

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2016

Public Authority: Royal Borough of Kensington and Chelsea

Address: Town Hall
Horton Street
London
W8 7NX

Decision (including any steps ordered)

1. The complainant requested from the Royal Borough of Kensington and Chelsea ("the Council") information about credit balances on business rates accounts. The Council withheld the requested information under section 31(1)(a).
2. The Commissioner's decision is that the Council has correctly applied section 31(1)(a) to the withheld information and so she does not require it to take any further steps to ensure compliance with the legislation.

Request and response

3. On 30 June 2015 the complainant requested the following information under FOIA:

"Under the Freedom of Information Act, I request a breakdown of credit balances accrued since your earliest records, for the amounts owing to all ratepayers within your billing area. Please include the following information;

- a) Occupier (where possible)*
- b) Full hereditament address*
- c) Rateable value*
- d) Property Description*
- e) Billing Authority Reference Number*

f) Start Date of Account

g) End Date of Account

h) Value of unclaimed Credit Balance

i)) Period within which Credit Raised

*I fully understand where the occupier is a sole trader, you are prevented from supplying us with the occupier name under the Data Protection Act. I would therefore reiterate that I am **not asking for the occupier name in the case of sole traders** and only requesting information relating to (b) to (i) above."*

4. The Council responded on 1 July 2015. It refused to provide the requested information on the basis that it was exempt from disclosure under section 41 of FOIA.
5. The complainant requested an internal review on 8 December 2015. The Council provided the outcome of the internal review on 23 December 2015 in which it no longer relied on section 41 to withhold the information but instead relied on section 31(1)(a).

Scope of the case

6. The complainant contacted the Commissioner on 6 January 2016 to complain about the way her request for information had been handled. She specifically complained about the Council's refusal to disclose the information that she had requested.
7. The Commissioner considered whether the Council had correctly applied section 31(1)(a) to the withheld information.

Reasons for decision

Section 31 – Law enforcement

Engagement of section 31

8. 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,"

9. The Commissioner initially considered whether the relevant criteria for the engagement of section 31(1)(a) were satisfied. These are:

(i) whether the prejudice claimed by the Council was relevant to section 31(1)(a);

(ii) the nature of the prejudice being claimed by the Council; and

(iii) whether there was a likelihood of the prejudice being claimed by the Council occurring.

(i) Applicable interest within the exemption

10. The Council argued that disclosure of the information withheld under section 31(1)(a) would be likely to prejudice the prevention of crime. It explained that it believed that there was a real and significant risk that the disclosure of details concerning business rate credit balances would lead to fraudulent claims being made to the Council for the payment of credits. Based on this argument, the Commissioner accepts that the prejudice claimed by the Council relates to the prevention of crime.

(ii) The nature of the prejudice

11. The Commissioner next went on to consider whether the prejudice being claimed is "real, actual or of substance", that is not trivial, and whether there is a causal link between disclosure and the prejudice claimed. She is satisfied that the prejudice being claimed is not trivial or insignificant and that there is the relevant causal link.

(iii) The likelihood of prejudice

12. The Council argued that the disclosure of the withheld information would be likely to prejudice the prevention of crime. In the case of *John Connor Press Associates Limited v The Information Commissioner (EA/2005/0005)* the Tribunal confirmed that, when determining whether prejudice would be likely, the test to apply is that "*the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk.*" (para 15). In other words, the risk of prejudice need not be more likely than not, but must be substantially more than remote.

13. The complainant contended that the Council had not provided any evidence or direct link that the provision of the requested information would prejudice the prevention of crime, nor had it provided any reason or evidence as to why it believed that fraudulent claims might be made or how they might be made. She argued that taxpayers would request refunds of over-payments all the time and that, presumably, the Council had procedures and safeguards in place to ensure that credits/refunds were only given to the correct people/companies.

14. The complainant went on to argue that 90% of councils throughout England and Wales had freely provided the requested information, many of whom openly published the data on their websites. She queried why the Council's approach differed from other councils.
15. In relation to this latter point, the Commissioner is aware that some local authorities have disclosed similar information to that requested by the complainant. She is also aware that some local authorities have refused to disclose this information when requested to do so under FOIA. She is not though in a position to determine what percentages of local authorities in England and Wales have disclosed similar information to that requested by the complainant and what percentage have not.
16. The Commissioner notes, however, that even if a significant number of local authorities have disclosed similar information to that requested in this case, it does not automatically follow that all public authorities should disclose that information. She needs to consider each individual complaint that she receives on its own particular merits, taking into account the specific circumstances of each case and the evidence and arguments presented to her.
17. The Council explained to the Commissioner that business rates liabilities were constantly changing due to the vacation of properties and changes in rateable value (the value upon which a rates bill is calculated). This generated a lot of bills which contained credits and most of these were claimed quickly. In 2015/16 the Council made 1,657 refunds totalling £22.3 million to its ratepayers. In the same year the Council billed ratepayers for £286.8 million in business rates.
18. The Commissioner was informed by the Council that it had never released the requested information into the public domain and so did not have any direct experience as to whether its release would or would be likely to lead to fraudulent claims. However, it explained that the information requested by the complainant was used as part of its security procedures to try to prevent fraud.
19. The Council confirmed that where a payment was made to a business rate account by BACS or direct debit, its policy was to pay the refund back to the sending account. However, it explained that the problem that it faced was that it only held bank account details for BACS payments for a period of 18 months because new financial systems had been implemented from 1 April 2015 and it did not have access to BACS records held in its old system.
20. The Council went on to explain that if it did not have the ratepayer's bank account details, its security procedure was to refund any money owing by

cheque. It stated that if the claimant requested the refund cheque to be made out in a name other than that on the rates account, they had to provide evidence as to why (e.g. a signed letter showing that the ratepayer had appointed the third party to deal with his account).

21. The Commissioner was informed by the Council that as soon as a credit was generated on the rates system, e.g. where a ratepayer had moved out, it created a record which would be picked up on the next weekly billing run. Consequently, all ratepayers due a refund were sent a credit note with a refund application form promptly, and if these documents were returned undelivered, the Council's rates office would try to find another address for the ratepayer and resend the credit notice and application form there. The Council confirmed that it only ever sent this information to the ratepayer or their agent. If it could not find a valid address for the ratepayer or agent, it did not send any further notices. Unclaimed credits were checked after 6 week and credit notices and refund applications re-sent to the last known address.
22. The Council explained that its refund application form, a copy of which was provided to the Commissioner, required the person making the claim to provide the ratepayer's name, the address of the rated property, the non-domestic rate account reference number and the amount of refund being claimed (which would be the value of the credit balance on the account). When a refund application form was submitted this information was used as a security check to try to ensure that the application was from the relevant ratepayer. However, the Council pointed out that this was precisely the information that the complainant was asking to be disclosed under FOIA to the world at large.
23. The Council considered that one of the problems with providing the information requested was that this would allow people, other than the relevant ratepayer, to use this information to make fraudulent claims by submitting a claim form in the name of the ratepayer. In such cases, the Council believed that it might not be obvious that someone other than the ratepayer was claiming the refund. A refund cheque could be made out in the name of the ratepayer or it could be requested that the cheque be made payable to someone else. In the case of cheques made out to the ratepayer, the Council was concerned that, in the case of fraudulent claims, banks and others cashing cheques might not check sufficiently carefully the names on cheques that were banked or cashed to prevent fraud occurring.
24. In addition, the Council explained that many companies were wound up or dissolved. Where this happened, any credit was due to the liquidator and then the creditors or the Crown, although this was not always claimed. It pointed out that once a company was dissolved, someone else could start a new company with exactly the same name and this new company could

claim any credit due to the previous company which had the same name, even though they were not entitled to this money. The Council confirmed that it could try to carry out checks with Companies House in relation to companies making refund claims but it pointed out that, as most refunds were to companies, this would prove to be very onerous.

25. As part of its arguments, the Council made reference to the decision of the First-Tier Tribunal in *London Borough of Ealing v The Information Commissioner (EA/2016/0013)* ("the London Borough of Ealing case") in which the Tribunal considered the application of section 31(1)(a) to an identical request for information to that made by the complainant in this case. In its submissions to the Tribunal, the London Borough of Ealing raised similar arguments to those raised by the Council in relation to this request, in particular that the disclosure of the requested information would be likely to increase the risk of fraudulent claims for the reimbursement of business rates.

26. In its decision, the Tribunal overturned the Commissioner's finding that section 31(1)(a) was not engaged. It stated that:

"We are satisfied that releasing information about refunds due to rate-payers (including the identity of the rate-payer, amount due, details of the property and details of the account) will make it easier for fraudsters to make false claims for rate rebates with some chance of success and therefore more likely that they will attempt to do so. That, in our view, clearly constitutes a real and substantial risk of prejudicing the prevention of crime." (para 8)

27. The Council noted that the First-Tier Tribunal in the London Borough of Ealing case, when considering the public interest test, had argued that it would be relatively easy for the London Borough of Ealing to mitigate the threat of fraud by tightening up its verification process for claims. However, the Council did not agree that it was always easy to verify that the individual or company claiming a refund was the ratepayer of the premises concerned. It noted that some of the outstanding credits were quite old and, given that new systems were introduced in 2015, it believed that it could be quite difficult to identify potential fraudulent claims related to rebates from before that time. In addition, as it had noted, companies might have been dissolved and new companies set up with the same name. Finally it pointed out that it had a very short timeframe to complete the refund process with a target to process requests within five working days.

28. The Commissioner is reticent to pass judgement on the procedures a public authority should put in place to try to prevent fraud in circumstances such as this as what procedures may be appropriate will depend on a whole range of factors, some of which will be specific to a particular public authority. However, in light of the explanation provided by

the Council of its procedures for handling requests for business rate rebates and its procedures for trying to prevent fraudulent claims, it does not appear to the Commissioner to be a relatively straightforward task for it to make effective changes to its verification procedures for refund claims so as to counteract the effect of the withheld information being placed in the public domain and available to anyone who wished to avail themselves of it.

29. As already noted, a significant amount of the information requested by the complainant is information that the Council uses as part of its security procedures in attempting to prevent fraudulent claims being made and in order to try to prevent any that are made being successful. As a consequence, the Commissioner accepts that the disclosure of the withheld information would be likely to facilitate an increase in fraudulent claims and make it more difficult for the Council to identify any such claims. Therefore, in light of this, and taking into account the findings as to the engagement of section 31(1)(a) of the Tribunal in the London Borough of Ealing case, the Commissioner is satisfied that the disclosure of the requested information would be likely to result in a real and significant risk of prejudice to the prevention of crime. She consequently accepts that section 31(1)(a) is engaged. As it is a qualified exemption, she went on to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosure.

Public interest test

Public interest arguments in favour of disclosing the information

30. The Commissioner recognises the public interest in transparency and openness in relation to the procedures and decision making of public authorities. The disclosure of the withheld information would provide the public with more information about the amounts of unclaimed business rate credits and would, more specifically, identify those companies that had to date failed to claim back credits on their business rate accounts.
31. The complainant informed the Commissioner that she did not believe that the arguments provided by the Council were a valid basis for withholding the information requested. In her view, this could be perceived as the Council retaining monies that did not belong to it, but belonged to the public, and making no attempt to trace occupiers to return their overpayments/credits.
32. The Council accepted that there was a real public interest in the disclosure of information which would increase openness and transparency in relation to the collection of taxes and the management of finances. However, it believed that this public interest could be met by the release of information about business rates credits which did not identify individual accounts, for example, by providing total figures for business rate credits.

33. The Council noted the argument that disclosure was in the public interest because release of this information would make it easier or more likely that those to whom it owed money would make a claim for that money. However, it believed that it met this need because it issued credit notes on a weekly basis so that business ratepayers could quickly claim any refunds that were owed. The Council also noted that it provide this information about rebates owing to agents acting on behalf of a ratepayer if they provide letters of authority.
34. The Commissioner has already noted the Council's explanation that all ratepayers due a refund of their business rates were sent a credit note with a refund application on a weekly basis. In addition, it had gone on to explain that if these documents were returned undelivered, its rates office would try to find another address for the ratepayer and resend the credit notice and application form to that address. It also checked unclaimed credits after 6 weeks and credit notices and refund applications were re-sent to the last known address.
35. The Commissioner also notes that the disclosure of detailed information about rate rebates owed to specific businesses would not benefit the public as a whole but only businesses that have outstanding rebates due. She assumes that businesses that are well run should be able to identify when they are owed money by the Council and be able to claim that money back relatively quickly, particularly in light of the attempts that the Council appears to make to alert them to any rebates that are owed and facilitate the claiming of those rebates. Consequently, the number of businesses potentially affected by any disclosure should not be large. In light of this and the attempts that the Council appears to make to contact businesses that are owed rebates and to get them to claim those rebates, the Commissioner views the public interest in the disclosure of the requested information as limited.

Public interest arguments in favour of maintaining the exemption

36. The Council argued that there was a strong public interest in withholding the requested information in light of the real risk of disclosure prejudicing the prevention of crime. It believed that the cost and time of dealing with fraudulent claims overrode any argument for the release of the information. It noted that any fraudulent claims would adversely affect the ratepayer and the Council, as well as increasing the work of the police.
37. The Commissioner has accepted that disclosure of the information that the complainant requested would be likely to prejudice the prevention of crime by assisting those people who wished to attempt to fraudulently claim business rate rebates. This inevitably creates a very strong public interest in favour of withholding the requested information.

Balance of the public interest arguments

38. The Commissioner acknowledges that there is some public interest in the disclosure of the withheld information to assist the public in understanding how the Council is managing its finances, although she is not convinced that it is necessary to publish detailed information about the accounts of individual businesses to achieve this. She also acknowledges that disclosure may assist some businesses in claiming refunds where they have outstanding credit balances on their rate accounts. However, she believes that this public interest in disclosure is to some extent reduced by the procedures that the Council already has in place to try to alert businesses to any outstanding credit balances.
39. The Commissioner notes that in the London Borough of Ealing case, the First-Tier Tribunal, whilst accepting that section 31(1)(a) was engaged, concluded that the public interest in withholding the information did not outweigh that in disclosure. However, as previously mentioned, she needs to ensure that she considers each case on its merits and takes account of the specific evidence and arguments that she has received that relate to the individual circumstances of that case. In this particular case, the Commissioner accepts that the Council has provided strong evidence as to how the disclosure of the requested information would be likely to prejudice its attempts to prevent fraudulent activity in relation to the claiming of refunds on its business rate accounts. In light of this, she believes that the public interest in maintaining the exemption outweighs the public interest in disclosure. She has consequently determined that the Council correctly applied section 31(1)(a) to the withheld information.

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

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