

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 July 2024

Public Authority: Oldham Metropolitan Borough Council
Address: Civic Centre
PO Box 33
West Street
Oldham
OL1 1UG

Decision (including any steps ordered)

1. The complainant has made a six-part request for information about bona vacantia estates passed to the Duchy of Lancaster. Oldham Metropolitan Borough Council ("the council") confirmed information was held, but withheld it under the exemption provided by section 31(1)(a) (prejudice to the prevention or detection of crime) of FOIA.
2. The Commissioner's decision is that in respect of parts [2] and [6] of the request, the council is entitled to withhold the information under section 31(1)(a). However, the Commissioner has found that the council is not entitled to refuse the remaining parts of the request under section 31(1)(a).
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation:
 - Disclose the information sought by parts [1], [3], [4], and [5] of the request.
4. The council must take these steps within 30 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 30 November 2023, the complainant wrote to the council and requested information in the following terms (numbering in square brackets added by the Commissioner):

“...please can I have the following information relating to those whose bona vacantia claims were passed to the Duchy of Lancaster between 2020 and 2022.

 - Name of the person. [1]
 - Value of estate/assets. [2]
 - Date of birth. [3]
 - Date of death. [4]
 - Location of death. [5]
 - Residential address. [6]”
6. The council responded on 11 December 2023. It stated that the information was held but refused to disclose it under section 31(1)(a).
7. Following an internal review the council wrote to the complainant on 18 January 2024. It stated that:
 - All of the requested information was withheld under sections 31(1)(a) and 41(1) (information provided in confidence).
 - The requested information about “Residential address” was also withheld under section 40(2) (personal information).

Scope of the case

8. The complainant contacted the Commissioner on 22 January 2024 to complain about the way their request for information had been handled, and specifically that the council was not entitled to withhold the information.
9. During the course of investigation, the council withdrew reliance upon section 41(1).
10. The scope of the following analysis is whether the council is entitled to withhold the information under section 31(1)(a). For the reasons given in this decision, he has not considered it necessary to consider the

council's reliance upon section 40(2), which was only applied to part [6] of the request.

Reasons for decision

Context

11. When an individual dies intestate (that is, without a will), and without known relatives who may have a right to the estate under intestacy rules, their estate becomes 'bona vacantia' ('vacant goods'), which is the term given to otherwise ownerless property.
12. However, in English and Welsh law it is not permitted for property to be legally ownerless; title to property must belong to an identifiable person or body. Therefore, if legal ownership to a deceased's estate cannot be established by anyone else, title to this estate will either pass to:
 - The Duchy of Lancaster, where the address of the deceased was within the County Palatine (all or parts of the modern administrative counties of Lancashire, Greater Manchester, Cheshire, Cumbria and Merseyside)¹; or,
 - The Duchy of Cornwall, where the address of the deceased was within the modern administrative county of Cornwall, or the Isles of Scilly²; or,
 - The Crown, represented by the Government Legal Department ("GLD") where the address of the deceased was based elsewhere in England and Wales³.
13. When an estate passes to either of the duchies, it is administered by The Solicitor for the Affairs of the Duchy of Lancaster, or The Solicitor for the Affairs of the Duchy of Cornwall, respectively. Searches for next of kin, and any claims by such, are handled by a law firm which acts for both duchies⁴.
14. When an estate passes to the Crown, it is administered by the GLD. Searches for next of kin, and any claims by such, are handled by the Bona Vacantia Division of the GLD. The GLD also maintains a public

¹ <https://www.farrer.co.uk/campaigns/bona-vacantia/deceased-individuals/>

² <https://www.farrer.co.uk/campaigns/bona-vacantia/deceased-individuals/>

³ <https://www.gov.uk/guidance/refer-a-deceased-persons-estate-to-the-treasury-solicitor>

⁴ <https://www.farrer.co.uk/campaigns/bona-vacantia/>

'Unclaimed estates list', which details unclaimed estates for a time limit of 30 years. The list contains a variety of biographical detail about the deceased, including their forename, surname, date of birth, date of death, and place of death.⁵

15. When an estate passes to either of the duchies or the GLD, the Commissioner understands that these will accept claims to an estate up to 12 years from the date that the administration of the estate was completed, based on the terms of the Limitation Act 1980⁶. The Commissioner further understands that the duchies and GLD will consider claims up to 30 years from the date of death, with discretionary payments made from a 'late claims fund' operated by each.
16. For those unclaimed funds held by the GLD, the monies become part of the Consolidated Fund managed by the Treasury for public spending. For those unclaimed funds held by the duchies, the monies are retained by the duchies and used for purposes such as supporting charity work^{7 8}.

Section 31 – Law Enforcement

17. Section 31(1) states:

"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"

18. Section 31 is a prejudice based exemption and is subject to the public interest test. This means that not only does the information have to prejudice one of the purposes listed, but that it can only be withheld if the public interest in the maintenance of the exemption outweighs the public interest in disclosure.
19. In order to be engaged, the following criteria must be met:
 - 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 (in this case, the prevention or detection of crime); and,

⁵ <https://www.gov.uk/guidance/make-a-claim-to-a-deceased-persons-estate>

⁶ <https://www.legislation.gov.uk/ukpga/1980/58/contents>

⁷ <https://duchyofcornwall.org/bona-vacantia.html>

⁸ <https://www.duchyoflancaster.co.uk/about-the-duchy/duties-of-the-duchy/bona-vacantia/>

- 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 alleged resultant prejudice must be real, actual or of substance; and,
- it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. 'would be likely' to result in prejudice or 'would' result in prejudice.

The applicable interests

20. The Commissioner must first consider whether the arguments provided by the council relate to the relevant applicable interests, namely the prevention and detection of crime.
21. The withheld information in this case is all that sought by the request. This information represents details of bona vacantia estates passed to the Duchy. This includes biographical detail of the deceased, and the value of their estate.
22. The council argues that disclosure of this information may lead to criminal activity, through enabling identity theft (using the deceased's details) and fraudulent claims on the deceased's estate.
23. The council also argues that the disclosure of the deceased's last known residential address may reveal that such properties could be vacant. This may lead to criminal activity such as vandalism, squatting, burglary, arson, identity fraud, and the use of the property for such activity as cannabis farms. The council also notes that, whilst the address may not now be vacant (such as through being sold by the Duchy, or, if it was a rented property, having new tenants), the disclosure of the address may lead to new residents being put at the risk of harm through their residence being targeted.
24. The Commissioner recognises that the disclosure of information about individuals (living and deceased) may facilitate a range of criminal activity. In particular, identity theft is of such a public concern that the Commissioner has himself published guidance on how individuals can protect themselves from it⁹. The Commissioner is also aware that the disclosure of potentially vacant addresses can also facilitate criminal

⁹ <https://ico.org.uk/for-the-public/identity-theft>

activity being targeted to those properties, as illustrated by the Commissioner's own guidance on section 31(1)(a)¹⁰.

25. Having considered the above, the Commissioner is satisfied that the harm specified by the council relates to the prevention and detection of crime.

The nature of the prejudice

26. Having concluded that the harm specified by the council properly relates to the exemption specified, consideration of whether there is a causal relationship between the disclosure of the withheld information and the prejudice that section 31(1)(a) is designed to protect is also necessary.
27. The disclosure must at least be capable of harming the interest in some way. As outlined above, the council considers that disclosure of the information would be likely to prejudice the prevention and detection of crime, as disclosure of the requested information could facilitate a range of criminal activity.
28. Based on the council's arguments, and the Commissioner's wider awareness of the matters raised, the Commissioner is satisfied that this prejudice is real and of substance, and that there is a causal relationship between the disclosure of the withheld information and the prejudice which the exemption is designed to protect.

Likelihood of prejudice

29. It is not sufficient for the information to merely relate to an interest protected by section 31(1)(a). Disclosure must also be likely to prejudice those interests, with the onus being on the public authority to explain how the prejudice would arise and why it is likely to occur.
30. The council has confirmed that it considers the disclosure of the information 'would be likely' to result in harm to the applicable interest at section 31(1)(a), for the reasons outlined above.
31. The Commissioner has considered these reasons, and accepts that disclosure of the information in this case would create a real and significant risk of the criminal activity described. He is therefore satisfied that section 31(1)(a) is engaged in respect of the withheld information.

¹⁰ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-31-law-enforcement/sections-31-1-a-f-criminal-and-civil-law/>

32. As section 31 is a qualified exemption, the Commissioner must now consider whether in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure.

Public interest test

Public interest arguments in favour of maintaining the exemption

33. The council argues that there is a strong public interest in reducing the possibility of criminal activities. In particular, the council argues that the disclosure of addresses would increase the likelihood of those properties being targeted by criminals, and that this action would place any new residents at risk of harm.
34. The Commissioner also considers that the disclosure of the value of unclaimed estates would increase the likelihood of fraudulent claims being made against those estates. Whilst this has not been addressed by the council in its arguments, the Commissioner has addressed similar information in decision notice FS50532521¹¹, which considered whether the value of a bona vacantia estate held by the Treasury Solicitor's Department (now the GLD) was exempt under section 31(1)(a). In that case, the Commissioner noted that there was compelling evidence that the disclosure of the estate value may facilitate probate fraud, and that the disclosure of such information would not in itself support legitimate claims being made. Consequently, the Commissioner found the public interest to be strongly weighted in favour of withholding the information under section 31(1)(a).

Public interest arguments in favour of disclosing the information

35. The council acknowledges that there is a public interest that bona vacantia estates passed to the Duchy are visibly published, as this may enable unknown next of kin to make a legitimate claim.
36. The Commissioner agrees with the council that this represents a wide and compelling public interest in disclosure. The Commissioner perceives that there will be a range of reasons why the executors of an estate are not able to easily identify next of kin, such as because of estrangement, relocation, or the loss or destruction of family records. In such a situation, the disclosure of information about the estate may increase the likelihood of next of kin being identified.

¹¹ https://ico.org.uk/media/action-weve-taken/decision-notice/2014/1021410/fs_50532521.pdf

37. As noted above, the Commissioner is aware that for those bona vacantia estates which are passed to the GLD (rather than either of the two duchies), a public list is maintained which contains significant detail of the deceased and their estate - with the exception of residential addresses and estate values - so as to facilitate claims by next of kin.
38. It is reasonable for the Commissioner to consider that, if at least some of the information requested in this case is routinely published by the GLD so as to facilitate legitimate claims by next of kin, then there is a demonstrable public interest in disclosure which must be applied to some of the information in this case.
39. The Commissioner is also aware that there is an increasing public awareness and debate about the nature of bona vacantia, and the way in which it functions to transfer unclaimed estates to either the duchies or the Crown. In particular, the Commissioner understands that there is ongoing debate about the basis on which estates are passed to the Duchy, and the way that those resultant funds are used by the Duchy to support charitable and maintenance activities^{12 13}. The Commissioner's view is that there is a valid public interest in disclosure of information about those estates which are being passed to the Duchy in order to inform this debate.

The balance of the public interest test arguments

40. When balancing the opposing public interests, the Commissioner must decide whether it serves the public interests better to disclose the requested information or to withhold it. If the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure, the information in question must be disclosed.
41. In respect of parts [2] and [6] of the request, which seek the "residential address" of the deceased and "Value of estate/assets", the Commissioner recognises that there is an inherent public interest that information that could facilitate criminal activity is subject to appropriate protection. As noted above, the Commissioner considers that the risks (of criminal activity) associated with the disclosure of this information is real and substantiated, and that neither type of information are published in the 'Unclaimed estates list' maintained by the GLD.

¹² <https://www.theguardian.com/uk-news/2023/nov/25/kings-estate-transfer-cash-ethical-funds-bona-vacantia-revelations>

¹³ <https://www.bbc.co.uk/news/uk-67519147>

42. It is also reasonable for the Commissioner to consider that information about the value of an estate is likely to be of limited relevance to assisting legitimate claims from next of kin, as opposed to biographical details of the deceased such as their name, date of birth, place of birth, and so on.
43. However, in respect of parts [1], [3], [4] and [5] of the request, the Commissioner perceives that there is a strong public interest that this type of information is subject to transparency, as this may enable next of kin to make a claim. It is pertinent for the Commissioner to note that bona vacantia estates passed to the Duchy do not appear to be subject to the same transparency as those passed to the GLD, which, as noted above, maintains a public list detailing biographical detail about the deceased so as to enable next of kin to make a claim.
44. It is reasonable for the Commissioner to consider that, if the GLD considers there to be a sufficient public interest in the publishing of this information, so as to facilitate legitimate claims, then the same logic can be applied to the information here.
45. It is also reasonable for the Commissioner to consider, that if the GLD is able to ensure that only legitimate claims are accepted, then the Duchy should likewise be able to do the same. The Commissioner notes that the GLD expects a high standard of documentary evidence to support a claim, as explained on its webpages, and the Commissioner is not aware of any reason why the Duchy would not be able to apply the same rigour in considering any claims made to it.
46. Lastly, the Commissioner is aware that the bona vacantia process as it relates to the Duchy is a matter of public awareness and debate. Transparency about those estates subject to it, and which have passed to the Duchy, would therefore inform this.
47. Having given due consideration to all the arguments set out above, the Commissioner has concluded the following:
 - In respect of the information sought by parts [2] and [6], the public interest is weighted in favour of maintaining the exemption.
 - In respect of the information sought by parts [1], [3], [4], and [5], the public interest is weighted in favour of disclosure.
48. As the Commissioner has found that the information sought by part [6] of the request is exempt under section 31(1)(a), he has not considered whether it is also exempt under section 40(2).
49. Therefore, the Commissioner's decision is that in respect of parts [2] and [6] of the request, the council is entitled to withhold the information

under section 31(1)(a). However, the Commissioner has found that the council is not entitled to withhold the remaining information, and therefore orders its disclosure in paragraph 3 of this notice.

Right of appeal

50. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

51. 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.
52. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Daniel Perry
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