

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 December 2022

Public Authority: Herefordshire Council

Address: Plough Lane
Hereford
HR4 0LE

Decision (including any steps ordered)

1. The complainant requested from Herefordshire Council (the Council) information relating to limited companies that pay business rates. The Council withheld the information and cited section 31(1)(a) (law enforcement) of FOIA.
2. The Commissioner's decision is that the Council was entitled to withhold the information requested under section 31(1)(a) of FOIA. Also, the public interest in maintaining the exemption outweighs the public interest in disclosure. Therefore, the Commissioner does not require the Council to take any steps as a result of this decision.

Request and response

3. On 25 May 2022 the complainant wrote to the Council and requested information in the following terms:

"I request to adjust and I just want the lists of companies and address and highest to lowest for business rates. So no exact figure needed just companies paying more than 2k a year in business rates. Surely there can no crime. As companies publish lots of info on companies house by a law. Surely an excel would not be made into a crime?"

As I have no criminal record and 56 other councils have share this info in excel and by email".

4. On 8 June 2022 the Council provided its response and refused the request under section 31(1) (law enforcement) of FOIA.
5. Following a request for an internal review, the Council provided its internal review response on 27 June 2022 and maintained its original position to withhold the information under the exemption cited.

Reasons for decision

Section 31 – law enforcement

6. Section 31(1)(a) of FOIA states that:

“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,”
7. The Council’s view is that the information requested could be used to enable fraud. It explained that the risk of fraud with this type of data is a known issue that remains a long term risk and therefore, the Council considers that the prejudice being claimed through the use of this exemption is ‘real, actual or of substance’ i.e. it is not trivial and there is a causal link between disclosure and the prejudice claimed.
8. The Council said if the information was disclosed, it would be possible to work out which businesses are paying less than £2000 a year in business rates by comparing the information requested against the datasets which are published on the website. The Council further explained that it would be possible to work out if businesses paying less than £2000 a year are in receipt of elements of relief because, if the Rateable Value is approximately £4500 or higher and a business is paying less than £2000 a year in business rates, then that business will be receiving some sort of relief.
9. With regard to fraud attempts, the Council believes that “those with criminal intent could use the information to hijack a company’s identity, allowing them to pose as that company to the Council in order to claim monies, set up a fraudulent account in the name of the company or pose as the Council or ratings agency to approach a company with relevant details of their accounts, such as the amount they pay and the reliefs they are entitled to, to acquire further confidential information from them, such as that company’s banking details.”

10. The Commissioner considers that in the Council's response to the complainant, the Council has satisfied all three stages of the prejudice test set out on Hogan¹ and therefore accepts section 31(1)(a) is engaged.
11. In this particular case, the Commissioner considers that, if the information in scope was disclosed it could be used, along with other information already in the public domain, to target companies who would receive some sort of relief. The Commissioner agrees with the Council that this would increase the likelihood of fraudulent activity. The Commissioner therefore 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.

Public interest test

12. Section 31(1) is a qualified exemption and is subject to the public interest test set out in section 2(2)(b) of FOIA. The Commissioner has considered whether in all the circumstances of this case, the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.

Public interest arguments in favour of disclosure

13. The Council stated reasons for disclosure are openness and transparency in relation to which companies are paying more than £2000 a year in business rates, from highest to lowest.

Public interest arguments in favour of maintaining the exemption

14. The Council said that it publishes on its website, a National Non-Domestic Rates (NNDR) dataset and that this is available to view via a link² which the Council provided to the complainant.
15. The Council recognises that there is a general public interest in knowing the total amounts paid by businesses in rates each year. Or, in knowing the (anonymised) highest or lowest payment paid but not in knowing the details of which businesses pay over a specified amount, in conjunction with information about them which is already in the public

¹

<https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i42/MrCMHoganandOxfordCityCouncilvInfoComm17Oct06.pdf>

² <https://www.herefordshire.gov.uk/downloads/download/2144/business-rates-nndr-dataset-extract>

domain, such as the rateable value of the property or the hereditament address.

16. The Council said that disclosure of the information requested (details for individual businesses) does not advance the general public interest in this type of information. It is, the Council added, information which each owner would already know about their business.
17. The Council argued that if it disclosed the requested information, it would be releasing it to the world at large and the additional checking processes would need to be introduced to mitigate against fraud. The Council said that such disclosure increases the risk and rate in which it is targeted for fraud. This is because, the risk of fraud substantially increases each time it is disclosed into the public domain. The Council further explained this would lead to additional costs and result in delays in legitimate refunds or account queries which could incite complaints about delays. Therefore, the Council considers delays of these legitimate claims, would not be in the interests of the businesses concerned.

Balance of the public interest arguments

18. The Commissioner accepts that there is a strong public interest in non-domestic properties and the amounts of business rates paid annually. Release of the information would provide the public with details of the companies paying more than £2000 a year in business rates, in a ranking order. The Commissioner acknowledges that the request is not for exact figures, but for a list of companies, addresses and the business rates.
19. However, the Commissioner notes information relating to NNDR is published on the Council's website. The Commissioner also acknowledges that if the information requested was disclosed, and the information was compared against the datasets published on the Council's website, it would reveal which businesses are paying business rates of less than £2000 a year. It would also be possible to work out from that information, if businesses are in receipt of elements of relief. The Commissioner therefore considers there is a greater public interest in preventing potential crime – fraud attempts such as rating agency or business impersonation. He has determined the release of the withheld information would be likely to impact on local businesses. He has taken into account that disclosure would be likely to encourage criminal activities which would have an adverse effect on the community.
20. Having considered the arguments on the balance of the public interest test, the Commissioner concludes that maintaining the exemption in this case, outweighs the argument in favour of disclosure.

The Commissioner's conclusion

21. The Commissioner is satisfied disclosure of the information requested would be likely to prejudice the prevention or detection of crime. His conclusion is that the Council was entitled to withhold the information requested under section 31(1)(a) of FOIA.

Right of appeal

22. 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@justice.gov.uk.

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

23. 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.
24. 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
Head of Freedom of Information Casework
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF