

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 May 2019

Public Authority: London Borough of Hackney
Address: 1 Hillman Street
London
E8 1DY

Decision (including any steps ordered)

1. The complainant has requested information on empty properties in the London Borough of Hackney and the names of the owners of those properties.
2. The Commissioner's decision is that the London Borough of Hackney ("the Council") appropriately applied the exemption contained in section 31(1)(a) FOIA – Law enforcement, to withhold the information.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

4. On 9 July 2018 the complainant wrote to the Council and requested information in the following terms:

"In light of the recent decision by Judge Fiona Henderson to order Camden Council make public its list of empty housing, and the previous decisions to make lists of long-term empty properties in Lambeth and Bexley public, could you please send me a copy of the:

- (a) Addresses of all long-term empty private and council owned homes that are within the Hackney Borough Council.
- (b) Addresses of all long-term empty commercial properties within the Hackney Borough Council.
- (c) The names of the owners of those properties referred to in (a) and (b).

In considering this request, I hope you will take into account Judge Henderson's statement on releasing the empty housing list in Lambeth:

'The Tribunal is satisfied that publication of this list would bring a proportion of the void properties back into use earlier than would otherwise be the case and that, consequently, this is a strong public interest in favour of disclosure.'

I would be interested in any information held by your organisation regarding my request. I understand that I do not have to specify particular files or documents and that it is the department's responsibility to provide the information I require."

5. The Council responded on 8 August 2018. It stated that it held information in the scope of the request but was withholding the information in reliance of section 31(1)(a). It considered that the public interest in maintaining the exemption outweighed the public interest in disclosure.
6. Following an internal review the Council wrote to the complainant on 3 September 2018. It stated that it upheld the initial response.

Scope of the case

7. The complainant contacted the Commissioner on 4 September 2018 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of her investigation to be the Council's application of section 31(1)(a) to withhold the requested information.

Reasons for decision

Section 31 – Law enforcement

9. Section 31(1)(a) FOIA states that:

"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

(a) the prevention or detection of crime,"

10. The complainant did not provide the Commissioner with any arguments in support of his complaint.
11. The Council explained its view that the release of the requested information would be likely to prejudice the prevention and detection of crime. It explained its concerns that in providing a list of empty properties the Council would be providing information which could be used to target crimes such as arson, metal theft, identity theft, vandalism and damage to property. It considers that disclosure would increase the likelihood of properties being used by squatters which may lead to the theft of services such as gas and electricity and other criminal damage.
12. In order for a prejudice based exemption, such as section 31(1), 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 – ie, 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
13. With regard to the first criterion, the Commissioner accepts that the potential prejudice described by the Council clearly relates to the interests which the exemption contained at section 31(1)(a) is designed to protect.
14. The Commissioner next went on to consider whether the prejudice being claimed is "real, actual or of substance", not trivial, and whether there is a causal link between disclosure and the prejudice claimed. She is satisfied that the prejudice being claimed is not trivial or insignificant and she accepts that it plausible to argue that there is a causal link between disclosure of the information and prejudice occurring.

15. The Council argued that the disclosure of the withheld information *would be likely* to prejudice the prevention of crime. In the case of *John Connor Press Associates Limited v The Information Commissioner* (EA/2005/0005) the Tribunal confirmed that, when determining whether prejudice would be likely, the test to apply is that "the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk." (para 15). In other words, the risk of prejudice need not be more likely than not, but must be substantially more than remote. The Commissioner accepts that disclosure of the withheld information would be likely to prejudice the prevention of crime.
16. The Commissioner finds that the prejudice test has been satisfied in the circumstances of this case and consequently the exemption at section 31(1)(a) is engaged.

The public interest

Public interest arguments in favour of disclosing the information

17. The Council acknowledged that disclosure of information is consistent with its policies for greater transparency and accountability.
18. The Council explained that it is aware that an argument in favour of disclosure put forward in an earlier Tribunal case ¹ stated:

"publication of this list would bring a proportion of the void properties back into use earlier than would otherwise be the case."
19. However, each Council has a duty to consider the specific circumstances prevailing within its own area. The Council explained that it has been pro-active in taking action on void properties in the borough of Hackney and is providing housing which would otherwise not be used. It explained:

"Previously, the Council's Regeneration Estates were given to a guardian provider, however, from 2014 the Council started to do essential work to bring empty properties back into use. The Council now has over 450 properties on its Regeneration Estates being used as accommodation for housing needs in Hackney."

Public interest considerations in favour of withholding the information

¹ Information tribunal reference EA/2011/0007

20. The Council explained its need to take account of the potential consequences of criminal damage, for example, the direct costs of repairing property and the indirect costs of the impact on local property values, increased insurance premiums and the costs of evictions.
21. The Council notes the risk of the social and psychological effects of crime, such as the increased vulnerability of local residents and their fear of crime.
22. The Council notes the financial implications on the public purse of refurbishing properties following use by squatters, alongside the cost in time and the resources required in taking court action.
23. The Council's records indicate the substantial costs incurred in repairing and securing damaged properties previously occupied by squatters in addition to the cost of providing security to avoid the costly process being repeated. The Council advised the Commissioner that it has spent over £35,000 on repairing a single property to make it fit for use as housing.
24. The Council made reference to another example of a building being used as a night club by squatters. The resultant complaints from residents about extremely loud music and heavy drug use every day demonstrated the extent of the impact on the local community. The cost to the public purse of the large scale operation required in this case was significant.

Balance of the public interest

25. In balancing the public interest arguments the Commissioner accepts that disclosure would to some extent help to increase openness and transparency of the Council's function in respect of housing.
26. The Commissioner notes the efforts taken by the Council to avoid void properties and accepts that it is acting in the public interest to achieve this. She is therefore not convinced that the public would benefit by highlighting the empty properties in the Borough.
27. The Commissioner acknowledges that there is a clear public interest in protecting society from the impact of crime. The greater the potential for a disclosure to result in crime, the greater the public interest in maintaining the exemption. The Commissioner considers that the prevention of crime will prevent the criminal acts which adversely impact on the public's wellbeing and on the public purse.
26. In conclusion, the Commissioner considers that the public interest in maintaining the exemption outweighs the public interest in disclosure. Consequently she has determined that the Council appropriately applied section 31(1)(a) to the withheld information.

Right of appeal

28. 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

29. 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.
30. 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
Principal Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF