

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 December 2024

Public Authority: City of London

Address: Guildhall
PO Box 270
London
EC2P 2EJ

Decision (including any steps ordered)

1. The complainant submitted a request to the City of London (CoL) seeking a list of ratepayers (limited companies and corporates only and not sole traders/individuals) that had been awarded Expanded Retail Relief for a specified period. The CoL refused the request on the basis of section 12(1) (cost limit) and section 31(1)(a) (law enforcement) of FOIA.
2. The Commissioner's decision is that the CoL is entitled to refuse to comply with the request on the basis of section 12(1), and that even if the request could be processed within the cost limit, such information would be exempt from disclosure on the basis of section 31(1)(a) of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. The complainant submitted the following request to the CoL on 18 April 2024:

"Under the freedom of information please provide me a list of ratepayers that were awarded Expanded Retail Relief for the period 1st

April 2020 – 31st March 2021. I am only interested in Limited Companies and Corporates and not sole traders/individuals.”

5. The CoL responded on 16 May 2024 and explained that the information it held falling within the scope of the request was exempt from disclosure on the basis of sections 31(1)(a) (law enforcement) and 41(1) (information provided in confidence) of FOIA.
6. The complainant contacted the CoL on the same day and asked it to conduct an internal review of this refusal. He questioned the CoL's position that disclosure of the requested information would lead to fraud or criminal activity.
7. The CoL informed him of outcome of the internal review on 6 June 2024. The CoL explained that from his comments it understood he was challenging the application of section 31(1)(a) of FOIA and therefore the review had focused on that exemption. The internal review concluded that the requested information was exempt from disclosure on the basis of section 31(1)(a) of FOIA, but did not consider the application of section 41(1).

Scope of the case

8. The complainant contacted the Commissioner on 25 June 2024 in order to complain about the CoL's refusal of his request.
9. During the course of the Commissioner's investigation the CoL revised its position. It explained that it was now of the view that to process the request would take more than 18 hours and therefore it was entitled to refuse to process the request on the basis of section 12(1) of FOIA. The CoL explained that even if the request could be processed within the cost limit it remained of the view that the requested information would be exempt from disclosure on the basis of section 31(1)(a), albeit that it no longer sought to rely on section 41(1) of FOIA. The CoL also informed the complainant of this revised position.
10. The complainant confirmed to the Commissioner that he disputed the CoL's position that complying with the request would exceed the cost limit, and remained of the view that the information was not exempt from disclosure on the basis of section 31(1)(a) of FOIA.

Reasons for decision

Section 12(1) - cost limit

11. Section 12(1) of FOIA states that:

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

12. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £450 for local government bodies such as the CoL. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12 effectively imposes a time limit of 18 hours.

13. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) of the Fees Regulations states that an authority can only take into account the costs it reasonably expects to incur in:

- determining whether it holds the information;
- locating the information, or a document containing it;
- retrieving the information, or a document containing it; and
- extracting the information from a document containing it.

14. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be 'sensible, realistic and supported by cogent evidence'.¹

15. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether, despite this being the case, there is a public interest in the disclosure of the information.

¹ Paragraph 12 of EA/2007/0004.

The CoL's position

16. The CoL explained there were 1982 accounts that were granted the Extended Retail and Hospitality Relief. It explained that in order to locate the information sought by the request, i.e. the names limited to companies and corporates but not sole traders/individuals, it would have to carry out a manual review of the information to remove any information that is not 'a corporate or limited company' from the list. This is because it did not undertake a check at the point a business name is added to the database to confirm if the business is a limited company, a corporation, an LLP or sole trade. The CoL explained that it would take an average of 1 minute to check each name and therefore it would take 33 hours work (or 1982 minutes) to process the list. The CoL acknowledged that for many of the entries such enquiries would take less than a minute, so the time allowed, i.e. 1 minute per name, for the checks is considered a reasonable average which allows for more detailed and in depth enquiries where required.
17. The Commissioner sought clarification from the CoL as to whether the average of 1 minute per entry was based on a sampling exercise.
18. The CoL confirmed that it had undertaken a review of ten accounts to establish if their details were publicly available. In instances where it was not immediately obvious whether the details were publicly available a further check was then completed using information held by Company's House. Of the ten accounts reviewed, two were not listed on Company's House and therefore were considered to contain personal details. A further two accounts had a company name and a different trading name (so the name on any bills would be different from any publicly available information). The details for the six remaining accounts were all in the public domain. The CoL explained that a review of these ten accounts took almost exactly 10 minutes.

The complainant's position

19. The complainant disputed the CoL's position that it would take 33 hours to separate the 1982 accounts into a list of companies/corporates and a list of sole traders/individuals.
20. Moreover, the complainant argued that if it was time consuming to clarify whether certain entries were a company/corporate or a sole trader/individual, then it could simply have provided him with any entries that ended 'ltd' or 'plc'. In his view it would clearly be easy, and in no way time consuming, to locate such entries on a spreadsheet of the 1982 companies.

The Commissioner's position

21. It is important to note that the Commissioner's remit in decision notices is limited to considering whether a public authority has met its obligations under FOIA in relation to a request that has been submitted to it. The Commissioner cannot consider, or reach a decision, on a future or hypothetical request that could be submitted to a public authority.
22. In this case, this means that the decision notice is limited to considering the request of 18 April 2024 which sought the names of 'Limited Companies and Corporates and not sole traders/individuals'.
23. In the Commissioner's view the complainant's suggested approach to avoiding the application of section 12(1), ie a list of companies on the spreadsheet of 1982 companies with the suffix 'ltd' or 'plc', whilst logical, is technically a different and refined version of his original request. This is because such a request would fail to capture companies that are 'limited companies or corporates' but which do not have a 'ltd' or 'plc' suffix on the spreadsheet. In the Commissioner's view the first request of 18 April 2024 is therefore broader in scope and seeks very similar, but not identical, information to the complainant's proposal.
24. Therefore, in line with the position set out at paragraphs 21 and 22, the Commissioner cannot provide a formal ruling as to whether complying with the complainant's suggested refined request could be answered within the cost limit (albeit he does note that it would seem plausible that this could potentially be the case). Rather, his role in respect of section 12(1) is limited to determining whether this applies to the complainant's request of 18 April 2024.
25. Turning to the CoL's estimate, the Commissioner accepts that a manual review of the list of 1982 entries would be necessary to determine whether each is a company/corporate or sole trader/individual given that when business names are entered onto the database no record is made as to whether they are a limited company, a corporation, an LLP or sole trade. With regard to the time taken to review each entry, the Commissioner agrees that for many of the entries it will be easy, and quick, to decide if they are for a company or corporate entity. However, having examined the list of 1982 entries the Commissioner accepts that for some entries the CoL will need to take steps to establish whether an entry falls within the scope of the request because it is company or corporate entity, or whether it falls outside the scope of the request because it concerns a sole trader or individual. In terms of the estimate of 1 minute per entry, the Commissioner accepts that this is supported by a sampling exercise which CoL have conducted. On the basis of this exercise, and his own examination of the list of the 1982 entries, the Commissioner is satisfied that the CoL's estimate of 33 hours to process

the request is a reasonable one supported by cogent evidence. It can therefore rely on section 12(1) of FOIA to refuse to comply with the request.

Section 31 – law enforcement

26. Normally where the Commissioner finds that processing a request will breach the cost limit he will not go on in a decision notice to consider any exemptions that a public authority may have also cited. This is because section 12 acts as a cut off meaning that if complying with a request would exceed the cost limit then there is no obligation on a public authority to consider a request any further. As a result if section 12 applies whether the requested information is exempt from disclosure or not is a moot point; even if information is not exempt, if it cannot be supplied within the cost limit then a public authority does not have to provide the information.
27. However, in the circumstances of this case the Commissioner accepts that it would be useful for him to provide clarity on his view of the CoL's reliance on section 31(1)(a) to withhold the requested information. This is on the basis that the complainant may, understandably, submit a further refined request along the lines of that set out in paragraph 20. The Commissioner assumes that the CoL would seek to refuse any such a request on the basis of section 31(1)(a) of FOIA for the same reasons it has refused the request of 18 April 2024.
28. 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"
29. In order for a prejudice based exemption, such as section 31, to be engaged the Commissioner believes 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.

- 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. If the likelihood of prejudice occurring is one that is only hypothetical or remote the exemption will not be engaged.

The CoL's position

30. In its initial response to the complainant the CoL explained that:

"CoL holds detailed financial information relating to the NNDR [national non-domestic rates] account holders and by disclosing the requested data for each account, CoL is opening itself up to fraudulent activity. When dealing with enquiries about a particular account, COL current systems provide limited but effective ways of ensuring that the person who contacts COL is actually authorised to discuss and deal with the account. By disclosing the requested information in response to this FOI request, a malefactor could bypass the security systems which are in place and convince the authority that they were the ratepayer given that we use the requested data as part of our security checks. It would also facilitate a fraudster posing as the authority to obtain confidential from ratepayers themselves."

31. The CoL noted that in support of this position it considered the arguments made before, and accepted by, the Tribunal in EA/2018/0033 are equally applicable to the NNDR information it held in the scope of this request.² It explained that its current systems and processes reflect those of the City of Westminster and those systems and processes were considered by the Tribunal in upholding the City of Westminster's decision to refuse disclosure of the NNDR information which was the subject of that appeal.

32. The CoL also provided the complainant with additional arguments to support this position in its updated response to him of 30 October 2024:

"While it is noted that this data is historic in nature and the scheme is closed and can no longer be accessed by businesses. However, most of the accounts remain live. So the information in relation to the business name is current.

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[https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2557/Westminster%20City%20Council%20EA-2018-0033%20\(04.12.19\).pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2557/Westminster%20City%20Council%20EA-2018-0033%20(04.12.19).pdf)

As the accounts are live, we consider that the level of threat remains the same. For instance, if someone phoned up and did not have the account number, we could ask two questions to confirm their identity. What is the name on the bill, and can you confirm which reliefs, if any the business has received in recent years. These two questions would be redundant if we divulged this information. It is also the thin edge of the wedge as the next request could be for similar information in 21/22, then 22/23 and so on. The same logic would apply to this more recent data."

33. The CoL also provided the Commissioner with the following more specific submissions to support its application of section 31(1)(a):

"One way of obtaining the details necessary to commit fraud is to contact the billing authority, clear its security checks and so gain access to the ratepayer's account, at which point other information will be provided on request and amendments could be made to the information held by COL. A large volume of NNDR enquiries are still handled by telephone, rather than online. The NNDR telephone enquiry service is very busy. The City needs to balance convenience to genuine ratepayers, who represent the overwhelming majority of callers, with maintaining robust processes to identify the tiny minority of fraudulent callers. The fact that the information requested is historic is not relevant as the majority of the accounts are still live and active accounts.

The COL seek to counter fraud by verifying the identity of anyone who contacts the COL Business Rates Team. One area of particular risk is refunds of business rates. Refunds occur due to changes to the hereditament, a change in occupation or the award of an exemption or relief. Over the past three years, COL has administered over 20,000 refunds worth around £400 million, the highest refund being over £4.9 million. There is therefore a significant incentive for fraudsters to attempt to gain access to these records. The City uses a suite of security controls including a unique account number. Whilst the account number is an important security control, in striking the balance between convenience and security, COL allow ratepayers to confirm their identity using other information if they do not have their account number to hand. The information requested can include the business name and address, payment method, amount of last payment, dates of occupancy and any exemptions or reliefs that have been applied to the account, such as Expanded Retail Relief. Providing the name of the business rates account to the world at large, and the knowledge that retail relief had been granted, would reveal two pieces of information that could be used to verify the caller's identity which would significantly weaken the City's security controls. Whilst the address has

not been requested as part of this request, it would be easy to match the account name to an address in the City via an internet search.”

The complainant's position

34. The complainant did not accept that disclosure of the withheld information would be prejudicial in the manner set out by the CoL. In his view it was not plausible to argue that its security systems could be bypassed simply on the basis of knowing whether a particular rebate had been granted. In any event, in the particular circumstances of this case, he noted that it was very likely that the rebate/relief in question – ie due to the Covid pandemic - had been given to virtually all businesses in the leisure/retail sector, so unless a business had decided not to accept it, it could be assumed that such businesses had received it. Therefore the complainant argued that knowledge of the requested information would not provide a fraudster with any particular insight.

The Commissioner's position

35. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by the CoL clearly relates to the interests which the exemption contained at section 31(1)(a) is designed to protect.
36. With regard to the second and third criteria, the Commissioner has given careful consideration to the findings of the Tribunal decision cited by the CoL, EA/2018/0033³. The request in that case sought broader information from the City of Westminster than in this present case⁴, but as the CoL has noted the security systems adopted by the two public authorities in relation to telephone callers about business rates are the same. The Commissioner further notes that in that case the Tribunal found that:

“110. The system Westminster has adopted to limit fraudulent claims for NNDR refunds is to verify the identity of anyone seeking a refund by asking a series of questions in a telephone call. We accept Mr Hinkley's evidence [ie City of Westminster's evidence] that the disputed data would allow a person to answer some of the security questions in the current pool. Different questions are asked each time,

³ See footnote 2.

⁴ The information sought for all businesses was: billing authority reference code; firm's trading name; full property address; occupied/vacancy; date of occupation/vacancy; actual annual rates charged.

and so this would allow someone to bypass the systems sometimes, but not always.

111. It is true that Westminster could remove these particular questions from the pool, but we accept that reducing the size of the pool of questions makes a system less secure. Further we accept that adding new questions is not straightforward given the limited datasets that Westminster collects: they do not for example have access to identifiers like national insurance numbers or dates of birth. Creating a new security system, or collecting further information would incur costs and cause inconvenience.”

37. And:

“137. In relation to fraud, we accept that the release of this information would make it much easier for a fraudster to pose as a ratepayer and bypass the Council’s security systems, and that changing those systems would entail significant time and expense. Further that it would facilitate a fraudster posing as the Council to obtain confidential information from a ratepayer. There is evidence that rates fraud is a real and current problem. The consequences to the Council of a loss of a significant sum of public money are serious. We therefore give this prejudice very significant weight in the balance.”

38. Furthermore, the Commissioner has considered the Tribunal’s findings in a further decision, EA/2022/0181 & EA/2022/0203⁵, which also considered requests seeking access to business rates information held by local authorities. Again, the information sought was broader in scope than in this case⁶, but the Commissioner notes that the Tribunal found that:

“176. Further, whilst it is possible in many cases to find out the name of the ratepayer, we accept that there is an advantage in fraudsters in having a searchable ready-made list of the answers to one of the security questions for every ratepayer, over having to physical visit the premises of each company that intend to defraud. A list enables access to the information by those who do are not based the same geographical area and for whom a ‘site visit’ would not be practical.

⁵ <https://www.casemine.com/judgement/uk/65b15771121ace78b84da5a0>

EA/2022/0181 concerned a request submitted to City of Westminster and EA/2022/0203 concerned a request submitted to the City of London.

⁶ The requests both sought a list of companies that pay business rates and which hereditaments they are liable for, including local authority references.

177. We accept that this information would not, in itself, allow a fraudster to breach the Councils' security systems, but it gives one answer to one of the security questions for all ratepayers and therefore weakens the system to some extent. The fraudsters will need a lot more information in relation to the an individual company to bypass the security systems, but they will be able to guarantee that they will not get the wrong answer to the question about what names is on the bill, and they will be able to do so without spending 25 minutes per company visiting the premises and matching up other data online. Weakening the security systems in our view inevitably prejudices the prevention of crime."

39. In respect of this present case, the Commissioner is satisfied that the withheld information could be used by a fraudster – in the manner described at paragraph 32 – to allow them to bypass the CoL's telephone security systems. The Commissioner recognises that this may not work every time, for example if different security questions are asked. But such information could still provide a fraudster with an opportunity/advantage in some cases that would not be present, or as easy to exploit, if the requested information was not available.
40. The Commissioner appreciates the complainant's point that many of the businesses in question are likely to have been awarded the particular rebate in question, but this is not certain. Disclosure of the withheld information in question would therefore provide a fraudster with certainty in respect of whether or not a particular business had received this rebate and as a result in an increased chance of bypassing the CoL's security systems. The Commissioner would also observe that it would provide fraudsters with a ready made list of leisure/retail businesses within the borough. It would therefore remove the need for a fraudster to have to conduct their own research into which leisure/retail businesses are based (or were based) in the borough in 2020-21.
41. The Commissioner recognises that the information requests considered by the Tribunal decisions above sought broader and wider information than in this present case. He also accepts that each FOI request must be considered on its own merits. However, in his view such findings lend weight to the CoL's position in this case, particularly the finding above, quoted at paragraph 38, that "Weakening the security systems in our view inevitably prejudices the prevention of crime".
42. Whilst disclosure of the dataset in this case would only facilitate potential fraud against one (or more) of the 1982 companies listed on it, as opposed to facilitating potential fraud against all business who pay rates in the borough, in the Commissioner's view it could still facilitate crime via the methods set out by the CoL. The Commissioner also notes that the Tribunal found that business rates fraud was a real issue; the

risk of this is not hypothetical. He notes the value and volume of business rates rebates that the CoL has processed in the last three years.

43. In view of the above, the Commissioner is satisfied that disclosure of the withheld information would be likely to provide a way for fraudsters to bypass the CoL's business rates security systems. Whilst such a method is not guaranteed to work, it nevertheless makes by passing the CoL's security systems easier. He also accepts weakening this security system presents a real and significant risk to the prevention of crime. On this basis the Commissioner is satisfied that section 31(1)(a) is engaged.

Public interest test

44. Section 31(1)(a) is a qualified exemption and therefore subject to the public interest test set out in section 2(2)(b) of FOIA. The Commissioner has therefore considered whether in all the circumstances of the case the public interest in maintaining the exemption cited by the CoL outweighs the public interest in disclosing the information.
45. The complainant argued that there was a public interest in the disclosure of the requested information as this would allow research into companies that had received this rebate.
46. The CoL argued that there was no public interest in eroding the security framework which have been adopted to protect it, and ratepayers, against fraudulent activity. Rather, there was a clear public interest in ensuring the prevention of crime not least because this would increase the burden on the public purse.
47. The Commissioner accepts that disclosure of the withheld information would provide transparency in respect of the identifies of business who received Expanded Retail Relief for the period in question. The Commissioner also accepts, as the complainant suggests, that such information could be useful for research purposes.
48. However, the Commissioner considers there to be a significant public interest in ensuring the prevention of crime. It is clearly against the public interest to disclose information which would facilitate fraud and incur additional costs for the CoL. Whilst the Commissioner recognises that the risk of fraud occurring is arguably more limited than in comparison to the cases considered by the Tribunal – on the basis that the dataset sought in this present case is smaller – he nevertheless considers that there remains a strong public interest in ensuring that fraud is not facilitated via the disclosure of this information.

49. In view of the above, he has therefore concluded that the balance of the public interest favours maintaining the exemption and withholding the information.

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.

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