

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 October 2015

Public Authority: Barnsley Metropolitan District Council

Address: PO Box 634

Barnsley

S70 9GG

Decision (including any steps ordered)

1. The complainant has requested details of deceased people who have had a public health funeral. The Commissioner's decision is that Barnsley Metropolitan Borough Council has correctly applied the law enforcement exemption at section 31(1)(a) of the FOIA. He does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

2. On 2 April 2015, the complainant wrote to Barnsley Metropolitan District Council ('the council') and requested information in the following terms:

"1.Does your Council Publish a List of Public Health Funerals it has carried out?

2. How often is this late [sic] updated (Including the last time it was updated)?

3. Does the Council have any Public Health Funeral cases on record that are not presently published on the website?

4. If the answer to question 3 is Yes (either because there is no list or because the list is not up-to date), what are their details (including names, last known address, date of birth, date of death, date of funeral, and whether the case has been/ will be/ or even might be referred to the Treasury Solicitor?

5. Has the Council given any of this information away to another individual or organisation (either formally through an FOI request or informally through other communications?)
 6. Have you been approached by any research or probate firms for this information, if so which ones?
 7. What is the name, email and telephone number of the individual(s) responsible for overseeing public health funerals within the Council?
 8. What is the name, email and telephone number of the individual(s) responsible for overseeing Treasury Solicitor referrals within the Council?"
3. The council responded on 5 May 2015 giving the request the reference of FOIA10287. It answered questions 1-3 and 5-8 but refused to provide the information requested at question 4 citing the exemptions at sections 21 and 31(1) of the FOIA.
 4. The complainant requested an internal review providing comments on the use of sections 21 and 31(1). The council provided an internal review on 28 May 2015 in which it maintained its original position.

Scope of the case

5. The complainant contacted the Commissioner on 17 June 2015 to complain about the way his request for information had been handled. He specifically stated that the council only refused question 4 of his request.
6. In its response to the Commissioner's enquiries, the council accepting that it was at fault in claiming section 21 to some elements of question 4 and said that it is claiming section 31(1)(a) to all the withheld information.
7. The Commissioner has considered whether the exemption at section 31(1)(a) has been correctly applied to question 4 in this case.
8. As the Commissioner has found that section 31(1)(a) has been correctly applied in this case, he does not deem it necessary to consider the application of section 21.

Reasons for decision

9. 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?

10. In *Hogan v the ICO and Oxford City Council*¹ 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”.

11. The relevant applicable interest in this exemption is the prevention or detection of crime and the Commissioner accepts that the arguments made by the council directly address this prejudice.

12. 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.

13. The council said that, in line with a previous decision on a similar case involving *Westminster City Council*², the nature of the prejudice is that release of the requested personal details of a deceased individual with no known relatives and no will may make the assets of that person

¹ Appeal numbers EA/2005/0026 and EA/2005/0030

² https://ico.org.uk/media/action-weve-taken/decision-notices/2012/783218/fs_50454267.pdf

vulnerable. It said that the assets of the deceased need to be secured and disclosure of the information may lead to the commission of offences and cause loss to unsecured estates. It explained that the publication of the last known address may be of an empty property, which might lead to squatting and an increase in the instances of various types of criminal activity directly connected to it; or 'stripping' as in the removal of copper pipes and floor boards. It said that publishing the date of death and the date of the funeral might provide an indication of the window of opportunistic theft of personal effects and property, and that the name of the deceased person, along with their date of birth, might lead to fraud, and specifically identity theft, whilst records are updated and before they can be cross-referenced.

14. Turning first to identification of empty properties, the Commissioner and the then Information Tribunal have considered requests for similar information before and the Commissioner believes it appropriate to consider those outcomes as part of this decision.
15. The Commissioner has had particular regard to the case of the London Borough of Bexley v Mr Colin P England and the Information Commissioner³. In that case, the requester had asked for the addresses of vacant, empty or abandoned properties that had been listed as "long term empty" and "uninhabitable properties". The information had been withheld using the exemption under section 31(1)(a). In summary, the Tribunal accepted that the second and third tests set out in paragraph 10 of this decision notice were satisfied based on the following facts:
 - The Tribunal accepted evidence that empty properties are associated with criminal activity from organised local gangs. In particular, the Tribunal in paragraph 41 identified occasions of organised "stripping" of empty properties. This was the removal of all things of value (such as pipes and floor boards) leaving an empty and uninhabitable shell property.
 - The Tribunal also accepted evidence that while squatting is not a crime in itself, it is associated with criminal activity. The Tribunal identified a number of instances in the evidence it heard between paragraphs 48 and 57.
 - The Tribunal accepted that the disclosure of the list of properties would be of use to squatters and would be likely to lead to significant harm in the form of criminal activity (paragraph 63).

³ Appeal numbers EA/2006/0060 and 0066

- Based on the evidence it heard, the Tribunal considered that disclosure of the information would be likely to have a significant negative impact on the prevention of crime (paragraph 63).
16. Although the Commissioner appreciates the difference in the information requested in the Bexley case and the information in this case, he believes that the prejudice arguments in the Bexley case demonstrate that there would be prejudice to the prevention of crime in this case in those circumstances where disclosure of the addresses of the recently deceased identify a residential property as empty.
 17. The council did not submit further details in relation to the causal link between disclosure of the requested information and identity theft. However, in line with the aforementioned Westminster case, the Commissioner considers that disclosure of the requested personal details to the world at large could enable a person to use such information to falsely obtain documents such as birth certificates, passports and driving licences which could then be used for the commission of crimes such as driving without insurance, fraudulent credit applications, committing bigamy, tax evasion, money laundering, drug smuggling, terrorism and people trafficking.
 18. The Commissioner is satisfied that there is causal link between the disclosure of the requested information and a prejudice to the prevention of crime, and that the prejudice is real and of substance in this instance. He therefore finds that the second stage of the test from Hogan is satisfied.
 19. When considering the third step as set out in Hogan, the Commissioner notes that the council has claimed that the stated prejudice 'would be likely to' occur. The Commissioner considers that this means there must be a "real and significant risk" of prejudice although the risk need not be more probable than not.
 20. The council said that despite the legacy of industrial decline and the persistence of social disadvantage, Barnsley is safer than the average town of its size and profile. However, it informed the Commissioner that the Crime Survey for England and Wales reports rising numbers of domestic burglaries (923 in the 12 months to September 2014) and criminal damage and arson (2684). It also said that Experian reports that the proportion of third party fraud in Yorkshire and the Humber was 5.77% last year and Cifas, the fraud prevention service, reports identity fraud up by 27% nationally in the first quarter of 2015. It also provided

a link to a media report dated 14 August 2015 stating that thieves had been planning to burgle Cilla Black's home during her funeral⁴.

21. The complainant has said all the information needed to commit criminal activity such as theft of an empty property is already in the public domain. He said that anyone could get a list of the recently deceased using death certificates from the General Register Office (these would contain the deceased's name, dates of birth/death, last known address etc) and this could then be cross referenced with information contained on the land registry and the electoral role to ascertain whether the deceased lived alone and then proceed to rob the property.
22. He has also said that the British Library publishes and regularly updates a list of all the recently deceased persons in the country, complete with full names, dates of birth/death, locality of death and a reference to order a death certificate. He argued that while these do not detail whether the deceased had a public health funeral it would give a hypothetical member of the public everything they need to target the empty properties of the deceased. He said that, realistically speaking, it would not be difficult for them to work out which ones are empty, simply waiting outside for a period would determine this (although using the land registry and the electoral role could also be a route to work out if the deceased lived alone) and that while it could be argued that this is perhaps a slightly convoluted route to the information, a determined criminal who is interested in targeting empty properties would most likely take it (especially as the information is free from the British library and available for a small fee from the General Register Office). He said that probate companies use this method all the time in their research so it's a widely used channel.
23. The complainant's argument is that because most of the information is already publicly available it is substantially more difficult to engage section 31. He believes that there is minimal, if any, increased risk in disclosing this information through the FOIA as all the data which might lead to the kind of crime being suggesting is already in the public domain.
24. The Commissioner has considered the complainant's argument. However, he notes that the information which is already publicly available does not detail whether the deceased had a public health funeral which is the core of the request in this case. He has taken into

⁴ <http://www.theguardian.com/tv-and-radio/2015/aug/14/cilla-black-home-target-funeral-burglary-plot-publicist>

consideration his own guidance on 'Information in the public domain'⁵ and believes that disclosure in response to this request would provide ready-collated information in a more easily useable form than obtaining information from the British Library or General Register Office and then taking time consuming steps to work out which properties are empty. He therefore considers that disclosure in response to this request would increase the risk of prejudice occurring over and above the current risk from publicly available information.

25. The complainant has also argued that in the Bexley case the existence of local organised gangs was taken into account, as was the exceptionally high crime rate of Westminster Borough in the Westminster case. He has said that the council in this case has not mentioned the existence of any such gangs and that local crime stats⁶ show that overall levels of crime in Barnsley are substantially lower than those of Westminster, and most of it would not even be vaguely linked to the information requested. He has submitted that given this, and given that hundreds of other councils do disclose their details on public health funerals (some of which report higher crime stats) the council's stance in this case seem a bit trivial.
26. The Commissioner has considered the evidence the council provided and the complainant's arguments. He believes that the risk of an adverse effect to the prevention of crime is real and significant. He considers that despite the lower levels of crime in Barnsley as opposed to Bexley and Westminster, the chance of prejudice being suffered from disclosure of the requested information is still more than a hypothetical possibility; it is a real and significant risk.
27. For the reasons set out above, the Commissioner considers that the council has satisfied all three stages of the prejudice test set out in Hogan and therefore accepts that the exemption at section 31(1)(a) is engaged. He has therefore gone on to consider the application of the public interest test associated with this exemption.

The public interest test

28. As the exemption under section 31(1)(a) is a qualified exemption, it is subject to a public interest test. In accordance with that test, as set out

⁵ <https://ico.org.uk/media/for-organisations/documents/1204/information-in-the-public-domain-foi-eir-guidance.pdf>

⁶ <http://www.ukcrimestats.com/Subdivisions/MTD/2513/>

in section 2(2)(b), the Commissioner must consider whether in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information.

Public interest arguments in favour of disclosing the requested information

29. The council identified the following public interest arguments in favour of disclosure:

- The council is rightly accountable for its expenditure, and at a time of austerity, there will be interest and scrutiny in relation to all of this expenditure such as the cost of having to arrange these funerals.
- There is a case that greater transparency enables more people to claim their entitlement from estates.
- Some of the information is in the public domain and if a person was so minded they could piece together a full picture.

30. The complainant submitted the following arguments:

- Disclosure would add to council transparency and it is public money being spent on such funerals.
- Disclosure could speed up probate work which, the complainant argues, actually reduces the threat of prejudice to law enforcement as it means the legal owners of the deceased's property are located and can lodge their claim at the earliest possible juncture.
- Disclosure increases the likelihood of relatives being made aware of deceased's passing.
- Once found, relatives may pay for the funeral (next of kin are often asked to do so by the council when they are found) thus saving public money.
- Speeding up the probate process will save both the local authority and the Government Legal Department (if there is an estate to refer) time and research in finding a next of kin which in turn would save public funds.

31. The Commissioner considers that the 'default setting' of the FOIA is in favour of disclosure. This is based on the underlying assumption that disclosure of information held by public authorities is in itself of value because it promotes better government through transparency,

accountability, public debate, better public understanding of decisions and informed and meaningful participation of the public in the democratic process.

Public interest arguments in favour of maintaining the exemption

32. The council identified the following public interest arguments in favour of maintaining the exemption:

- It has to be mindful of not increasing burdens on the public purse should information about the properties lead to theft or vandalism. It quoted the Upper Tribunal Judge Edwards as saying:

“Preventing crime prevents the criminal acts themselves and the consequences that accompany or follow them. These factors have to be taken into account as part of the assessment of the public interest. The consequences of a crime may be financial or social. They may be direct or indirect. Just to take criminal damage, there are the costs of security measures, the cost of repairs, increased insurance premiums for the area and an impact on the local property values. There is no justification for taking account of only some of these financial consequences. There is no difference in principle between the costs that are carried by private individuals, by the public purse or spread through insurance premiums. Nor is there a difference in principle between the cost of repairing the damage and the cost of evicting someone who caused the damage in order to gain entry and possession. And there is no justification for severing financial costs from social costs....Criminal damage and its consequences can reduce the quality of life in a neighbourhood. There is a psychological element involved, which may not be rational. People may feel more vulnerable or threatened than they really are. But the impact is none the less real for that.”⁷

- From its research it can only find that East Cambridgeshire District Council publishes all the information that the complainant has requested.⁸

⁷ Yiannis Voyias v Information Commissioner and the London Borough of Camden (EA/2011/0007 22 January 2013).
http://www.informationtribunal.gov.uk/DBFiles/Decision/i942/EA-2011-0007_2013-01-22.pdf

⁸ Open Data: Public health funerals since January 2013.
<http://www.eastcamb.gov.uk/notices/open-data>

- It considers that there may be a stigma attaching to public health funerals. The lead academic researcher in this field has said: "In the past it was about respectability, for a working family that was the worst thing that could happen that you couldn't afford to pay for someone's funeral."⁹ The term is relatively recent and replaces the previous reference to "pauper" or "welfare" funerals.
 - It owes the equivalent of a duty of confidence to a deceased person. There may be no next of kin, but there might be neighbours, friends or acquaintances, and these are sensitive circumstances that should be managed with dignity and the minimum of distress to any party.
 - The Local Government Association has reported an increase in the number of family or friends unable or unwilling to contribute to the costs of a funeral, and therefore availing themselves of the council's duty under Public Health (Control of Disease) Act 1984, when anyone in the area passes away outside of a hospital and there is no one else willing or able to pay, the local authority for that area must make the necessary arrangements for a public health funeral.¹⁰ This may be a consequence of austerity, but whatever the circumstance, the council does not believe that the publication of this information, except potentially in some anonymised and summarised annual form, is in the wider public interest.
33. The Commissioner considers that there is a strong public interest inherent in section 31(1)(a), which in this case is avoiding prejudice to crime prevention.
34. He also considers that there is a strong public interest in preventing the impact of crime on individuals, for example, relatives of a deceased person who are financially affected if an estate which has been stolen from or who would suffer damage and distress as a result of fraud being committed using the deceased's details.
35. In addition to the above, the Commissioner recognises that there is public interest in reducing the impact of crime on the public purse and in

⁹ Bingam, J. (2014) Paupers' funerals making comeback as families exploit loophole to save funeral costs. *The Telegraph*, 21 January.
<http://www.telegraph.co.uk/news/uknews/10584884/Paupers-funerals-making-comeback-as-families-exploit-loophole-to-save-funeral-costs.html>

¹⁰ Local Government Association, Public Health Funerals Final Report October 2011.
http://www.local.gov.uk/c/document_library/get_file?uuid=59d4ed48-08a5-4f9b-80c3-00ce5fcd341b&groupId=10180

protecting the availability of public resources, such as the police, which would otherwise be utilised in the in the handling of burglary and identify fraud cases.

Balance of the public interest arguments

36. As stated above, the Commissioner recognises that there is always some public interest in the disclosure of information. He also recognises that there is interest to certain members of the public who may have an entitlement to the estate of a particular deceased person's estate, and/or organisations enabling individuals to exercise that entitlement. However, he has not given this argument significant weight as there are other mechanisms in place for the administration of estates of persons who die intestate and without a known kin, such as the Bona Vacantia Division of the Government Legal Department. He notes that the routine publishing of estates that have been referred to the Bona Vacantia division has enabled more people to claim their entitlement from estates¹¹.
37. The Commissioner has not placed weight on the council's arguments that there may be a stigma attaching to public health funerals and that it owes the equivalent of a duty of confidence to a deceased person. This is because arguments in favour of maintaining an exemption must be must be relevant to the specific exemption.
38. However, in favour of maintaining the exemption, the Commissioner recognises that there is an inherently strong public interest in avoiding likely prejudice to the prevention of crime. The crime in this case would be likely to include a diverse range from anti-social behaviour, criminal damage, arson, organised groups stripping empty properties to identity fraud and the crimes that can be committed using false documents. The Commissioner accepts that tackling issues like these would involve significant public expense and believes it is in the public interest to protect property and to ensure that public resources are used efficiently. He also accepts that there is a strong public interest in avoiding personal distress to the direct victims of the crime and, in the case of crime related to empty properties, to those in the wider neighbourhood who may be affected.
39. Taking all of the above into consideration, the Commissioner decision is that the public interest in avoiding prejudice to the prevention of crime

¹¹ <https://www.gov.uk/government/news/transparency-transforms-total-estates-claimed-by-relatives>

outweighs the public interest in disclosure in all the circumstances of this case.

Right of appeal

40. 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

41. 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.
42. 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

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