order for a prejudice based exemption, such as section 31, to be engaged the Commissioner believes 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 was 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 regard 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.

20. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice which the Council envisages would be likely to occur if the withheld information was disclosed clearly relates to the interests which the exemption contained at section 31(1)(a) is designed to protect.
21. With regard to the second criterion, the Commissioner accepts that it is clearly logical to argue that the disclosure of a list of empty properties would provide those intent on committing crimes associated with such properties an easy way to identify them. He therefore accepts that there is some causal relationship between disclosure of the withheld information and the prevention of crime. Moreover, the Commissioner is satisfied that the resultant prejudice which the Council believes would occur is one that can be correctly categorised as one that would be real and of substance.
22. In relation to the third criterion, the Commissioner acknowledges that a number of other local authorities have disclosed similar information without any apparent impact on the prevention of crime. However, in the particular circumstances of this case, given the examples of crimes involving empty properties that the Council has identified in its borough, the Commissioner is persuaded that disclosure of the addresses falling within the scope of this request represents more than a hypothetical risk of harming the prevention of crime. Rather, disclosure of such addresses would present a real and significant risk.
23. The addresses of the empty properties are therefore exempt from disclosure on the basis of section 31(1)(a).

#### Public interest test

24. Section 31 is a qualified exemption and therefore the Commissioner must consider the public interest test and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

#### *Public interest in maintaining the exemption*

25. The Council argued that it was clearly in the public interest to maintain the exemption because it was not in the public interest to disclose information that aided individuals to commit crimes.

*Public interest in disclosure of the information*

26. Disclosure of the requested addresses could potentially assist in returning the properties to use if interested tenants were able to use the list to easily identify potential business premises within the borough.
27. Disclosure would also provide the public with a greater insight as to which type of properties within the borough – e.g. size of property and location – benefited from business rates relief.

*Balance of the public interest*

28. The Commissioner agrees it would be in the public interest to disclose the addresses as it would provide some insight, albeit relatively limited, into the administration of business rates relief by the Council. Furthermore, he also agrees that it would be in the public interest if disclosure of the withheld addresses could assist in returning such properties to use.
29. However, the Commissioner is firmly of the view that such interests are outweighed by the public interest in ensuring that criminals are not aided in using empty properties in the Stoke-on-Trent area for crime.
30. He has therefore concluded that the public interest in maintaining the exemption outweighs the public interest in disclosing the addresses of the empty properties.
31. In light of this decision the Commissioner has not considered the Council's reliance on 38(1)(b).

**Names and addresses of individuals responsible for empty properties**

32. Section 40(2) of FOIA states that personal data is exempt if its disclosure would breach any of the data protection principles contained within the Data Protection Act (DPA). The Council argued that the names of any individuals (as opposed to companies) who owned or were responsible for the empty properties, and their private addresses for correspondence, were exempt from disclosure under this exemption. This is because disclosure of such information would be unfair and thus breach the first data protection principle which states that:

*'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –*

- (a) *at least one of the conditions in Schedule 2 is met, and*
- (b) *in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'*

33. Clearly then for section 40(2) to be engaged the information being withheld has to constitute 'personal data' which is defined by the DPA as:

*'...data which relate to a living individual who can be identified*

*a) from those data, or*

*b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,*

*and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.'*

34. The Commissioner accepts that the information which has been redacted on the basis of section 40(2) constitutes personal data as it identifies, or could be easily used, to identify living individuals.

35. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:

- The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
  - what the public authority may have told them about what would happen to their personal data;
  - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights;
  - the nature or content of the information itself;
  - the circumstances in which the personal data was obtained;
  - particular circumstances of the case, e.g. established custom or practice within the public authority; and
  - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.



- The consequences of disclosing the information, ie what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:
    - whether information of the nature requested is already in the public domain;
    - if so the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?
36. Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure.
37. In considering 'legitimate interests' in order to establish if there is such a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach, ie it may still be possible to meet the legitimate interest by only disclosing some of the requested information rather than viewing the disclosure as an all or nothing matter.
38. The Council argued that the individuals will hold reasonable expectations that their data would only be used for the purposes of administering empty property relief. The Council argued that the individuals in question would suffer consequences upon disclosing this information because, where individuals are sole traders, information about their business may reveal information about their financial well-being. The Council also argued that there was no compelling public interest in disclosure of the redacted information and if individuals wished to put a particular property back in to use, businesses could be contacted via the Council.
39. The Commissioner notes that the Council's concerns about the consequences of disclosure focus on the impact of sole traders. In the Commissioner's view it is possible that some of the individuals included in the withheld information may not be sole traders. Rather they may be directors of particular companies. However, having considered the withheld information carefully, in the Commissioner's view there is no easy method to accurately determine which parts of the redacted information relate to sole traders and which parts of the redacted information relate to directors of companies. In situations such as this the Commissioner is faced with a difficult dilemma. He could assume

that none of the redacted information concerns sole traders. Alternatively he could assume that all of the withheld information relates to sole traders. Neither solution is a perfect one. However, in circumstances such as this where personal data is concerned the Commissioner prefers to err on the side of caution. Therefore in the circumstances of this case he has taken the approach that all of information concerns sole traders. Having done so, in light of the expectations of the various data subjects, and the potential consequences of disclosure, the Commissioner agrees with the Council that disclosure of the redacted personal data would be unfair. Thus such information is exempt from disclosure on the basis of section 40(2) of FOIA.

### **Section 10 – time for compliance**

40. Section 10(1) of FOIA requires public authorities to disclose information promptly and in any event within 20 working days following the date of the request.
41. In this case the complainant submitted his request on 3 February 2014. The Council did not provide him with the information it was willing to disclose until 29 August 2014.
42. The Commissioner has therefore concluded that the Council breached section 10(1) of FOIA by failing to disclose this information within 20 working days of the complainant's request.

### **Section 16 – advice and assistance**

43. Section 16 of FOIA places a duty on public authorities to provide requestors with advice and assistance. The complainant argued that the Council had failed to discharge this duty in handling his request.
44. In the Commissioner's view if a public authority complies with the provisions of Part II of the section 45 code of practice in relation to advice and assistance, it will have complied with section 16.<sup>2</sup> In particular, paragraphs 8 to 11 deal cover circumstances in which public authorities should consider clarifying requests with a complaint, with paragraph 10 stating that:

*'Appropriate assistance in this instance might include:*

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<sup>2</sup> <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-of-practice.pdf>

- *providing an outline of the different kinds of information which might meet the terms of the request;*
- *providing access to detailed catalogues and indexes, where these are available, to help the applicant ascertain the nature and extent of the information held by the authority;*
- *providing a general response to the request setting out options for further information which could be provided on request.'*

45. The Commissioner has reviewed the Council's responses to the complainant, in particular the internal review response. He notes that this includes an explanation from the Council as to why it did not believe that it held the requested information in full along with details of further related information outside the scope of the request that may be of interest to the complainant.
46. The Commissioner accepts that the provision of these details did not allow the two parties to agree the interpretation of the request that was ultimately reached following the intervention of the Commissioner. However, given that the Council did provide some reasonably detailed information to the complainant as described above, the Commissioner is of the view that the Council provided sufficient advice and assistance to comply with Part II of the code of practice and thus meet the requirements of section of FOIA.

## Right of appeal

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47. 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 123 4504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

48. 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.

49. 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 .....**

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