

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

### **Decision notice**

**Date:** 30 August 2023

**Public Authority:** Durham County Council  
**Address:** County Hall  
Durham  
DH1 5UF

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

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1. The complainant requested information about empty residential properties in County Durham. Durham County Council (the "council") refused the request, citing the exemption for law enforcement and the prevention or detection of crime (section 31(1)(a)).
2. The Commissioner's decision is that the council appropriately applied the exemption in section 31(1)(a) to withhold the information but that it failed to respond in time and breached section 10(1).
3. The Commissioner does not require the council to take any steps.

## Request and response

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4. On 26 April 2023, the complainant wrote to Durham County Council (the "council") and requested the following information:

"I have come across a FOI request published online from 2017 for a list of long term Empty Homes in County Durham.

Can I please get a list that is for 2022, no personal information just the property address including postcode. Residential properties, and ownership by council/Housing Association or privately owned."

5. The council responded on 1 June 2023 and refused to provide the information, citing section 31(1)(a) of the FOIA. The council upheld this position at internal review.

## Reasons for decision

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6. The following analysis sets out why the Commissioner has concluded that the council was entitled to rely on the exemption in section 31(1)(a) of the FOIA in this particular case.

### Section 31(1)(a) – the prevention or detection of crime

7. Section 31(1)(a) of the FOIA says that:

"Information .... is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

(a) the prevention or detection of crime,"

8. The exemption in section 31(1)(a) covers all aspects of the prevention and detection of crime. It could apply to information on general policies and methods adopted by law enforcement agencies.
9. The exemption also covers information held by public authorities without any specific law enforcement responsibilities. It could be used by a public authority to withhold copies of information it had provided to a law enforcement agency as part of an investigation. It could also be used to withhold information that would make anyone, including the public authority itself, more vulnerable to crime for example, by disclosing its own security procedures, such as alarm codes.

10. Whilst in some instances information held for the purposes of preventing or detecting crime will be exempt, it does not have to be held for such purposes for its disclosure to be prejudicial.
11. In *Yiannis Voyias v Information Commissioner and the London Borough of Camden* (EA/2001/0007 23 January 2013)<sup>1</sup> the First-tier Tribunal (Information Rights) (the "Tribunal") upheld the public authority's decision to withhold the addresses of empty houses under section 31(1)(a). In that instance the information had been collected for council tax purposes and to inform the council's policies aimed at returning empty homes to the housing market and the Tribunal agreed that disclosing the information could facilitate squatting and/or criminal gangs engaged in asset stripping.
12. A number of decision notices issued by the Commissioner have upheld public authorities' use of section 31(1)(a) to withhold information about empty residential homes<sup>2</sup>.
13. In this case, the council has argued that disclosing details of empty residential properties would make them a target of crime. It stated:  
  
"Release of this type of information where buildings are situated would increase the potential for:
  - Buildings to be targeted by squatters
  - Buildings to be targeted by criminals or terrorists intent on hiding or depositing proceeds of crime or terrorist materials
  - Premises to be identified as short-term hiding places by criminals or terrorists
  - Premises to be targeted by vandals or street artists."

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<sup>1</sup> [https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i942/EA-2011-0007\\_2013-01-22.pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i942/EA-2011-0007_2013-01-22.pdf)

<sup>2</sup> See, for example: <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4023319/ic-196429-s2x5.pdf>; <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615022/fs50786336.pdf>;

14. Having considered the council's position, referred to previously issued decision notices and to the Tribunal's conclusions, the Commissioner accepts that the potential prejudice described by the council clearly relates to the interests which the exemption in section 31(1)(a) is designed to protect.
15. The Commissioner is also satisfied that the prejudice being claimed in this case is "real, actual or of substance", and that there is a causal link between disclosure and the prejudice claimed. 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. The Commissioner, therefore, considers that the exemption is engaged.
16. Section 31(1)(a) is a qualified exemption. Therefore the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption at section 31(1)(a) outweighs the public interest in disclosing the information.

#### **Public interest in disclosure**

17. The council has acknowledged that disclosing the information would promote transparency and accountability of public authorities.
18. The council also accepted that disclosing the information would raise the profile of unused or vacant properties in order to encourage public debate.
19. The complainant has argued that issues around empty homes in the district have been widely publicised in local and national press. They have referred to many cases where empty properties have already been broken into and squatted on a regular basis and suggested that disclosure will not increase the risk of this happening more frequently than it already is.

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

20. The council has argued that there is an inherent public interest in crime prevention and pointed to costs associated with squatting, such as repair, security and eviction costs. The council further argued that the impact of squatting was not only directed towards to the property owners affected but also the surrounding community and public authorities involved.

## **Balance of the public interest**

21. In balancing the public interest arguments the Commissioner accepts that disclosure would to some extent help to increase openness and transparency of the council's function in respect of housing.
22. The Commissioner agrees with the complainant that the council's responsibilities and performance in relation to housing should be subject to public scrutiny. However, he does not consider that it is necessary to disclose the addresses of empty residential properties to provide accountability in this matter.
23. The Commissioner accepts that it may well be that a degree of disclosure at a higher level of generality would assist the public in assessing the council's effectiveness in this area. For example, public scrutiny of the council's performance might be facilitated by the disclosure of the numbers by category of property, possibly further broken down by reference to ward boundaries. The Commissioner cannot see that how disclosing the specific details requested would enhance the public interest in accountability, at least, not to the extent that it would offset the public interest in preventing the crimes that disclosure would cause<sup>3</sup>.
24. In relation to the complainant's argument that, as empty properties are already subject to crime, disclosure would not have much impact, the Commissioner considers that this rather validates the council's position that empty properties are susceptible to crime. That crimes have already been committed does not invalidate the public interest in preventing future criminal activity.
25. The Commissioner considers that there is a substantial public interest in bringing empty properties back into use, which may be met to some extent by the disclosure of the information. However, he has to weigh the benefits of this potential longer-term effect, together with the public interest in transparency and accountability, against the more immediate likely prejudice to the prevention of crime.

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<sup>3</sup> The Tribunal makes the same point in EA/2001/0007:  
[https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i942/EA-2011-0007\\_2013-01-22.pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i942/EA-2011-0007_2013-01-22.pdf)

26. The Commissioner acknowledges that there is a clear public interest in protecting society from the impact of crime. The greater the potential for a disclosure to result in crime, the greater the public interest in maintaining the exemption. The Commissioner considers that the prevention of crime will prevent the criminal acts which adversely impact on the public's wellbeing and on the public purse.
27. In conclusion, the Commissioner considers that the public interest in maintaining the exemption outweighs the public interest in disclosure. Consequently he has determined that the council appropriately applied section 31(1)(a) to the withheld information.

### **Procedural matters**

28. Section 10(1) of the FOIA provides that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
29. In this case the complainant submitted their request on 26 April 2023 and the council responded on 1 June 2023.
30. The Commissioner has, therefore, found that the council failed to respond to the request in time and breached section 10(1).

## **Right of appeal**

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

32. 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.

33. 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 .....**

**Christopher Williams**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**