

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 October 2017

Public Authority: London Borough of Hammersmith & Fulham

Address: Hammersmith Town Hall
King Street
London
W6 9JU

Decision (including any steps ordered)

1. The complainant has requested information relating to credit balances in respect of all ratepayers within the billing area of London Borough of Hammersmith & Fulham ("the Council"). The Council refused to disclose the requested information, citing section 31(1)(a) of the FOIA as a basis for non-disclosure.
2. The Commissioner's decision is that the Council has correctly applied section 31(1)(a) of the FOIA to the requested information.
3. The Commissioner therefore requires no steps to be taken.

Request and response

4. On 10 June 2016, the complainant wrote to the Council and requested information in the following terms:

"Please send me a breakdown of current credit balances accrued since your earliest records, for the amounts owing to all ratepayers within your billing area. Please include the following information;

- a) Occupier (where possible)
- b) Full property address

- c) Rateable value
- d) Property description
- e) Billing authority reference number
- f) Start date of account
- g) End date of account
- h) Value of unclaimed credit balance
- i) Billing period within which credit raised

I fully understand that where the occupier is a sole trader, you are prevented from supplying us with the occupier name under the Data Protection Act. I would therefore reiterate that I am not asking for the occupier name in the case of sole traders and am only requesting information relating to b) to i) above.

Please provide the data in an excel format, if possible."

- 5. The Council responded on 17 June 2016. It stated that it was withholding the requested information, citing the exemption at section 31 of the FOIA as a basis for non-disclosure.
- 6. Following an internal review the Council wrote to the complainant on 22 July 2016. It stated that the reviewer was upholding the original decision and that section 31(1)(a) of the FOIA applied to the requested information.

Scope of the case

- 7. The complainant contacted the Commissioner on 23 August 2016 to complain about the way his request for information had been handled.
- 8. The Commissioner has considered the Council's application of the exemption at section 31(1)(a) of the FOIA to the requested information.

Reasons for decision

Section 31(1)(a) of the FOIA

9. 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,"

10. The Commissioner initially considered whether the relevant criteria for the engagement of section 31(1)(a) were satisfied. These are:

(i) whether the prejudice claimed by the Council was relevant to section 31(1)(a);

(ii) the nature of the prejudice being claimed by the Council; and

(iii) the risk of the prejudice being claimed by the Council occurring.

(i) Applicable interest within the exemption

11. The Council argued that disclosure of the information withheld under section 31(1)(a) would prejudice the prevention of crime. It explained that it believed that placing a list of unclaimed business rates credits in the public domain would be an invitation to those seeking to defraud the Council and the businesses who are legitimately owed the credit. Based on this argument, the Commissioner accepts that the prejudice claimed by the Council relates to the prevention of crime.

(ii) Nature of prejudice

12. The Commissioner next went on to consider whether the prejudice being claimed is "real, actual or of substance", that is 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 that there is the relevant causal link.

(iii) The likelihood of prejudice

13. The Council argued that the disclosure of the withheld information would prejudice the prevention of crime. The Commissioner's guidance states that, if an authority claims that prejudice would occur they need to establish that either

- the chain of events is so convincing that prejudice is clearly more likely than not to arise. This could be the case even if prejudice would occur on only one occasion or affect one person or situation; or
 - given the potential for prejudice to arise in certain circumstances, and the frequency with which such circumstances arise (ie the number of people, cases or situations in which the prejudice would occur) the likelihood of prejudice is more probable than not.
14. The complainant noted that the Council had said that the disclosure of the requested information could enable criminal activity in that fraudulent claims could be made. However, he explained that he did not believe that it had provided any evidence or instances where fraudulent claims had been made nor had it shown any direct link between disclosure and fraudulent activity.
 15. The complainant went on to argue that 90% of councils throughout England and Wales had freely provided the requested information, many of whom openly published the data on their websites. He queried why the Council's approach differed from other councils.
 16. In relation to this latter point, the Commissioner is aware that some local authorities have disclosed similar information to that requested by the complainant. She is also aware that some local authorities have refused to disclose this information when requested to do so under FOIA. She is not able, though, to determine what percentage of local authorities in England and Wales have or have not disclosed similar information to that requested by the complainant.
 17. The Commissioner notes, however, that even if a significant number of local authorities have disclosed similar information to that requested in this case, it does not automatically follow that all public authorities should disclose that information. She needs to consider each individual complaint that she receives on its own particular merits, taking into account the specific circumstances of each case and the evidence and arguments presented to her.
 18. The Council informed the Commissioner that it is required to bill and collect Non Domestic Rates under the Non-Domestic Rating (Collection & Enforcement) (Local Lists) Regulations 1989 S.I. 1989/1058. The Council is responsible for the administration, billing and collection of £203 million in NNDR and has issued approximately 700 refunds this year totalling £21m.
 19. The Council stated that a credit may be raised on an NNDR account for a variety of reasons and most credits result in a refund, a small

number are offset. A notice is automatically issued to all ratepayers who have had an amendment to their account so they are aware of any sums or credits due.

20. The Council informed the Commissioner that, when an individual or a company has a credit and wishes to claim a refund, the Council requires that the request is made in writing or by email. This request may be made by a ratepayer's Rating Agent or accountant where authority has been granted for them to act on the ratepayer's behalf. The Council does not have the capacity to make any further identity checks to ensure that the person claiming the refund is the actual ratepayer or their agent/representative. In practice, the system is essentially self-policing as the only people who would know there is a credit due is the ratepayer themselves as they are the only ones who have been notified.
21. The information requested by the complainant includes the billing authority reference number, and the start and end date of the account. This information would generally be known only to the ratepayer and the local authority. Disclosing this information with a list of credits and addresses to anybody who requested them would provide a fraudster with the complete knowledge required to create false/fraudulent identities and claim a refund. The Council is very aware that fraudsters can and do obtain forged identity documents on the internet and by providing them with relevant background details it would assist them in making false refund claims.
22. The Council further informed the Commissioner that it had recently become aware of one of its residents who had been contacted by fraudsters advising the resident that they were due a Council Tax refund and requesting their bank details to arrange for payment. Luckily, the resident terminated the call before giving out this information and this fraud was attempted with very little information available to the fraudster. However, the Council believes if it were to disclose the requested information such as the company name, reference number, dates, address and the amount owed, a ratepayer could easily be convinced to disclose actual bank details or other important information to a fraudster.
23. The Council also asked the Commissioner to note that it was the victim of an internal fraud several years ago in relation to ratepayer credits and believes that the disclosure of this information to the general public would increase awareness of fraudulent opportunities and prejudice the Council's ability to prevent them.
24. The Council informed the Commissioner that disclosed information is published on the Council's website and this would allow any person to

review lists and set up fraudulent accounts in the relevant names and apply for credits. There are substantial sums involved and it would make it worthwhile for an organised fraud to take advantage of an opportunity such as this. Publishing all the information requested would provide any fraudster with a huge amount of knowledge on the ratepayer who is due the credit and make it virtually impossible for the Council to verify whether the refund was being claimed by the correct ratepayer.

25. In addition, the Commissioner notes that the Council has received more than 50 requests for information on NNDR credits over the last few years and clearly the risk of fraud would be substantially increased if the Council were required to disclose this information each time an individual or company requested it. Furthermore with modern day technology, lists can be circulated at will across the internet, with little or no control. All ratepayer information is currently held in a very secure environment within the Council and this would not be maintained if credit information were to be disclosed.
26. The Commissioner is reticent to pass judgement on the procedures a public authority should put in place to try to prevent fraud in circumstances such as this as the procedures that may be appropriate will depend on a whole range of factors, some of which will be specific to a particular public authority. However, in light of the explanation provided by the Council of its rate refund procedures, it does not appear to the Commissioner to be a straightforward and inexpensive task for it to make effective changes to its verification procedures for refund claims so as to counteract the risk of fraud as a result of the withheld information being placed in the public domain.
27. As part of its arguments, the Council made reference to the decision of the First-Tier Tribunal in *London Borough of Ealing v The Information Commissioner (EA/2016/0013)* in which the Tribunal considered the application of section 31(1)(a) to an identical request for information to that made by the complainant in this case. However, the Commissioner notes that the Upper Tribunal in *London Borough of Ealing v The Information Commissioner (GIA/2360/2016)* has recently set aside the decision of the First-Tier Tribunal and remitted the matter for redetermination by an entirely differently constituted First-Tier Tribunal. Consequently, the Commissioner has not taken into account the views expressed by the First-Tier Tribunal in its judgement in coming to her decision.
28. As already noted, some of the information requested by the complainant, particularly the amount of credit accrued on a particular account, is information that the Council uses as part of its security procedures in attempting to prevent fraudulent claims being made and in order to try to prevent any that are made being successful. As a

consequence, the Commissioner accepts that the disclosure of the withheld information would facilitate an increase in fraudulent claims and make it more difficult for the Council to identify any such claims. Therefore, in light of this, the Commissioner is satisfied that the disclosure of the requested information would prejudice the prevention of crime. She consequently accepts that section 31(1)(a) is engaged. As it is a qualified exemption, she went on to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosure.

Public interest arguments in favour of maintaining the exemption

29. There is a strong public interest in ensuring that monies are not fraudulently claimed and disclosing this information would enable criminal activities to take place.
30. Should claims for refunds be made, the Council would not necessarily be able to assess which were real and which were fraudulent without a great deal of investigation which would lead to spending more on resources that the Council does not have. This would place an additional cost to the public purse and delay legitimate ratepayers receiving their refund which may have a negative effect on their business.
31. The Council would put public money at risk if a fraudulent claim for a refund was successful and then the correct ratepayer came forward at a later date to claim their credit. The Council would have no option but to refund the ratepayer which would be from the public purse and have a negative effect on the residents of the Council's borough.
32. All Local Authorities have faced significant cuts to their budgets in recent years and the Council believes that, by not disclosing this information, this would prevent any crime taking place rather than spending extra resources trying to detect and investigate whether a crime has been committed, which would be in the public interest as those resources could be better used for the public good.

Public interest arguments in favour of disclosing the requested information

33. The Council acknowledges that, as it is a public authority, there is a public interest in openness and transparency in respect of NNDR credit records.

34. The Council also accepts that there would be an interest to certain members of the public who are due a refund and could enable them to claim sums they are owed.
35. The complainant argues that there is a public interest in disclosing the information, as the monies involved belong to the public.

Balance of the public interest arguments

36. The Commissioner recognises the public interest in transparency and openness in relation to the procedures and decision making of public authorities and that the disclosure of the requested information might to some extent help to increase openness and transparency in relation to the Council's collection of taxes and the management of finances. The requested information would provide the public with more information about the amounts of unclaimed business rate credits and would, more specifically, identify those companies that had to date failed to claim back credits on their business rate accounts. However, the Commissioner notes that the former more general public interest could be largely met by the release of information about business rates credits which did not identify individual accounts, for example, by providing total figures for business rate credits.
37. The Commissioner has already noted the Council's explanation that it sent notices to companies that had a credit on their accounts with instructions on how to claim refunds that were owing and also the steps that it took to remind relevant companies that did not initially make a refund claim.
38. The Commissioner also notes that the disclosure of detailed information about rate rebates owed to specific businesses would not benefit the public as a whole but only businesses that had outstanding rebates due. She assumes that efficient businesses would generally be able to identify when they were owed money by the Council and be able to claim that money back relatively quickly, particularly in light of the attempts that the Council has explained that it makes to alert them to any rebates that are owed and facilitate the claiming of those rebates. Consequently, the number of businesses potentially affected by any disclosure should not be large. In light of this and the attempts that the Council appears to make to contact businesses that are owed rebates and to get them to claim those rebates, the Commissioner views the public interest in the disclosure of the requested information as limited.
39. In this particular case, the Commissioner accepts that the Council has provided strong arguments as to how the disclosure of the requested information would be likely to prejudice its attempts to prevent fraudulent activity in relation to the claiming of refunds on its business rate accounts. This inevitably creates a significant public interest in favour of withholding the requested information.

40. In light of this, she believes that the public interest in maintaining the exemption outweighs the public interest in disclosure. She has consequently determined that the Council correctly applied section 31(1)(a) to the requested information.

Right of appeal

41. 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

42. 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.
43. 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

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