

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2016

Public Authority: Westminster City Council

Address: Westminster City Hall
64 Victoria Street
London
SW1E 6QP

Decision (including any steps ordered)

1. The complainant requested from Westminster City Council ("the Council") information about credit balances on its business rate accounts. The Council withheld the information under section 31(1)(a) and 41 of FOIA.
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 17 November 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. **This information does not appear to be available via the datasets published on your website.** 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 7 December 2015. It refused to provide the requested information on the basis that it was exempt from disclosure under section 31(1)(a).
5. The complainant requested an internal review on 8 December 2015. The Council provided the outcome of the internal review on 17 December 2015 in which it maintained its original position.

Scope of the case

6. The complainant contacted the Commissioner on 11 January 2016 to complain about the way his request for information had been handled. He specifically complained about the Council's failure to disclose the information that he had requested.
7. During the course of the Commissioner's investigation, the Council also sought to rely on section 41 as a basis for withholding the requested information.
8. The Commissioner considered whether the Council was entitled to rely on sections 31(1)(a) and 41 to withhold the requested information.

Reasons for decision

Section 31 – Law enforcement

Engagement of section 31(1)(a)

9. 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,"

10. 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

11. The Council argued that disclosure of the information withheld under section 31(1)(a) would prejudice the prevention of crime. It explained that it believed, and that it was supported by the police in this view, that releasing the requested information would have a prejudicial effect on the prevention of crime. This was because, by releasing this information to the world at large the Council would be providing people with information that would enable them to defraud the Council of significant sums of money. 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

12. 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

13. The Council argued that the disclosure of the withheld information would prejudice the prevention of crime. In the Commissioner's view, "would" means 'more probable than not', in other words, there is a more than fifty per cent chance of the disclosure causing the prejudice claimed, even though it is not absolutely certain that it would do so.

14. 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. He 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.

15. 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. He queried why the Council's approach differed from other councils.
16. 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 percentage of local authorities in England and Wales have disclosed similar information to that requested by the complainant and what percentage have not disclosed such information.
17. 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.
18. The Council informed the Commissioner that given the number and value of the credits involved, it considered that there was a heightened risk of crime as a result of disclosure of its data. It explained that:

"The Council is required under Non-Domestic Rating (Collection & Enforcement) (Local Lists) Regulations 1989 S.I.1989/1058) to bill and collect Non Domestic Rates ("NNDR"). Westminster City Council is currently responsible for the administration, billing and collection of £1.8 billion in NNDR, which equates to 8% of the national NNDR debt.

The Council issues approximately 9000 refunds annually which total approximately £165 million. The number and value of these refunds is significantly more than any other local authority due to the size of Westminster's NNDR database. The Council regularly issues individual refunds in excess of £1 million and on one occasion an individual refund exceeded £8 million."

19. The Council went on to explain that:

"Refunds are issued for a number of reasons but usually due to a business moving properties or if there is a decrease in their liability, e.g. through a rateable value reduction from the valuation office (central government). These amendments can go back over many years and amendments will be made on a daily basis, so the list of credits is not simply a list of unclaimed money."

20. The Commissioner was informed by the Council that it sent notices to a company that had a credit on its business rate account with instructions on how to claim a refund. It confirmed that it took active steps to find those to whom payments were due, including searches at Companies House for registered offices and sending reminders, including, where appropriate, care of banks or building societies. In addition, the Council explained that many companies employed accountants or Rating Agents to manage their tax affairs and the Council liaised with these third parties where express permission was provided by the relevant company.
21. The Council further informed the Commissioner that it advertised how to claim a refund in all documentation that it sent to ratepayers and that it also took out an annual advert in the local press. It said that if any company contacted the Council, it could easily request details of its account balance. It was also possible for a company to create a secure account online which would inform it of any credits that it may be due.
22. It was explained by the Council that when an individual/company claimed a refund, it required them to sign a refund application form. It confirmed that it did not have the capacity to make any further identity checks to ascertain that the individual was acting validly on behalf of the ratepayer. The Council contended that the system was self-policing in that the only people who would know that a refund was due would be those who had been actively contacted because they were directly associated with the business or company.
23. The Council went on to argue that, consequently, the disclosure of a list of the nature requested by the complainant to the world at large would directly provide an opportunity for fraudulent activity. Any person would be able to look through the list for those businesses which were owed significant sums and then set up fraudulent accounts in appropriate names and apply for repayment. The significant sums involved would clearly make it worthwhile to set up an organised fraud to take advantage of the situation and allow fraudsters to target individual accounts.
24. The Council noted that while there were some safeguards in place to try to stop bank accounts being opened in false names, it was aware that such controls could be circumvented by those bent on fraud and that

identity fraud was a significant problem in the current climate. The disclosure of the requested information would mean that it would not be able to assess which were real and which were fraudulent claims. The Council felt that it must take as many steps as possible to "shut the door" to criminals, i.e. to protect the public purse from fraud.

25. The Council confirmed that it had previously requested advice from the Metropolitan Police on this matter. It provided the Commissioner with the comments of a Detective Chief Inspector with the Metropolitan Police. He had said that:

"Publication of the data would identify accounts where money was owed that would not otherwise have been known. I would have concern as a senior police officer that these accounts would then be vulnerable to fraud. As you say large sums of money would be an attraction. In addition the data is actually used to check whether the claimant is genuine so without this safeguard the likelihood of getting away with the fraud and avoiding detection is also greater.

I have not come across this specific type of fraud personally, perhaps because councils are so careful with the data. However, my experience of crime tells me that when there is temptation and a window of opportunity, and this data would be such an opportunity, someone will take advantage. Clearly most crime is committed when there is such opportunity. With the internet this data would quickly become proliferated, increasing the likelihood of a person with the intent and knowledge coming into contact with it."

26. The Council informed the Commissioner that it had experienced first-hand attempts by individuals to obtain significant funds using information already in the public domain. In 2012 it received a notice from one of its suppliers that it was changing its bank account. The letter was on company headed paper and was signed by a director of the company. The Council duly updated its records. On investigation it was discovered that the letter was a hoax and that the bank account had been set up specifically for the purpose of committing the fraud. Fortunately before the funds were obtained from the Council, the fraud was identified.
27. The Council noted that this fraud was attempted with only the knowledge that the Council made payments to a particular company. The individuals that had instigated the fraud had made several other successful attempts across a number of authorities and had fled abroad before the police could apprehend them. Therefore, the Council believed that the disclosure of the withheld information would enable the commission of such fraudulent activity, thereby prejudicing the prevention and detection of crime.

28. The Council stated that if it were to publish the names of creditors, their addresses and the amounts that were owed, it believed that this would significantly undermine its ability to verify that the company claiming a refund was the correct company. It would give fraudsters a huge advantage in committing fraud as they would have complete knowledge of all the information required to claim refunds.
29. The Council explained that, as well as attempts to claim refunds fraudulently or attempts to divert payments by fraudsters, it had also experienced attempts by fraudsters to use the refund process to gain access to further information that would allow them to commit fraud. It provided the Commissioner with details of how fraudsters attempted to defraud one of its residents by informing her that she was due a Council Tax refund and then sought to obtain her credit card details as part of the alleged process of providing the refund.
30. The Council noted that the above fraud was attempted with little information but it believed that it was clear that if it were to disclose additional information such as the company name, address, account number and the amount owed, a company could easily be duped into believing that they were discussing a legitimate enquiry by the Council and provide bank details or other privileged information which would facilitate the commission of fraud.
31. The Council stated that it was also aware that there had been at least one fraud carried out at another London Council which involved a member of staff accessing the precise information that would be disclosed under this request and then fraudulently claiming a refund. It was of the view that if this occurred through one trusted member of staff in a small NNDR Team, it could be seen that the likelihood of prejudice caused to the prevention of crime through disclosure to the world at large would be significantly increased.
32. The Council provided the Commissioner with three National-Anti Fraud Network ("NAFN") newsletters which it noted demonstrated repeatedly the lengths fraudsters would go to in impersonating companies to perpetrate fraud. It pointed out that the newsletters contained examples of fake e-mail addresses, bank accounts that appeared genuine and fraudsters impersonating representatives from companies.
33. The Council noted that the March issue also provided key advice to avoid fraud when updating bank account details and that one element of this advice was to "be alert to individuals seeking advice about payments made or accounts to which they are paid". Whilst this did not specifically relate to refund fraud, it believed that it was easy to see the link that by giving out more information than was required in relation to payments it

made, the Council would be exposing itself to a vastly increased risk of fraud.

34. The Council argued, in summary, that it had been the subject of a number of attempts to fraudulently access payments that it made. It believed that the NNDR refund payment process had not suffered such an attempt due to the safeguards that were currently in place, i.e. nondisclosure of NNDR credit data. It further believed that should it relax these controls by publishing details of the companies that were due a refund this would significantly increase the risk of a fraud being committed and prejudice its ability to prevent crime. It also noted that disclosure would be contrary to the very clear advice it had received from the police.

35. 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.

36. 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)

37. 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 would be relatively easy for it to tighten its procedures for preventing fraud if the withheld information were to be disclosed. It pointed out that the information from the police, NAFN and various press articles that it provided to the Commissioner evidenced the extent of attempted financial fraud in this country and the lengths to which criminals would go to achieve fraud. It also noted that the volume of successful frauds in relation to credit cards showed that fraud was still being achieved even given the extensive security

arrangements put in place by the country's largest and most security conscious financial institutions.

38. The Council highlighted that fraud prevention was not just a resource issue for local authorities, although it was a key concern for Westminster City Council due to its (approximate) 9000 refunds per annum. In the Council's experience, a fraudster who was determined to commit fraud would be prepared to produce:
- Copies of its refund application form;
 - High quality false company documents;
 - False bank account details, including setting-up false bank accounts; and
 - Fake utility documentation.
39. In this respect the Council believed that it should be noted that local authorities did not have the ability to verify documentation with either the banking sector or with utility companies, as both types of organisation had security policies preventing any disclosure of data to local government. Nor did it have the resources available to private financial institutions in respect of designing and implementing fraud prevention measures. As a result, the Council maintained that non-disclosure of the requested information remained one of the most effective means of preventing fraud of this nature.
40. 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 the procedures that 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.
41. 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 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 more probably than not result in 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

42. The complainant informed the Commissioner that he did not believe that the arguments provided by the Council were a valid basis for withholding the information requested. In his 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.
43. The Council acknowledged that there was a public interest in disclosure to provide some transparency to the records that it held in respect of the administration of business rates in the borough. The information could be of interest to a very small minority of the public who might be entitled to a refund and had somehow failed to receive the City Council's notifications and reminders of their credit balance as it might enable them to exercise that entitlement. However, it believed that this was outweighed by the wider public interest in maintaining the exemption.
44. The Commissioner recognises the public interest in transparency and openness in relation to the procedures and decision making of public authorities and that the disclosure of the requested information would increase openness and transparency in relation to the Council's collection of taxes and the management of finances. 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. However, the Commissioner notes that the former more general public interest could be largely 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.
45. The Commissioner has already noted the Council's explanation that it sent notices to companies that had a credit on their accounts with instructions on how to claim refunds that were owing and also the steps that it took to locate relevant companies.
46. 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 had 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

47. The Council argued that there was a public interest in ensuring that monies from the public purse, such as rebates on business accounts, were not fraudulently claimed and also in not making fraud an easy option. In addition, the position of the genuine ratepayers could be undermined and their situation made difficult if the Council had paid out monies to a fraudulent claimant. The Council pointed out that it would put public money at risk if a fraudulent attempt to claim a refund succeeded and then the correct company came forward at a later date to ask to have their money returned. It would have no option but to refund this money, again from the public purse.
48. The Council explained that any loss would ultimately have a significant negative impact on Westminster residents in terms of the funds available to run the services that the Council provides. A significant loss from a fraud of this nature could also lead to an increase in the amount collected in Business Rates and Council Tax from the public. Further to the potential financial impact of any fraud, the Council argued that the public interest was better served in the availability of public resources (such as those of the Council and the police) which would otherwise be dedicated to the detection and investigation of fraud resulting from disclosure.
49. The Council noted that since 2013 local authorities had faced significant budget cuts and loss of resources, and therefore the most cost-effective recourse in this regard was in prevention of crime by not disclosing the requested information, rather than time, money and resource being spent in detection and investigation of crime and having to find funding to meet the cost of successful fraudulent applications, which for Westminster could easily equate to several million pounds.
50. The Commissioner has accepted that disclosure of the information that the complainant requested would 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

51. 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.
52. 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 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.
53. The Council also sought to rely on section 41 to withhold the requested information. As the Commissioner has decided that the information is exempt from disclosure under section 31(1)(a), she has not gone on to consider the application of section 41 to the same information.

Right of appeal

54. 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

55. 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.

56. 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
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