

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 December 2017

**Public Authority:** Department for Communities and Local Government ('DCLG')

**Address:** 2 Marsham Street  
London  
SW1P 4DF

#### Decision (including any steps ordered)

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1. The complainant has requested the Association of London's Environmental Health Manager's London Lockdown July report 2016. The Commissioner's decision is that DCLG has incorrectly applied the law enforcement exemption at section 31(1)(a) of the FOIA. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation.
  - Disclose the requested London Lockdown report.
2. The public authority must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Background

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3. The Association of London Environmental Health Managers website<sup>1</sup> reports that DCLG commissioned it and 6 London Boroughs to:

"...investigate an emerging and rapid expansion of a landlord business model which places vulnerable tenants in sub-standard, converted, small, family properties, marketed to give the illusion of self-contained flats, in order to secure the maximum level of housing benefit payments which are paid on behalf of tenants, direct to the landlords.

The model abuses legal exemptions and the lack of clarity in environmental health, planning and housing benefit rules, to avoid detection and is resulting in widespread abuse of public funds, as well as housing tenants in poor and sometimes dangerous accommodation. This project is named 'London Lockdown'...

...ALEHM has acted as project management lead, liaising with each participating authority to keep on target and pull together information centrally to achieve the wider aims of the project, to provide recommendations on how to prevent further spread of the business model, as well as bringing all substandard properties up to legal compliance.

The investigation has used intelligence data from local authority records to identify and inspect suspected properties and take enforcement action to rectify non-compliance with a range of legislation. Data from participating councils is then referred to intelligence officers working on behalf of the project, with a view to investigating the extent of organised criminal activity, aiming to prosecute multi-borough rogue landlords. The project should achieve better protection for housing charities and homelessness teams whose vulnerable clients are being targeted."

4. One of the outcomes of the London Lockdown Project has been a report to the DCLG recommending how to address the spread of Lockdown.

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<sup>1</sup> <https://alehm.org.uk/services/criminal-landlords/>

## Request and response

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5. On 17 March 2017, the complainant wrote to DCLG and requested information in the following terms:

"Firstly, I should very much like to view a copy of the Association of London's Environmental Health Manager's London Lockdown July report 2016 to the DCLG.

I should also like to have answers to the following questions:

- 1) How many HMO landlords in 2016 were discovered operating premises without licenses?
  - 2) Of those landlords discovered operating HMO premises without any valid or appropriate licence, how many were successfully prosecuted under Section 72 of the Housing Act 2004?
  - 3) Given that it is a criminal offence to operate HMO premises without a license on how many occasions were landlords reported for this offence to the relevant police force?
  - 4) Of those HMO landlords who were successfully prosecuted, how many paid fines of £20,000 or more?
  - 5) Of those HMO landlords who were successfully prosecuted, how many were subject to rent repayment orders?"
6. DCLG responded on 13 April 2017 (reference number 3256909) and confirmed that it holds the London Lockdown report but refused to provide it citing the exemption at section 31(1)(a) of the FOIA. It also confirmed that it does not hold the information requested at questions 1-5.
7. On the same day the complainant requested an internal review. He stated that it is very unlikely that the report would prejudice any investigation as its purpose is to make policy recommendations to DCLG whose role in this in matter is not to prosecute individual cases. He said it ought to be possible to provide the report with certain details redacted if they would prejudice any investigation. He also provided reasons why he believes it is in the public interest to disclose the report.
8. DCLG provided an internal review on 29 April 2017 in which it maintained its original position, expanding on its reasons.

## Scope of the case

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9. The complainant contacted the Commissioner on 2 May 2017 to complain about the way his request for information had been handled.
10. During the Commissioner's investigation, DCLG revised its position from exempting the entire London Lockdown report to exempting some of the information within the report.
11. The Commissioner has considered whether the exemption at section 31(1)(a) has been correctly applied to the exempted information within the London Lockdown report.

## Reasons for decision

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12. Section 31(1) states that:

"Information which is not exempt information by virtue of section 30 [information held for the purposes of investigations and proceedings conducted by public authorities] is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

a) the prevention or detection of crime ..."

## Would disclosure be likely to prejudice the prevention and detection of crime?

13. In *Hogan v the ICO and Oxford City Council*<sup>2</sup> the Information Tribunal stated that:

"The application of the "prejudice" test should be considered as involving a number of steps. First, there is a need to identify the applicable interest(s) within the relevant exemption...Second, the nature of the 'prejudice' being claimed must be considered...A third step for the decision-making concerns the likelihood of occurrence of the prejudice".

14. The relevant applicable interest in this exemption is the prevention or detection of crime. DCLG has said that the prejudice relates to illegal eviction of tenants, disruption of prosecutions, failure to secure
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<sup>2</sup> Appeal numbers EA/2005/0026 and EA/2005/0030

conviction, and rogue landlords obtaining knowledge that would allow them to evade detection in the future. The Commissioner accepts that the arguments made by DCLG relate to the prevention or detection of crime.

15. 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.
16. DCLG has submitted that any release of the requested information in full could reduce the flow of intelligence between the Boroughs and DCLG and that this would reduce the effectiveness of the intelligence received thereby allowing some criminal landlords to escape scrutiny and effective action being taken against them.
17. The Commissioner asked DCLG to clearly explain, with reference to the specific withheld information, why there would be a reduction in the flow of information between local authorities and DCLG. It said the following:

"...it is likely that if this report were to be released, local authorities would be reluctant as a result to share information with us about their enforcement work against criminal landlords. Also it is likely that this could spread to other areas. We have made considerable efforts to build trusting relationships with local authorities so that we can work together to achieve a wide variety of aims, many of which involve detection of crimes of various sorts. The safe flow of information is important for all of these aims, and that trust could be damaged by a single release of information. It is impossible to provide evidence of harm that may occur in the future, but if local authorities no longer feel able to share sensitive information with us, then that will have a negative impact on the future development of policy to tackle rogue landlords and other sensitive areas."
18. Whilst the Commissioner can appreciate, in general terms, that ordering disclosure of information may, in some cases, reduce the flow of information between public authorities, she must consider the specific information caught by the request when making her decision in this case. She does not consider that DCLG has provided specific arguments in this respect and has not identified any content in the withheld information so candid as to have the effect that DCLG claim. The Commissioner considers the information in the report to be couched in fairly general terms, rather than being specific intelligence provided by the participating Boroughs.

19. The Commissioner has not been made aware that the participating Boroughs would not expect that the information about their public functions would be shared, including under information access legislation. If there was an expectation that the information would not be shared in this case then the Commissioner could appreciate more that disclosure of the specific requested information may reduce the flow of information between public authorities.
20. DCLG also referred to release of the information resulting in other criminal landlords adopting similar approach, i.e. copycat behaviour, and that that release of investigative methods and tactics would enable those intent on committing crimes to use strategies designed to thwart the purpose of Project Lockdown and potentially to evade detection and frustrate the legal process. Again, the Commissioner does not consider that DCLG has provided arguments with reference to the specific information in this respect and has not identified any content in the withheld information so candid as to have the claimed effect.
21. It is not for the Commissioner to apply arguments on behalf of DCLG. DCLG was informed by the Commissioner that it must justify its position and was provided with the Commissioner's guidance on how she deals with complaints which clearly states that it is the responsibility of the public authority to satisfy the Commissioner that information should not be disclosed and that it has complied with the law.
22. The Commissioner considers that DCLG has been provided with sufficient opportunity to provide its detailed rationale for withholding the information. The rationale should have been in place since the request was refused and therefore opportunities for providing this existed when responding to the request and when requested by the Commissioner.
23. As DCLG has not provided sufficient arguments for the application of the exemption to the specific information in this case, the Commissioner has concluded that DCLG has not sufficiently demonstrated the causal link for section 31(1)(a) to be engaged in this case.
24. As the Commissioner has decided that the exemption is not engaged in this case, she has not considered the public interest arguments.

## **Other matters**

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25. During the course of the investigation in this case, DCLG asked the complainant whether release of a redacted version of the report would resolve the complaint. The complainant said that he would be prepared to receive the redacted report but must withhold agreement of resolution until afterwards. The Commissioner informed DCLG that she

would expect the complainant to be provided with a redacted version of the report in order to make a decision as to whether that would resolve the complaint. DCLG did not provide the complainant with a redacted version of the report.

26. Whilst the Commissioner welcomes attempts to resolve complaints by informal means, which can include the provision of redacted information, DCLG should be aware that it is unlikely that a complainant will agree to withdraw a complaint on the basis of an *offer* of redacted information rather than actual provision of the redacted information.

## Right of appeal

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

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

28. 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.
29. 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** .....

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