

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 December 2015

Public Authority: Ealing Council
Address: Perceval House
14/16 Uxbridge Road
Ealing
W5 2HL

Decision (including any steps ordered)

1. The complainant requested a breakdown of credit balances owed to ratepayers that had been accrued by the council.
2. The Commissioner's decision is that the council incorrectly applied the exemptions at s31 and s41 in order to withhold the information.
3. He requires the public authority to disclose the withheld information to the complainant within 35 calendar days of the date of this decision notice.
4. 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 3 July 2015 the complainant requested the following:

"... a breakdown of credit balances accrued since your earliest records for the amounts owing to all ratepayers in your billing area. Please include the following information:

(a) Occupier where possible

(b) Full hereditament 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) 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."

6. On 31 July the council withheld the information under s31(1)(a) FOIA.
7. The complainant appealed on 3 August and on 1 September the council's internal review upheld the exemption.

Scope of the case

8. The complainant contacted the Commissioner on 16 September to complain about the way his request for information had been handled.
9. During the Commissioner's investigation the council introduced a further exemption at s41 FOIA.
10. This decision notice addresses the council's application of the exemptions at s31 and s41.

Reasons for decision

11. **Section 31(1)(a)** allows information to be withheld if its disclosure would or would be likely to prejudice the prevention or detection of crime.
12. The council considered that release of the information would be likely to lead to fraudulent claims for refunds.
13. The Commissioner requested responses from the council to the following queries:
 - (i) an explanation as to how disclosure of the information would be likely to lead to fraudulent claims for refunds.

- (ii) if such a claim did arise whether or not it would be subject to identity verification by the council.
- (iii) provision of evidence which could demonstrate a clear link between disclosure of the information and the occurrence of fraudulent claims.
14. With reference to (i) and (ii) the council's response was that its procedures for refunding included the information requested. It said that as most credits arise as a result of vacation they are rarely from the property address but from a forwarding address. It said this can make verification difficult and that the minimum verification procedures generally used by the council for smaller balances would likely need to be increased. However, the council failed to provide the Commissioner with any convincing explanation as to why its verification procedures, strengthened or otherwise, would be incapable of preventing a fraudulent claim.
15. With reference to (iii) the council did not provide any evidence that could demonstrate a clear link between disclosure of the information and the occurrence of fraudulent claims.
16. In the absence of any convincing argument to support the council's submission, the Commissioner finds that it has failed to establish engagement of the s31 exemption.
17. As the exemption is not engaged he has not proceeded to consider the public interest test in respect of the exemption.
18. **Section 41(1)** exempts information if it was obtained from any other person and its disclosure would constitute a breach of confidence actionable by that or any other person.
19. In its response to the Commissioner's queries regarding the application of s31, the council added that it believed the information was given in confidence and therefore it felt s41 was also applicable. The council did not provide any argument to support this submission.
20. For s41(1)(a) to be met the information must have been provided by a third party. For s41(1)(b) to be met disclosure of the withheld information must constitute an actionable breach of confidence. As most of the requested information appeared to have been generated by the council itself the Commissioner asked for a response to the following queries:
- (i) which third parties provided the withheld information in confidence.
- (ii) explain why disclosure of the withheld information would constitute an actionable breach of confidence.

- (iii) the law of confidence contains its own built in public interest test with one defence to an action being that disclosure is in the public interest. Therefore please explain the public interest arguments considered by the council in this case and explain why it was concluded that there was insufficient public interest in disclosure of the information in order to defend any actionable breach.
21. The council failed to answer these questions in relation to information disclosure. Instead, it said that if overpaid business rates were paid to a third party it believed businesses would be justified in taking legal action against the council as that would be an actionable breach of confidence.
22. In the absence of any argument to support the council's submission that s41 applied, the Commissioner finds that it has failed to establish engagement of the exemption.
23. As neither s31 nor s41 are engaged the information should be disclosed.

Procedural breach

24. The council failed to cite the exemption at s41(1) within 20 working days of receiving the request. By failing to do so it breached s17(1) FOIA.

Right of appeal

25. 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

26. 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.

27. 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

Rachael Cragg
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