

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 February 2017

Public Authority: Cornwall Council

Address: County Hall
Treyew Road
Truro
TR1 3AY

Decision (including any steps ordered)

1. The complainant has requested information on a complete and up-to-date list of all business (non-residential) property rates data held by Cornwall Council. The council applied section 31(1)(a) to the information stating that it would prejudice the prevention and detection of crime to disclose the information.
2. The Commissioner's decision is that the council was not correct to withhold the information under Regulation 31(1)(a). The Commissioner has also considered the application of section 40(2) to the information (personal data). Her view is that this will apply to information held relating to sole traders and partnerships.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - To disclose the requested information to the complainant other than information relating to sole traders or partnerships
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 14 March 2016, the complainant wrote to the council and requested information in the following terms:

"In terms of the Freedom of Information Act of 2000, could you please provide me with a complete and up-to-date list of all business (non-residential) property rates data for your local authority, and including the following fields:

- *Billing Authority Code*
- *Firm's Trading Name (i.e. property occupant, with a Section 40(2) redaction in the case of personal names)*
- *Full Property Address (Number, Street, Postal Code, Town)*
- *Occupied / Vacant*
- *Date of Occupation / Vacancy*
- *Actual annual rates charged (in Pounds)"*

6. The council responded on 18 March 2016. It provided the majority of the information but said that information relating to whether a property was occupied or not was exempt under section 31(1)(a), section 40(2) and section 38 (Health & Safety).
7. Further correspondence followed between the parties wherein the complainant offered to narrow his request to a copy of occupied premises only. He informed the council however that in doing so his intention was to match the data with data available from the Valuation Office Agency (VOA) to determine occupancy and so effectively the same information would be available to him once the data had been matched.
8. Following an internal review the council wrote to the complainant on 19 April 2016. It said that it had decided to continue to rely upon section 31(1)(a).

Scope of the case

9. The complainant contacted the Commissioner on 11 May 2016 to complain about the way his request for information had been handled.

10. The Commissioner considers that the complaint is that the council was not correct to apply section 31(1)(a) to withhold information relating to the occupancy of the properties he has asked about.

Reasons for decision

11. 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..."

12. In order for a prejudice based exemption, such as section 31, to be engaged the Commissioner considers that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.

13. The council argues that a disclosure of the information on empty non-residential properties in the borough could be used by criminals and squatters wishing to find properties to move into. Its arguments follow a number of previous tribunal cases related to empty domestic property lists, for instance, *Voyias v Information Commissioner and London Borough of Camden Council (EA/2011/0007)* ('Voyias') wherein the First-tier tribunal found that a disclosure of lists of empty properties

would be likely to increase the likelihood of crime. The Tribunal concluded that the exemption in section 31(1)(a) applied and that the public interest rested in the exemption being maintained.

14. The Commissioner has also considered a similar case previously in a decision notice relating to Stoke on Trent Council; Decision Notice Reference FS50538789. In that case she accepted that details of empty commercial properties could be withheld under section 31(1)(a) and section 40(2) (personal data).
15. However in this case the complainant has provided the Commissioner with statistical evidence which he has collated which he considers demonstrates that a disclosure of unoccupied commercial premises does not increase the levels of crime.
 - a. He said that 66% of local authorities either already make the information available, or made it available after the receipt of an FOI request. Whilst the Commissioner has not checked whether this figure is accurate he is aware that a large number of authorities did provide the data to the complainant in response to his request.
 - b. He has made FOI requests to a number of police forces regarding the levels of crime in unoccupied commercial premises. Out of 44 police services, only two are actually able to provide data on incidents in empty commercial properties. The two who have are Thames Valley Police and North Wales Police. The remaining police services do not specifically collect such data and have no way of knowing what the incident rates are.
 - c. In North Wales, there is an average of 1,780 crimes a year in occupied properties, and 26 crimes a year in unoccupied properties that largely have to do with theft, vandalism or arson (note that squatting in commercial property is not a crime and so unrecorded).
 - d. There are about 45,000 commercial properties in North Wales and vacancies range from 15% to 25%.
 - e. The complainant therefore argues that the ratio of crimes in occupied vs empty commercial properties is almost 70: 1, compared with an actual occupied vs empty ratio of 6: 1 (ie an occupied commercial property is ten times more likely to experience an incident of crime than an unoccupied one).
 - f. He gave an example of how publication of the information he had requested has had no effect upon crime levels in specific areas

In 2015 Oxford had 4,038 commercial properties and suffered 2 cases of empty commercial property crime at a cost of £1,259. In comparison, they had 3,133 cases of crime committed in occupied business premises, at a cost of £507,956.

By comparison, Reading, with 5,659 commercial properties suffered 2 empty commercial property crimes that caused no damage at all.

Oxford refuses to publish under Section 31(1)(a) while Reading publishes regularly.

- g. He argues that the data provided are unequivocal. Incidents of crime in empty properties are exceedingly rare, and there is no variation in the incidence rate between local authorities who do publish, and those who do not publish data on empty properties.
16. The council provided the following arguments in support of the exemption applying:
- a. The disclosure of the information may facilitate or encourage criminal activity.
 - b. There is a clear public interest in protecting society from the impact of crime and avoiding damage to property.
 - c. The victims of crime can be both organisations and individuals.
 - d. The impact of crime is not confined to its immediate victims. A request for the addresses of empty properties provides the opportunity to consider the wider repercussions of crime in more detail, for example, fraud, criminal damage, illegal occupation, risk of the theft of electricity, unlawful practices, arson attacks etc. The list could be used to target properties. Buildings could be stripped of valuable materials and fixtures.
 - e. As well as the financial costs of crime, there are also social costs, criminal damage reduces the quality of life in the area; neighbours would live in fear of further crime being committed.
 - f. Information could be used by squatters and could make properties more vulnerable to illegal activities or antisocial behaviour and not be in the interests of owners/residents nearby.
 - g. It is also appropriate to take into account the cost of removing those illegally occupying properties.

- h. There are potential financial costs to local taxpayers arising from such crime.
 - i. Estate agents/letting agents advertise properties on websites, adverts etc but not all properties they advertise would indicate whether they are vacant.
 - j. The ICO previously supported Stoke-on-Trent City Council decision to use this exemption on the same data requested. https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1042144/fs_50538789.pdf
 - k. In case law, in *Yiannis Voyias v Information Commissioner and the London Borough of Camden (EA/2001/0007 23 January 2013)* the First Tier Tribunal upheld the council's decision to withhold the addresses of empty houses under section 31(1)(a).
17. It further argues that there is evidence in newspapers and opinion from police forces stating that the disclosure would be likely to heighten the potential for an increase in crime in unoccupied commercial properties. It argues that it has found evidence of arson attacks on empty commercial properties within Cornwall, which it has taken into consideration. These reports can be viewed using the following links:
 - Arson attack at a disused industrial building in Wadebridge: <http://www.bbc.co.uk/news/uk-england-cornwall-25902277>
 - Arson attacks on derelict hotels in Newquay: <http://www.bbc.co.uk/news/uk-england-cornwall-21696302> <http://www.bbc.co.uk/news/uk-england-cornwall-19124763>
 - Arson attacks on a derelict hotel in Liskeard: <http://news.bbc.co.uk/1/hi/england/cornwall/3166138.stm>
18. It argues that whilst it has taken into consideration that incidents of crime committed on empty properties may be small in number, there still remains a realistic possibility that criminal acts could be committed. Individuals may deliberately choose to target properties which are not in their own local area and disclosure might enable criminal organisations or individuals with access to a full list of empty properties to target these types of properties.
19. It says that, assuming that it is accurate, given their own caveats, the statistical evidence provided by Thames Valley Police does confirm that crimes on unoccupied properties are low. However, no conclusion can be

drawn on whether unoccupied properties are targeted more often, less often or equally to occupied properties without knowing how many occupied and unoccupied properties there are in total and this data was not provided. It further argues that the data from the North Wales police is incomplete and so no conclusions can be drawn from this.

20. It says that it knows from its own data that unoccupied properties are relatively small in number when compared to occupied properties.
21. In addition it argues that the Thames Valley area is a largely affluent area of the country where crime in general would be expected to be lower including crime related to empty properties. Cornwall, however, has been recognised as being a relatively poor area with low earnings and pockets of serious social deprivation as illustrated by the European Objective One funding received by Cornwall since 2008. This is the highest priority designation for European aid and has been targeted at areas where prosperity, measured in Gross Value Added (GVA) per head of population was 75% or less of the European average. It argues that it is generally accepted that poorer areas with social deprivation are likely to have higher rates of crime.
22. The council concluded that its decision is therefore that a disclosure of this information would be likely to prejudice the prevention and detection of crime. It argues therefore that the exemption is applicable.

The Commissioner's view

23. The Commissioner has considered the above arguments. The council is correct in its view that the decision in the Voyias case was based upon evidence which the First-tier Tribunal considered which demonstrated that a disclosure of the information in that case would lead to an increase in squatting and associated criminal activity. Following the lead of the Upper Tribunal it considered that some forms of crime are often associated with squatting, such as criminal damage. It also considered that there was slight evidence that it might increase the likelihood of 'stripping' of buildings by criminals, although it accepted that such activity was generally associated with building sites rather than residential properties.
24. The Commissioner notes that squatting within non-residential premises is not a criminal activity. Squatting in residential properties was made a criminal offence in 2012.
25. The complainant has produced an evidential basis to show that no significant prejudice can be demonstrated where the information is disclosed. He argues this by providing a statistical analysis demonstrating that in fact, a disclosure of the information would be extremely unlikely to result in increased levels of crime within unoccupied commercial premises. His argument that over 60% of local

authorities have made this information available, either proactively, or as a result of requests is also strong evidence that many local authorities are unconvinced that a disclosure of the information would be likely to increase levels of crime.

26. The complainant's evidence adds information which the First-tier Tribunal did not have before it in the *Voyias* case. Although on the slightly different matter of residential properties, the two clearly correlate and the evidence provided by the complainant is persuasive. The Tribunal in *Voyias* did not have the information which the complainant can now produce to demonstrate the levels of crime which occur in counties who do proactively disclose the information does not appear to have statistically risen where offences have been recorded.
27. The Commissioner also considers that commercial premises are more likely to have greater levels of security than most residential premises.
28. However the Commissioner also accepts that the arguments of the council do have merit. The Commissioner notes from other responses to equivalent requests (not from this council) that the media has reported that the criminalisation of squatting in residential properties may have led to an increase of squatting in commercial properties:

<http://www.telegraph.co.uk/finance/newsbysector/constructionandproperty/9658410/Squatters-take-a-commercial-break.html>
29. Further to this, squatting in commercial premises is something that squatters have considered since the criminalisation of squatting in residential properties. For instance, the Advisory Service for Squatters (ASS) provides advice on squatting in commercial properties on its website:

<http://www.squatter.org.uk/for-new-squatters/squatting-made-less-simple/>
30. Paragraph 26 of the judgement in the remitted First-tier Tribunals decision in *Voyias* states that the Tribunal were "*provided with sufficient evidence, in particular in material published by the ASS...to satisfy us that squatters do check available lists of empty properties and that the release of such a list by another council in response to a freedom of information request in the past had led to an increase in squatting*". The finding of the Tribunal in this respect carries significant weight.
31. Further to this, the council points to the decision in *Voyias* as evidence that both the Tribunal and the Commissioner have previously accepted the likelihood that a disclosure of such information would lead to an increase in squatting and criminal activity in residential properties.

32. The ASS website does indicate that lists of non-residential properties might be available on request from local authorities, and it provides legal and practical advice as to how to move in to such premises without breaking the law. Although squatting in non-residential premises is not in itself illegal, following the Upper Tribunal's judgement, squatting has specific crimes which are associated with it, such as criminal damage which therefore needs to be taken into account when considering the application of the exemption.
33. Although the complainant's arguments strongly suggest that the impact would be low, if not negligible, there is no specific level of prejudice required which must be reached in order for the exemption to be engaged. The Upper Tribunal in *Voyias* accepted that certain crimes are associated with squatting, and the ASS website provides advice to squatters regarding squatting in non-residential properties, including how to identify and enter such properties. From this the Commissioner concludes that there must therefore be a degree of prejudice to the prevention of crimes associated with squatting.
34. The Commissioner also notes the arguments accepted by the First-tier Tribunal regarding the likelihood of stripping on building sites is likely to correlate more with some (larger) non-residential properties (which might have significant air conditioning, water and heating units) than with residential properties. In the *Voyias* decision, at paragraph 35 the First Tribunal's remitted decision it found that;

"35. The guidance provided to us by the Upper Tribunal is to the effect that, just because criminals have in the past targeted building sites rather than empty properties from which to steal metal and other materials, it does not follow that they will not change the pattern of their behaviour once aware of publicly available lists of empty properties. The Council's own evidence on this type of possible criminal activity is thin. However, its case is again supported to some extent by the Appellant's own evidence. This included transcripts of conversations with certain police officers. They acknowledged that, while building sites are likely to be the most common target, knowledge that a property was empty would make it a "softer" target worth considering stripping, provided that it was also evident that it contained a certain amount of valuable material. This would include, in particular, a multiple occupancy building that was being renovated as this would include, for example, separate heating system for every flat, each including a certain amount of copper pipe and heating equipment.

35. Clearly the same arguments are applicable with larger non-residential business units. These will contain (in some instances) larger heating units and air conditioning which may provide more valuable material from a single property than a residential home would be likely to.

36. The Commissioner notes that the main press articles referring to crime on unoccupied non-residential premises by the council relate to arson attacks. In general arson attacks are more likely to be opportunistic, rather than planned. The Commissioner is not therefore persuaded that a disclosure of the information would likely to lead to potential arsonists using the information to identify relevant targets.
37. The Commissioner has therefore considered the three criteria he has outlined above as regards the application of section 31(1)(a)
- With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice which the Council envisages would be likely to occur if the withheld information was disclosed, and this relates to the interests which the exemption contained at section 31(1)(a) is designed to protect.
 - With regard to the second criterion, the Commissioner accepts that 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. He therefore accepts that there is some causal relationship between disclosure of the withheld information and the prevention of crime. Moreover, the Commissioner is satisfied that the resultant prejudice which the Council believes would occur is one that can be correctly categorised as one that would be real and of substance.
 - In relation to the third criterion, the Commissioner acknowledges that a number of other local authorities have disclosed similar information without any apparent impact on the prevention of crime. However, in the particular circumstances of this case, given the examples of crimes involving empty properties that the Council has identified in its borough (see paragraph 16 above), the Commissioner is persuaded that identification of vacant non-residential premises falling within the scope of this request represents more than a hypothetical risk of harming the prevention of crime. Rather, disclosure of this information would present a real and significant risk.
38. The Commissioner therefore considers that the exemption is engaged. The Commissioner has therefore gone on to consider the public interest test required by section 2(2)(b) of the Act.

The public interest

39. The test is whether *"in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information"*.

The public interest in the exemption being maintained

40. The Commissioner has considered the public interest arguments in favour of the exemption being maintained. The council has outlined its view that a disclosure, whilst itself in the public interest as regards economic development, would have an overall detrimental effect on the public due to the costs of repairs, court time to remove squatters from business, detrimental impact upon neighborhoods where squatting is occurring.
41. The council recognised that the aims of the complainant were laudable and recognised his arguments about the benefits which could arise from releasing the data.
42. In the Voyias case the First-tier Tribunal considered the council's public interest arguments in favour of the exemption being applied. These were as follows:

- a. The inherent public interest in the prevention of all crimes (even those where the damage caused may be limited or the chances of securing a conviction problematic);*
- b. The cost of securing properties vulnerable to squatting and repairing damage resulting from it, whether that cost falls on the private or public purse;*
- c. The cost of evicting squatters;*
- d. The potential detrimental impact on those directly affected by criminal damage;*
- e. The impact on the community in the vicinity of a squatted property;*
- f. The problems faced by Council staff having to deal with squatting and its consequences;*
- g. The impact on police resources;*
- h. The direct financial cost caused by property stripping.*

The Upper Tribunal had also identified, as potentially relevant factors, the possibility that insurance premiums would rise in an area where squatters were active and that house prices would fall. However, no evidence or submissions were presented to us on either of those issues and we have not therefore taken them into account."

43. The Tribunal then went through each point identifying the strength to each part of the above. It placed particular strength on the arguments surrounding the inherent public interest in crime prevention, which it described as substantial (albeit that evidence had been put before it that in general squatters tried to reduce the damage they caused to a minimum).
44. It also placed a significant weight on the costs of repair and security stating:

"We think that seriously underestimates the problem property owners face and that these costs may readily be anticipated as satisfying the Upper Tribunal test of being a realistic possible consequence of squatting and the damage frequently accompanying it."

45. It also placed some degree of weight on eviction costs. It placed little weight on the remaining factors however.
46. Additionally for the reasons outlined above, the Commissioner must give more weight to the possibility of stripping occurring, and the potential for insurance claims being made following this. As noted by the Tribunal, this may result in insurance premiums being raised for particular areas where a number of such crimes have occurred.

The public interest in the information being disclosed

47. The central public interest in the information being disclosed relates to the complainant's intended usage of the information. Whilst the Commissioner is not able to take into account the private interests of the applicant in a decision regarding the public interest he is able to take into account the wider consequences of a disclosure of the information, and in this case the complainant's intended usage of the data would have wider benefits to businesses and communities.
48. The complainant runs an organisation which, working with other organisations, hopes to provide free data to business users on empty business properties. Effectively he wishes to provide statistical data and advice on the viability of types of businesses in particular properties within particular areas. The complainant says that this is partly funded by a grant from EU Open Data Incubator to develop this service.
49. In his request for review the complainant stated to the council:

"I would ask that you consider that the public interest in economic development and improving opportunities for independent businesses and entrepreneurs far outweighs any concern that the release of data which can identify empty business properties may cause crime.

Unemployment and economic deprivation are often key to reducing the potential for crime. Our intention is to support local economic development initiatives through the use of these data."
50. Clearly such information will be of use to business owners and would aid in the economic development (and redevelopment) of an area. The council itself recognises the public interest in the information being made available to business users in this manner.
51. The Commissioner therefore recognises a strong public interest in the aims of the complainant's business.

52. Additionally, outside of the direct intentions of the complainant there is a public interest in this information being available. Even where business owners are not intending to use the complainant's service a list of vacant commercial premises within an area will be of use to those looking to develop their businesses.
53. The complainant has also pointed out research: '*British High Streets: from Crisis to Recovery? A Comprehensive Review of the Evidence*' by Neil Wrigley and Dionysia Lambiri of the University of Southampton on behalf of the Economic & Social Research Council which argues that there is a lack of open data on town centre/high street structures which affects research into the area as well as local government's response to retail issues on high streets. The complainant argues that this request is a step towards adding open data on this available for free. The research (at page 4) states:

"In part, these difficulties reflect the dominance of proprietary research on topics which have considerable commercial value, and its consequences in terms of a resulting lack of visibility of the true spectrum of available research and findings. But, more widely, it also reflects: the long slow demise of publically accessible open data'; the rise and importance of 'commercial data' on town centre/high street structures, and the constraints that having to fund use of commercial data imposes on research."

Conclusions

54. When considering the public interest arguments in support of an exemption applying, the Commissioner can take into account the, severity and likelihood of prejudice identified, and this in turn will affect the weight attached to the public interest arguments for the exemption being maintained.
55. The Commissioner has taken the above into account. She considers that the complainant's arguments in respect of the statistical evidence is relatively strong, particularly when combined with the fact that so many other local authorities proactively provide this information, or at the least have provided it in response to the complainant's requests. She considers that the fact so many other authorities disclose this data is a strong indicator that the impact and the prejudice which the council considers will occur is not so great as to cause concern amongst other authorities to the extent that they withhold the requested data.
56. The Commissioner notes that there are already commercial websites which can be searched for details of commercial properties for rent or purchase which include maps (and sometimes photographs) of the sites. Whilst these do not specify whether the sites are vacant or not a motivated individual would be able to make checks on a property to

identify whether that is the case or not. The ASS website identifies the need for research on commercial properties as a key point to squatters prior to planning to move in.

57. Similarly organised stripping gangs already have the opportunity to search these sites and to identify a specific property or area armed with a list of the commercial properties which are available for rent or purchase. It would be relatively easy therefore for them to identify properties then visit them to establish whether they are vacant or not prior to any attempt at breaking into the property to strip it of valuable material. The Commissioner considers that gangs would be likely to visit a property first prior to breaking in in order to check on security arrangements in any event. Although commercially advertised properties may not advertise whether the properties are vacant or not the task of establishing whether the properties are vacant would simply become part of the reconnaissance which they would be likely to do to establish the security arrangements on a property they have identified. Withholding the requested information would not therefore prevent such crime occurring as the opportunities already exist for this. A list might however increase the numbers of properties which would be identifiable as potential targets.
58. As stated, there is a balance to be made between the prejudice identified by the council and both Tribunals in the *Voyias* cases and the public benefits identified. On the one hand the council has recognised the benefit such a service would bring, on the other it has strong concerns about the crime which providing a list might result in.
59. The Commissioner must make her decision based upon the evidence presented to her. In this case the complainant has provided statistical evidence that the concerns of the council are ill founded, or at least, not as likely as it considers it to be. The Commissioner also notes that the opportunity to identify vacant commercial premises with a view to squatting, or with a view to stripping clearly already exists. This clearly weakens the council's arguments that the information should be withheld on the basis of the prejudice to the prevention and detection of crime.
60. Effectively, the 'proof of the pudding' is that many other authorities have disclosed the information without a noticeable resultant rise in crime, or in criminal activity associated with squatting or stripping.
61. Whilst there is always a possibility that the lists may be used for such purposes, the evidence from the complainant and from the fact that so many authorities continue to disclose the information, is that the likelihood, severity, and or frequency of such prejudice must be fairly low to local authorities to actively publish the information. When borne in mind against the economic advantages such a disclosure might bring

about the Commissioner therefore considers that the public interest in the disclosure of the information outweighs the public interest in maintaining the exemption.

62. The Commissioner's decision is therefore that the council was not correct to apply section 31(1)(a) in this instance.

Section 40

63. Although this was not an issue raised by the council in defence of its position at internal review the Commissioner has considered the likelihood that a disclosure of some of the information in question would potentially disclose personal data under conditions failing to comply with the requirements of the Data Protection Act 1998 (the DPA), and in particular any of the data protection principles.

64. The complainant in this case sought to exclude data protection issues by stating within his request that:

"I appreciate that properties owned / rented by individuals are personal information and such personal data (i.e. the Firm's Trading Name) would be excluded from my request in terms of Section 40(2) of the Freedom of Information Act 2000. In such cases, please provide the remaining information with the Firm's Trading Name either blank or listed as 'individual'."

65. For its part the council did not respond directly to this in its notice or review, but instead sought to rely upon the application of section 31. In her role as regulator of the DPA however the Commissioner must also ensure that her decisions do not result in personal data being disclosed in breach of the data protection principles purely on the grounds that a public authority has failed to address or recognise where that may be the case. She has therefore considered whether any data protection issues would be raised by a disclosure of the information in this case.

66. Section 40 states in the relevant part:

"(2) any information to which a request for information relates is also exempt information if –

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or second condition below is satisfied

(3) the first condition is –

- (a) *in a case where the information falls within paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene –*

i. any of the data protection principles, or ..."

Is the information personal data?

67. Personal data is defined in the Data Protection Act 1998 as data which relate to a living individual who can be identified from those data, or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
68. The Commissioner considers that following the Tribunal's decision in the case of England & L B of Bexley v Information Commissioner (EA/2006/0060 & 0066) ('Bexley') the disclosure of addresses alone (ie without the associated details of the owner of a property) can amount to personal data:

"It is the Tribunal's conclusion that the addresses are personal data in the hands of the Council because the addresses are held with ownership details from the Council Tax register. The address alone, in our view, also amounts to personal data because of the likelihood of identification of the owner (or the individual who inherits from a deceased owner), as we have concluded above. In our view this information amounts to personal data because it says various things about the owner. It says that they are the owner of property and therefore potentially have a substantial asset. It also raises issues and questions about why the owner has left the property empty and it seems to us that that very question in itself is capable of being personal data. The key point is that it says something about somebody's private life and is biographically significant. It is not as Mr Choudhury suggests the address that is the focus or the property, that analysis is based upon the question being asked, and not upon what meaning or meanings the data may have in the context of someone's private life. Does the fact that Mr X owns a property potentially worth several tens of thousands of pounds say something about Mr X? In our view it does, and the owner is the focus of that information."

69. The Tribunal's decision was that the addresses of empty properties not owned by individuals should be released together with the names of those owners. It decided however that the information on individuals should be withheld.

70. In this case the complainant has only asked for details of the property occupant and the Firms trading name rather than the owner (although in many cases of smaller business these may well be the same individual). He also stated that this section of the request could be left blank if the council considered that the information may be personal data subject to section 40(2). However the decision in Bexley is that the address alone can still be considered to be personal data where the occupier or owner is an individual for the purposes of the DPA.
71. The Commissioner considers that disclosing the addresses of properties owned or leased to individuals (such as sole traders) will therefore be personal data even without the corresponding identification of the individuals.

The addresses

72. The Commissioner notes that in response to the request the council disclosed all of the information requested other than details of whether the properties were vacant or not. The addresses of the properties have therefore already been disclosed by the council.
73. Effectively therefore the only additional information which would be disclosed is the information that a particular property is currently vacant, and this information can be associated with the relevant address. Following on from the view that addresses are personal data however the Commissioner considers that information on whether the property is vacant or not provides some degree of information on the occupant/owner. The Commissioner therefore considers that this information is also personal data when combined with the address of the property. It is this aspect which the Commissioner has considered further below.

Would disclosure breach any of the data protection principles?

74. The relevant data protection principle in this case is the first data protection principle. This states that:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."

75. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.
76. The issue, insofar as this request is concerned, is whether disclosing the fact that properties owned or leased by individuals are vacant would be fair, taking into account their reasonable expectations and what the council told them the information would be used for at the time that that information was obtained from them.

Reasonable expectations of the data subject

77. When considering whether a disclosure of personal information is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
78. The information is obtained from individuals as part of their liability assessment for business tax rating purposes. Essentially the information allows the council to calculate the amount of tax which the business needs to pay for the property. Liability may be dependent upon a number of factors, including whether the property is unoccupied or is being used for exempt or discounted purposes (such as charitable purposes).
79. The Commissioner understands that the VOA publishes information on commercial property values, including details of the addresses of commercial properties (however there is a charge for some information). Nevertheless information on the addresses (but not the occupancy) of information is otherwise available to the public.
80. The Commissioner recognises that the tax affairs of individuals and legal entities are subject to a duty of confidence under the Commissioners for Revenue and Customs Act 2005. There is a strong degree of expectation of taxpayer confidentiality surrounding the payment of taxes to the HMRC and agents acting on its behalf. However in the case of business rates on properties much of that information is already ascertainable by members of the public, and so the issue is a relatively grey area.
81. The Commissioner considers that the provision of addresses by the council in this list does not add anything further to the public than is already available from the VOA. As such he considers that individuals would understand that although they are providing the information to

the council for the purposes of business rates liability, address information is already in the public domain.

82. As regards the occupancy of a property, in the case of many empty residential properties it may generally be difficult to identify that a property is empty without careful scrutiny. However whether a commercial property is occupied would be likely to be much easier to establish. Vacant commercial properties such as retail units may have shutters up, and if not people can look through the window to see they are empty. Larger buildings such as industrial properties or office blocks may be signposted as for rent or sale. In any event, the lack of any parked cars or people entering or leaving the building during normal business hours would also make this fact relatively easy to establish. Pubs and restaurants may have shutters up and otherwise it would be clear that they are not open for business.

Consequences of disclosure

83. The main consequence of disclosure insofar as this information is concerned is that the detail that the property is vacant would be put into the public domain. This raises the potential for the crimes associated with squatting to occur in those properties as identified in the Voyias case. Additionally there is an associated risk of criminal gangs using the information to identify targets for 'stripping'. To this extent a disclosure of the information might be considered to create a potential for detriment to the individuals concerned.
84. There are also the associated costs to the individual of taking measures to ensure properties are secure and sound, and to evict any squatters who do move into premises. In the Voyias case the Tribunal also identified the potential for insurance premiums to rise and the associated costs of this under such circumstances.
85. However the Commissioner has noted above that the complainant's argument is that where other authorities have disclosed the same information previously, his statistics would suggest that there is no significant increase in crime. This is based on limited information however as the majority of police forces do not record data relating to unoccupied commercial premises specifically.
86. The Commissioner considers that the argument that it is relatively easy to establish whether anyone is occupying commercial premises substantially weakens any arguments that personal detriment will occur purely as a result of the disclosure of this information, particularly as other authorities do disclose and publish this sort of information. However this will not always be the case as mentioned previously.

87. The Commissioner accepts however that a disclosure of a list of such properties might provide a 'shopping list' for interested parties, some of whom may have adverse intentions or intend to squat.
88. As noted above, the Commissioner also accepts that a disclosure of the information would to an extent provide information about the individual which would create an intrusion into his private life.

Balancing the rights and freedoms of the data subject with the legitimate interest in disclosure

The legitimate interest of the public

89. The complainant has outlined his reasons for wanting the information, and the Commissioner has above demonstrated that there is an overall public benefit to be obtained by a disclosure of the information as open data would enable his, and other organisations to make use of that information in order to provide advice to businesses on where properties were available to purchase or rent.
90. As stated, the complainant has also highlighted independent research which specifically identifies that there is a scarcity of information available on unoccupied business premises, and he argues that this information would allow researchers much greater access to the information they might need. Clearly more statistical data would allow more informed decisions, policies and responses to be made to issues such as the increase in vacant properties on some high streets.
91. The Commissioner cannot take into account the specific reasons why the complainant wishes the information as FOI requests are intended to be 'applicant blind'. However as regards the legitimate interests of the receiver of the information, the receiver would be the public as a whole. She can therefore take into account the general public benefits which will occur through a disclosure of the information, such as those highlighted by the complainant as his intentions with this information.

Unwarranted intrusion into the rights of the data subjects

92. If disclosed, the information would put into the public domain that the individuals' premises were currently vacant. The Commissioner has highlighted above that in the Voyias case the Tribunal considered in the case of residential properties that this might lead to the increased potential for criminal activity affecting and/or damaging the properties of the individuals. It may also lead to greater costs for them in terms of insurance and legal costs to evict squatters.

93. The Commissioner considers that it should not be the case that information provided for one reason to an authority purely in order to allow the authority to calculate their business rate liabilities is subsequently disclosed to the outside world, and as a result of that disclosure the risk of detriment being caused to the individual rises. Given the Tribunal's findings in the Voyias case this cannot be overlooked, albeit that the complainant's statistics appear to demonstrate that the effect of disclosure may have rested on little in the way of statistical evidence, and more on the opinions of witnesses.
94. Additionally a disclosure would provide some information about the current standing of the individual – that they own or rent a substantial asset which is currently not being used. This is a general loss of privacy which they would not otherwise expect to occur.
95. The Commissioner considers that the detriment to individuals, and the potential detriment provides a strong weight in favour of the information being withheld in this case. The individuals would have no expectation that the information regarding the occupation of their business premises would be disclosed by the council in response to an FOI request.
96. In conclusion, when weighing up the competing factors the Commissioner has decided that the legitimate interests of the public in having access to the information is unwarranted when balanced against the prejudice to the legitimate interests of the individuals.
97. For this reason the Commissioner considers that a disclosure of the information would not comply with the first data protection principle. The Commissioner has therefore applied section 40(2) in this instance.
98. The Commissioner therefore considers that the council should withhold information where it relates to a sole trader or a partnership.

Right of appeal

99. 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

100. 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.

101. 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

Gerrard Tracey
Principle Policy Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF