

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 November 2022

Public Authority: London Borough of Merton Council
Address: Merton Civic Centre
London Road
Merton
SM4 5DX

Decision (including any steps ordered)

1. The complainant has requested information on empty commercial properties in the London Borough of Merton ("the Council").
2. The Commissioner's decision is that the Council appropriately applied the exemption contained in section 31(1)(a) of FOIA (law enforcement and the prevention or detection of crime) to withhold the information.
3. The Commissioner does not require the Council to take any steps to ensure compliance with the legislation.

Request and response

4. On 5 November 2021, the complainant wrote to the public authority and requested information in the following terms:

"I am undertaking research on behalf of [named company] who specialises in sourcing empty commercial properties for small to medium sized businesses and national, regional and local charities.

Could you please provide the following information under the Freedom of Information Act 2000.

Details of all current empty commercial properties within your authority which includes but not limited to Shops, Office, Retail Warehouses and Industrial Units, if possible on an excel spreadsheet containing the following information:

- Property Billing Reference
- Property Type
- Rateable Value
- Property Vacant Date
- Property Address
- Liable Party Name

If this information is already available on your website and no more than two months old, please could you provide me with the link to the correct page so that I may source this information myself."

5. The Council responded on the same day and refused to provide the information citing section 31(1)(a) of FOIA as its basis for doing so. The public authority upheld this position at internal review.

Reasons for decision

6. The following analysis sets out why the Commissioner has concluded that the public authority was entitled to rely on section 31(1)(a) of FOIA in this particular case.
7. Section 31(1)(a) of FOIA says that:

"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

(a) the prevention or detection of crime,"
8. The Council argued in its responses to the complainant that the release of the requested information would be likely to prejudice the prevention and detection of crime. 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) FOIA is designed to protect.
9. The Commissioner is also satisfied that the prejudice being claimed is "real, actual or of substance", and that there is a causal link between disclosure and the prejudice claimed. It is clearly logical to argue that the disclosure of a list of empty commercial properties would provide those intent on committing crimes associated with such properties an easy way to identify them. The Commissioner therefore considers that the exemption is engaged.
10. Section 31(1)(a) is a qualified exemption. Therefore the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption at section 31(1)(a) outweighs the public interest in disclosing the information.

11. 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 empty commercial properties. Clearly such information will be useful to business owners and higher rates of occupation by businesses in an area aid in the areas economic development (and redevelopment). However, the Commissioner also acknowledges that there is a clear public interest in protecting society from the impact of crime as this helps prevent the criminal acts which adversely impact on the public's wellbeing and on the public purse.
12. The Commissioner understands that the information – a list of vacant commercial premises, is of interest to the complainant who provides information to business users or companies that are wanting to develop their business in a particular area. However, disclosure under FOIA is disclosure to the world at large. The Commissioner is not able to take into account the private interests of the complainant in his decision. He must therefore consider whether the information is suitable for disclosure to everyone.
13. The Commissioner notes that there is a difference between unoccupied domestic properties and commercial properties. It is relatively easy to take steps to make a domestic property look occupied, whereas this cannot be said to be the case for the majority of non-residential properties. Commercial properties will be closed and potentially shuttered, industrial properties are likely to be locked and appear empty from the outside, and office buildings are likely to be empty of equipment and locked up during normal business hours.
14. While those intent on committing organised crime would find opportunities simply from visiting an area, disclosing a list of empty commercial properties would be likely to widen the list of potential properties which criminals are aware of and the number of potential targets of crime will therefore increase. The provision of a readymade list makes it easier to commit crime and therefore prejudices the prevention of crime: it enables criminals to avoid the significant effort of researching and compiling the information in relation to each potential target.
15. The Commissioner therefore considers that the public interest in maintaining the exemption outweighs the public interest in disclosure.

16. The First-tier Tribunal (Information Rights)¹ has recently considered the issue of requests made to local authorities for information on empty commercial properties, and has concluded that such information should be withheld under section 31(1)(a) of FOIA. The Commissioner has taken this Tribunal case into account when reaching his decision as it is similar to this case.
17. In addition, the Commissioner notes that Council has already provided the complainant with links to ICO decision notices which accept that details of empty commercial properties could be withheld under section 31(1)(a) FOIA. The Commissioner also notes that this position is supported in several more recent ICO decision notices involving local councils: see FS50866638² and FS50786336³. ICO guidance also reflects this position⁴ (see paragraphs 20, & 91-98).
18. Consequently the Commissioner has determined that the Council appropriately applied section 31(1)(a) FOIA to the withheld information.

¹[https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2566/Sheffield%20Council%20EA.2018.0055%20\(03.12.19\).pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2566/Sheffield%20Council%20EA.2018.0055%20(03.12.19).pdf)

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617622/fs50866638.pdf>

³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615022/fs50786336.pdf>

⁴ <https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf>

Right of appeal

19. 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

20. 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.
21. 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

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF