Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **27 February 2019**

Public Authority: **Charnwood Borough Council**
Address: **Southfield Road**
Loughborough
LE11 2TX

Decision (including any steps ordered)

1. The complainant has requested information in relation to council tax liabilities and payments regarding a number of properties. The council withheld the information it holds under section 43(2), 31(1)(d) and also stated that no further information was held beyond the information which it exempted.

2. The Commissioner's decision is that the council was correct to apply section 31(1)(d) to withhold the information. She did not need to make a decision as regards the application of section 43(2) as the relevant information was provided to the complainant previously. Additionally, following a disclosure of further information during the course of the Commissioner's investigation, she has decided that, on a balance of probabilities, no further information is held by the council.

3. The Commissioner does not require the council to take any steps.

Request and response

4. On 30 October 2017, the complainant wrote to the council and requested information relating to a number of properties in the following terms:

> *"This request for information is made pursuant to the FOIA 2000 and EIR 2004.*
>
> *Please supply copies of all decision, letters, inspection reports, concession agreements, emails, photographs, sketches, handwritten notes or drawings, emails and opinions and advice which you are holding in respect of the above properties since 1st January 2011. Please supply the further information*
>
> *(1) Administrative measures taken*
> *(2) Policy decisions relating to the above properties*
> *(3) Legal advice in respect of liability for council tax of the above properties*
> *(4) Copies of all council tax demands notices issued since 1st March 2011 pursuant to section 19 of the Council Tax (Administration and Enforcement Regulations 1992 ('1992 Regulation').*
> (5) *Details of all steps taken pursuant to section 14 of the 1992 Regulations with supporting written evidence.*
> (6) *Details of all steps taken pursuant to section 8 of the 1992 Regulations with supporting written evidence "*

5. The council spoke to the complainant on or around 14 November 2017 where it advised the complainant that the information would be personal data and advised that his request should be considered under the subject access provisions of The Data Protection Act 1998 (the DPA). It considered that the complainant agreed this and therefore considered his request as a subject access request under the DPA.

6. The council subsequently responded to the complainant's subject access request (SAR) on 30 November 2017 providing information to him in respect of the request, but withholding any information in relation to the accounts when the requestor's company was not the liable party for council tax.

7. On 18 December 2017 the council received a letter from the complainant stating that it had not complied with his FOI request. The council responded on 22 December 2017, again setting out its decision that the request had been processed under the DPA.

8. The council received further correspondence from the complainant on 3 January 2018, and at this point it carried out a review and decided that it had made a mistake. The council said to the Commissioner that on reflection it considered that initially dealing with the request under the DPA was an error. It had realised at this point that as council tax liability relates to the property, not to the owner of the property, it therefore considered that it should have dealt request under the FOIA rather than the DPA.

9. It therefore told the complainant that it would respond shortly as required under FOI. It sent its FOI response to the complainant on 2 February 2018, withholding information under sections 31(1)(d) and section 43(2).

10. Crucially, some of the information which it was now withholding under the exemptions under FOIA was information which it had previously disclosed to the complainant under the provisions of the DPA.

11. Further correspondence was received by the council from the complainant's representatives on 14 February 2018, requesting the following information:

Para 4: please supply a copy of all liability orders made on the 30th November 2018.

Para 7: please specify which "majority of information" would not be disposable and the ratio descendi therefore.

Para 8: Please explain how the release of information could prejudice the commercial interest of "the business involved". The business involved is La Cala in respect of which it is alleged "Council Tax showing as overdue on numerous properties".

Para 9: Please detail "the further clarification sought" and supply a copy of all attendance notes on or around the 13th November in respect thereof.

Para 10: The DPA relates to human individuals. How can it be said the decision by the Council to consider the request made by a Corporate would be appropriately dealt with pursuant to the DPA.

Para 15: We repeat please supply copies of all liability orders made in respect of the above properties…"

"We are seeking information only and specifically in respect of [addresses or relevant properties redacted]."

12. The council wrote to the representatives referring them to the response to the complainant of 23 January 2018 and a subsequent letter dated 2 February 2018.

13. The council said that the complainant's representatives also made a separate request to the Council Tax team directly, and this was responded to directly by that team. It said that this team had considered the request to be a normal course of business request and it therefore provided the information requested where it was possible to do so. It did not consider this request under the provisions of the FOIA.

14. The council wrote again to the complainant's representative on 14 March 2018 providing some information in respect of their letter dated 14 February 2018.

Scope of the case

15. The complainant contacted the Commissioner on 3 May 2018 to complain about the way his request for information had been handled. He argues that the council was not correct to apply the exemptions it has to the information it has withheld.

16. The complainant also argues that further information must be held by the council.

17. The Commissioner therefore considers that the complaint is that the council wrongly withheld the information under section 43(2) and that 31(1)(d) and that further information is held by the council.

Reasons for decision

Background to the complaint

18. The complainant's company purchased and subsequently sold a block of derelict properties which had been partially destroyed by fire a number of years previously. He argues that his company subsequently received a court summons stating that it was liable to pay council tax for the relevant properties for the period of its ownership.

19. The complainant wrote to the council arguing that he had received no earlier correspondence from the council regarding this, and that the properties were not liable for council tax as they were uninhabitable during the period that his company owned them. He considered therefore that his company were not liable to pay the amount which the council were seeking.

20. The council however considered that its decision regarding the liability for council tax for the properties was correct. It said that the council tax exemption for uninhabitable properties is only available for a period of 6 months in total, and the previous owners of the properties had already claimed this exemption for the relevant properties. The exemption was not therefore available to the complainant's company.

21. The council has clarified to the Commissioner that whilst it does not dispute the complainant's claim that the properties were uninhabitable during the period in which his company owned them, the company could have applied to the Valuation Office to have the property taken out of taxation but it had not done so. It also clarified that the council cannot take this step on behalf of the owner of the properties; it is for the owner to do so.

22. In responding to the requests the council said that it could not provide further details on the properties and the previous claim to the exemption as it said doing so would disclose details of the company which previously owned the properties' tax dealings.

23. The complainant is therefore seeking to use the Act to obtain information relating to the properties and the exemptions when they were owned by the previous owner.

Section 31(1)(d)

24. Section 31(1)(d) 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- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature".*

25. The council argues that the information relates to liability for council tax, and argues that those providing information for the purposes of council tax liability generally expect that the information will be held in confidence by the council.

26. It argues that the request covers information collected by the Council Tax team from the relevant liable parties on the accounts. It also considers that disclosure of this level of information would be likely to prejudice its, and other local authorities' ability to investigate, assess and collect council tax.

27. It argues that councils rely on the co-operation of council tax payers and other authorities to provide accurate and potentially confidential information in order to administer the council tax system, arguing that disclosing information of this nature is likely to have a negative impact,

as people will be less willing to engage with the council if they believe the information held will be disclosed to the public.

28. It further argues that providing the specific information it holds regarding a council tax payer on an account may lead others to be less likely to be open or to actively co-operate with the council on the collection of council tax in the future, thus having a detrimental effect on the council's ability to carry out this function to assess and collect council tax.

29. The Commissioner has considered this argument. The council's argument is relatively generic in nature, however its point is valid. Information on tax dealings is generally considered to be held in confidence, and those providing information to the council in respect of this would consider that that information would not be disclosed in response to an FOI request. This is particularly the case where the liable party is an individual, (where that information is also likely to be personal data), but is still true in cases where the liable party is a limited company.

30. The withheld information in this case concerns a third party's liability for council tax, and details of its transactions with the council regarding that liability. Details on the account may relate to payments due, payments made, and discussions between the parties regarding liability for the properties.

31. Responses under the Act are considered to be to the whole world, and so any information disclosed under the FOIA would effectively become public information, available to anyone. The Commissioner notes that the company would not have considered that the information which was being generated as a result of these transactions would be subsequently disclosed under FOIA. A disclosure of financial information relating to the companies tax liabilities would undoubtedly raise the concerns of the company owners.

32. The Commissioner notes the council's argument that disclosing this information may result in other companies being less forthcoming in providing information to the council for the purposes of assessing liability for, and collecting council tax from other companies or individuals. The contributors would note that the information which they were providing would not be held in confidence, and may potentially be disclosed to the world under FOIA. The Commissioner would suggest, however, that it is always the case that information provided to a public authority may be requested under information access rights, and on some occasions this information may indeed be disclosed.

33. However, the Commissioner does question whether the council's argument has a great deal of weight insofar as the council is concerned. Council tax is based upon information provided to local authorities by the Valuation Office Agency, as well as an evaluation taken from the outside of the property. It is assessed primarily by information obtained by the VOA directly, without recourse to the owners of the property *per se*. However the Commissioner does note that, on rare occasions, VOA officials may find it necessary to obtain the permission of owners to enter properties to obtain further details when assessing the valuation of the property for council tax banding purposes[1]. She also accepts that during the collection of the tax the council will have dealings with the owners.

34. Of the information which is obtained by the council, this is likely to relate to payments, claims for exemptions etc. The council is unlikely to be greatly affected in obtaining this form of information. Payments are a legal requirement, and correspondence etc. relating to the application of exemptions is unlikely to be affected as these benefit the owners of the properties who claim them.

35. Nevertheless the Commissioner does place weight on the fact that the information is provided to the council purely for the purposes of assessing council tax, and that property owners would be relatively unhappy to find that information provided for these purposes may subsequently be disclosed to the whole world through an FOI response. Taking a holistic view of the situation, the disclosure of such correspondence to the world in response to information access requests may well affect the councils ability to have full and frank correspondence with relevant parties if they consider that this information will be made available generally in response to information access requests.

36. The Commissioner has therefore decided that the exemption in section 31(1)(d) is engaged in this instance. She has therefore gone on to consider the public interest test required by section 2 of the Act.

[1] https://www.gov.uk/guidance/understand-how-council-tax-bands-are-assessed

The public interest

The public interest in the information being disclosed

37. The council noted the following points as regards the public interest in the information being disclosed:

- Furthering the understanding and participation in the public debate of issues of the day.
- Promoting accountability and transparency by public authorities for decisions taken by them.
- Promoting accountability and transparency in the spending of public money.
- Allowing individuals, companies and other bodies to understand decisions made by public authorities affecting their lives.
- Bringing to light information affecting public health and safety.

38. The central public interest in the information being disclosed relates to creating greater transparency and clarity on the way the council addresses council tax.

39. The council has sought to take the complainant's company to court on the basis that the properties are liable for council tax and this had not been paid. The company disputes that those payments are due, and a disclosure of this information would, to an extent, inform the public and provide a greater understanding of the issues which this case raises.

40. The Commissioner recognises a general public interest in creating greater transparency and openness on the actions of public authorities, and in this case, council tax is applicable to properties in England. Creating greater transparency over this issue is therefore informs the public generally.

41. Further to this, liability in this case may potentially have resulted as the result of a mistake, or a misunderstanding by either the company or the council (it is not within the Commissioner's remit to determine which party) in this case. A disclosure of this information may inform the public as to the potential misunderstanding and prevent such issues occurring again.

42. Nevertheless the Commissioner notes that essentially, the issues relate to one particular set of properties and relate to the private interests of that company together with the company which previously owned the properties.

43. The Commissioner also notes that the complainant has the opportunity to resolve the issue before the courts, where information on the previous owner's liabilities and contact with the council can be managed insofar as disclosure to the public.

The public interest in the exemption being maintained

44. The council noted the following points as regards the public interest in the exemption being maintained:

> *"In order to provide services to the public, the Council must be able to collect the Council Tax due and in order to do this, the Council act within specific legislation. Many people understand that Council Tax accounts are confidential, whether between the authority and an individual or a company. To provide the specifics held regarding an account, may lead people or other bodies not to be open or actively co-operative with the authority, if they believe the information they provide will be made public; this will then have a detrimental effect on the Council's ability to carry out its legal duty. The legislation the Council must work to - The Council Tax (Administration and Enforcement) Regulations 1992, is already available to the public, in order for people to understand what the Council must do in relation to Council Tax. The Authority also proactively publish information in the public domain about charges, premiums and discounts which may be applicable to accounts meeting specific criteria within their billing area, making the authority transparent in the reasoning of the decisions they take."*

45. The Commissioner considers that the main point of this request relates to the private interests of the complainant and his company rather than the public interest as a whole. Whilst some transparency would be created as a request of the disclosure of this information, given the nature of the information which is held this would be extremely limited in scope. The information mostly relates to notes relating to the previous financial transactions of the previous parties, and would only create greater transparency on a very limited issue; the exemption which is available to property owners if their properties become uninhabitable, and how that exemption is administered. However the council has explained to the complainant why it believes liability remains with his company – the exemption which was applicable is only available for a period of months and the company which owned the properties previously had already claimed this. It also provided the complainant with an internet link providing further information as to how that exemption is applied by the council.

46. The Commissioner also notes in this respect that the majority of information which would have shed a greater light on the issues which the complainant is seeking is no longer held by the council. The Commissioner has considered this lack of information further below.

47. Additionally the Commissioner notes that the central issue for the complainant is seeking to defend his position that liability was not due for the properties in question. Under the circumstances this is a question

for the courts to consider, and in doing so, to manage any information which it considers discloseable to the wider public.

48. Having considered the above the Commissioner's decision is that the public interest rests in the exemption being maintained in this case.

Section 43(2)

49. The Commissioner has been informed by the council that the information which has been withheld under section 43(2) is information which was provided to the complainant as a result of his initial request, but it was provided in error by the council under the subject access provisions of the DPA 1998.

50. As this information has been provided to the complainant in response to his initial request (albeit under the incorrect legislation), the council said that it would seek to apply section 21 to the request if the Commissioner disagreed with the finding that the information was exempt under section 43(2). Section 21 provides that information which is reasonably accessible to the applicant otherwise than under the Act is exempt information.

51. In reality however the information was disclosed as a result of the initial request for information, albeit under the DPA, due to the council's initial mistake.

52. The Commissioner notes that the information does not relate to the commercial interest of the company concerned, but to its financial responsibilities as regards liability for council tax for properties it owns.

53. In any event, she notes that the information relates to the complainant's companies liability for council tax, and that the information has already been provided to him.

54. As the information has already been disclosed to the complainant she has not found it necessary to consider this information further.

Is further information held?

55. The council said that the majority of the information which the complainant has requested is no longer held by it. It clarified that beyond the information which it has already provided to the complainant, and the information which it has withheld under section 31 no further information is held which falls within the scope of the complainant's request for information.

56. The council said that due to the time which has elapsed since the decision regarding the awarding of the exemption on council tax was made to the previous owners, all documentation has been deleted from its document management system in line with its retention of information policy. This restricts information being held on records for more than 6 years. It further clarified that the removal of old information is an automated process.

57. In addition to the deletion of older documents outlined above, it said that Council Tax bills/adjustments etc. are automatically generated by the system, and no copies are retained. It clarified therefore that whilst the Council does hold the dates and basic details included on these letters, it does not hold the actual bills.

58. The complainant provided further information to the Commissioner as regards the information it considered had not been disclosed to it. The Commissioner provided this to the council and asked it to specify what information was held but exempt, what information was never held, and what information may have been held but would have been deleted under its policies outlined above.

59. The information which the complainant suggested should be held was clarified by the complainant as:

    i. A copy of the Class D Discount notification(s).
    ii. A copy of the Class A Exemption notification(s)
    iii. A copy of the notice to Building Control Charnwood Borough Council dated 13th August 2011.
    iv. Copy of notification of building collapse (email 24th October 2017).
    v. Copy of Council determination that the property was uninhabitable (letter 18th April 2018)
    vi. Evidence of all steps taken by Charnwood Borough Council pursuant to Section 8 of the Council Tax (Administration and Enforcement) Regulations 1992 ("the 1992 Regulations) to issue Class A Exemptions and Class D Discount Exemption.
    vii. Copies of all policy decisions taken in respect of the flats.
    viii. Evidence of all reasonable steps taken by Charnwood Borough Council pursuant to Section 14 of the (1992 Regulations) and all relevant documents relating to the discounts claimed to have been granted.
    ix. Copies of all letters, inspection reports, emails, concession agreements, handwritten notes, opinions, emails attendance reports and advice relating to the destruction of the properties by fire rendering the same uninhabitable.

x. Copies of all steps taken pursuant to Para 8 of the 1992 Regulations.

60. The council provided the following response to these specific items of information:

(i)&(ii): The council clarified that these are effectively the same issue. The class A exemption was amended to a Class D discount in 2013 due to changes in legislation at that time. The council clarified that it does not hold copies of bills or exemption notices for this as the original notices were generated in 2011. These are auto generated by the system and copies are not retained by the council. It does however hold the text which was printed on the original documents. The information which is held falls within the scope of the exemption in section 31(1)(d) and has been considered above.

iii): The council said that following its initial discussions with the complainant it initially considered that the request solely related to council tax issues and did not therefore search other departments. Its Building Control department holds a copy of the report. The Commissioner therefore telephoned the council and asked if this information could therefore be disclosed to the complainant in response to the requests for information. The council confirmed that the information was able to be disclosed and agreed to do so in writing to the Commissioner on 10 January 2019. The Commissioner has not therefore considered this further.

iv) Only one email was located which was provided to the complainant in response to his initial request for information.

v) The council said that it had not been able to locate this information. It said however that if the complainant's were able to provide further information such as which service issued this letter it would carry out further searches to determine whether this information was held. The Commissioner therefore asked the complainant's to provide further information which might allow the council to identify this document however the complainant's did not provide that. Without further information allowing the identification of the document referred to by the complainant therefore the Commissioner has decided that on a balance of probabilities this information is not held by the council.

vi) The council clarified that *"The Council have responded to [the companies] enquiries regarding whether the properties in question are exempt from or attract a discount from the Council Tax charge. Correspondence and file notes have already been provided in the Council's original response. The Council Tax team have not denied that the properties were uninhabitable, however the exemption/discount*

which applies to empty properties requiring structural repair work, relates to the property, not the owner and can only be applied once. The exemption was applied in August 2011 and therefore the property is not eligible for further exemption. The owner could apply to the valuation office to have the property taken out of taxation; however the council cannot take this decision."

vii) The council clarified that it does not hold any information in this respect. It said that it has not made any policy decisions in relation to the habitability, status or council tax liabilities of the properties.

viii) As per the response to point vi). The council said that it does not hold any information in respect of this which has not already been disclosed to the complainant. The Commissioner does note however that as some information would have been deleted from council systems it is possible that this information was held previously.

ix) The council clarified that all of the information its holds falling within the scope of this point has already been disclosed or withheld under the exemptions cited above.

x) The council asked the Commissioner to clarify with complainant exactly what information was being sought through this part of the request. It clarified that if the complainant's were referring to section 8 of the Council Tax (Administration and Enforcement) Regulations 1992 then its response to vi) covers this information. The Commissioner therefore sought further clarification from the complainants on this matter. They clarified that they were referring to section 8 of the 1992 Regulations. Therefore the council's response was the same as it outlined for part (vi) above,

Conclusions

61. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainants' evidence and argument. She will also consider the actions taken by the authority to check that the information is not held, and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held.

62. The Commissioner is mindful of the Tribunal's decision *in Bromley v the Information Commissioner and the Environment Agency (EA/2006/0072*) in which it was stated that "*there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records".* It

clarified that the test to be applied as to whether or not information is held was not certainty but the balance of probabilities. This is therefore the test the Commissioner applies in this case.

63. In discussing the application of the balance of probabilities test, the Tribunal stated that, *"We think that its application requires us to consider a number of factors including the quality of the public authority's initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide, on the basis of our review of all of these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed."* The Commissioner has therefore taken the above factors into account in determining whether or not further information is held on the balance of probabilities.

64. In coming to a decision in this case the Commissioner has considered the supporting evidence which was provided to him by the complainant in support of his submission that further information may be held.

65. In coming to her conclusion, the Commissioner has considered what information she would expect the council to hold and whether there is any evidence that the information was ever held. In doing so the Commissioner has taken into account the responses provided by the council to the questions posed by her during the course of her investigation. The Commissioner is also mindful of the Tribunal decision in the decision in the *Bromley* case highlighted above.

66. The council has carried out relevant searches, within all of its relevant case management systems, and of its electronic files. It's records system is such that any information falling within the scope of the complainant's request would be filed onto the relevant case managements systems, and these have been searched and the information has been provided to the complainant.

67. The council provided a large degree of information to the complainant in response to its consideration of the complainant's request under the subject access regime of the DPA 1998. It has also withheld some information under section 31(1)(d). It confirmed that some of the information which the complainant is seeking was deleted under its records and retentions schedule, that this was deleted automatically by

its systems after 6 years, and that its systems to do not make a record of this deletion.

68. Having considered the above the Commissioner is satisfied that on a balance of probabilities no further information is held by the council falling within the scope of the request.

Right of appeal

69. 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

70. 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.

71. 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 .....

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF