

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 October 2015

Public Authority: Southwark Council

Address: PO Box 64529
London
SE1P 5LX

Decision (including any steps ordered)

1. The complainant requested details of closed council tax accounts with credit balances where the liable party is deceased.
2. The Commissioner's decision is that Southwark Council is entitled to rely on the exemption from disclosure at s31(1)(a). He requires no steps.

Request and response

3. On 20 March 2015 the complainant wrote to Southwark Council and requested the following:

"I wish to request a list of all closed/ended Council Tax accounts with credit balances from 1993 (or earliest records) to 2015 where the liable party is deceased.

I would like the following fields returned in Excel format via email:-

Full name

*Address**

End date on the account

Amount of credit on the account

**If the account address of the deceased is considered exempt for any reason, then I would still request that the other criteria is returned."*

4. On 9 April the council withheld the information under s31(1)(a) FOIA.

5. The complainant appealed and on 27 April the council's internal review upheld the exemption.

Scope of the case

6. The complainant contacted the Commissioner on 28 April to complain about the way his request for information had been handled.
7. In support of his complaint the complainant cited an earlier decision notice where the Commissioner had decided that similar information held by another council under s31(1)(a) should be released. However, on that occasion the potential crime identified by the local authority had been based on the possible identification of vacant properties and the submission that this could lead to theft and vandalism. The Commissioner had ruled against this because the local authority had been unable to provide any evidence to support its assertion.
8. In the current case Southwark Council has identified the potential crime differently. This decision notice addresses Southwark Council's reasons for withholding the information under s31(1)(a) FOIA.

Reasons for decision

9. Section 31(1)(a) allows information to be withheld if its disclosure would or would be likely to prejudice the prevention or detection of crime.
10. The council considered that the release of details of closed accounts where an existing credit balance exists would be likely to lead to fraudulent claims for refunds.
11. In response to the Commissioner's queries the council explained that normally the only way an individual can know if there is a credit on a deceased person's account is by receiving a credit notice – either addressed to the deceased person at the property concerned or in their capacity as an executor of the estate. If the information were to be publicly disclosed the council would be releasing details of accounts that have a credit and therefore where a refund can be claimed. Releasing this information could give rise to the possibility of an individual fraudulently claiming credit for themselves. With these details an individual could write to the council with a fraudulent grant of probate and claim the "advertised" credit.
12. The council explained that copies of grant of probate and wills are public records and can be obtained for a fee of £10 through the gov.uk

website. To claim a refund the council's policy allows for copies of the grant of probate rather than a paper original. The council explained that these can be emailed as attachments and that therefore it would be possible to doctor the document. By releasing details of the name of the deceased it is possible for the grant of probate or will to be obtained. As with any other forms of identity fraud, the grant of probate or will can be doctored and a copy sent to the council to claim a refund. The fact that the credit remains unclaimed means that it is highly likely (a 50% chance according to the council) that the council would not know who the executor of the estate was.

13. The complainant asked the Commissioner how an individual would know that the council does not actually hold the correct executor details. In response to this query the council said that an individual would not automatically know if the council did not hold the correct records. However, because accounts which have unclaimed credits indicate that no claim has been made there is a high probability that the council would be unaware of the executor details.
14. The complainant queried how someone would be able to cash a cheque in another person's name if the credit balance details were to be released. When this query was put to the council it explained that it would not be necessary to cash a cheque in another's name as an individual would be able to submit a fraudulent copy of a grant of probate or will with their own name on it.
15. The complainant submitted that in his view accounts with no executor would be in a small minority. However, the council informed the Commissioner that almost half of deceased accounts with credits show no executor or next of kin details. It said that if a grant of probate and refund claim were received on an account for which the council did not know the executors, it would be difficult to identify it as a fraudulent claim.
16. As to whether the redaction of addresses might invalidate the need for the exemption as suggested by the request, the council explained that this would not affect the likelihood of fraudulent claims. Release of the name of the deceased would still enable the grant of will or probate to be obtained, doctored and a copy sent to the council to claim a refund.
17. In light of the arguments submitted by the council the Commissioner is satisfied that public release of the information would be likely to prejudice the council's ability to prevent or detect criminal behaviour. Accordingly he finds the exemption at s31(1)(a) to be engaged.

Public interest test

18. The s31 exemption is subject to the public interest test whereby information can only be withheld if the public interest in maintaining the exemption outweighs that of disclosure.
19. The council submitted that factors in favour of disclosure include:
 - (i) the possibility that executors/administrators of deceased estates might have historic credits refunded to them
 - (ii) raising the profile of the issue could encourage public debate regarding the matter.
20. Factors in favour of maintaining the exemption include:
 - (i) the strong public interest in avoiding prejudice to the prevention or detection of crime
 - (ii) the public interest in safeguarding public funds against fraudulent activity
 - (iii) the public interest in the efficient use of council and police resources.
21. In the Commissioner's view the public interest arguments in favour of maintaining the exemption are powerful.
22. He has concluded that in all the circumstances of the case the public interest favours maintenance of the exemption. The requested information should therefore be withheld.

Right of appeal

23. 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@hmcts.gsi.gov.uk

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

24. 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.
25. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF