

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 22 April 2020

**Public Authority:** Tendring District Council

**Address:** Town Hall  
Station Road  
Clacton on Sea  
CO15 1SE

(email: [corporateinfomanager@tendringdc.gov.uk](mailto:corporateinfomanager@tendringdc.gov.uk))

### Decision (including any steps ordered)

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1. The complainant requested from Tendring District Council information about business rate account credit balances and write-ons for a named property. Tendring District Council withheld the information relying on the section 31(1)(a) (law enforcement) FOIA exemption.
2. The Commissioner decided that Tendring District Council had correctly applied the section 31(1)(a) FOIA exemption to the withheld information and does not require it to take any steps to comply with the legislation.

### Request and response

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3. On 20 May 2019 a colleague of the complainant wrote to Tendring District Council (TDC) about a named property in which their business had an interest. He requested information in the following terms:

*"Under the Freedom of Information Act 2000, I write to request the following information specifically in relation to the [name redacted] property:-*

*Details pertaining to any monies held on account by way of credit balances / write-ons due to be returned to any / all of the previous*

*ratepayers. For the avoidance of doubt this request includes any previous credits written back due to time elapsed.*

*As this request is specific in relation to one property, the possible exemption Section of 31(1)(a) of the Freedom of Information Act 2000 should not be applicable”.*

4. TDC responded on 18 June 2019, refusing to provide the requested information on the basis that it was exempt from disclosure because the section 31(1)(a) FOIA exemption applied. TDC maintained its refusal following an internal review.

## **Scope of the case**

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5. On 5 August 2019 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
6. The complainant said that his request for information related only to one property and added, without explanation, that the section 31(1) FOIA exemption should not have been applied. He said that TDC should disclose the information that he had requested.
7. TDC’s detailed response to the Commissioner included a description of its process for tracing and informing persons entitled to business rates credit. TDC maintained its reliance on the section 31(1)(a) FOIA exemption.
8. The Commissioner considered whether TDC was entitled to rely on the section 31(1)(a) FOIA exemption to withhold the requested information. During her investigation the Commissioner considered the representations from both parties, reviewed the withheld information and considered relevant precedents.

## **Reasons for decision**

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

- (i) whether the prejudice claimed by TDC was relevant to section 31(1)(a) FOIA;
- (ii) the nature of the prejudice claimed by TDC; and
- (iii) the likelihood of the prejudice claimed by TDC occurring.

**(i) Applicable interest within the exemption**

11. TDC said its functions included the collection of National Non Domestic Rates ("business rates"). TDC added that it had a fiduciary duty to protect the "public purse". It explained that, within its powers and duties, TDC had a law enforcement function that allowed it to investigate a number of, primarily regulatory, offences and prosecute when and where appropriate. TDC said that it has a general power, conferred by section 111 of the Local Government Act 1972, to "*... do anything (whether or not .....) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions*". Accordingly the Commissioner accepted that the prejudice claimed by the Council related to law enforcement.

**(ii) The nature of the prejudice**

12. The Commissioner proceeded to consider whether the prejudice being claimed is "real, actual or of substance", that is, it is not trivial. Also whether there is a causal link between disclosure and the prejudice claimed.

13. TDC said that, like many other local authorities, it had been subject to related criminal offences, notably of fraud arising from false claims for business rates credits made by persons who were not entitled to receive them. TDC added that it was currently prosecuting offences of fraudulent trading in which significant sums of money due to it had been withheld from, or lost to, TDC. Accordingly the Commissioner was satisfied that the prejudice being claimed from disclosure was not trivial or insignificant and that there was a relevant causal link.

**(iii) The likelihood of prejudice**

14. TDC argued that disclosure of the withheld information 'would' prejudice its efforts to prevent crime. In other words, the risk was of the anticipated prejudice being more likely than not to occur. TDC told the Commissioner that disclosure of the requested information would invite fraudulent or criminal activity. TDC explained that it actively sought to refund credits where they were due and that there was no wider public

interest in disclosing information about individual credit balances, other than to those to whom they were due. TDC assured the Commissioner that it had processes in place to identify and notify businesses that were due for credit and that it made every effort to return credit due to its legal owner.

15. The complainant told the Commissioner that, on 16 May 2016, TDC had made public a list of business rates 'credit write ons' for 2016 including a substantial credit apparently due at that time in respect of the named property. He said he believed that more recent information was likely to be held and that an information request would produce it but TDC had withheld the requested information. He added that the business occupying the named property in 2016 had since been dissolved and speculated that this factor might have misled TDC into overlooking relevant information.
16. TDC told the Commissioner that a business rates credit had become due on the named property when the Valuation Office Agency had reassessed and amended the rateable value. A claim had yet to be made which met TDC's eligibility criteria; it had therefore not released the monies. TDC added that harm would be caused to it if credit were to be released to a person other than the one to whom it was legally due and that the legally entitled person had not yet been identified to its satisfaction. TDC said that providing the withheld information in response to a FOIA request would make it publicly available and was likely to encourage crime rather than prevent it. Moreover making a credit available in error to someone not properly entitled to it would put TDC itself at risk of loss.
17. The Commissioner noted that complying with some requests can set a precedent, making it more difficult to refuse similar requests in the future. It may therefore be appropriate to consider any harm that would be caused by combining the requested information with the information a public authority could be forced to provide subsequently if the current requested was complied with. This is known as the precedent effect.
18. TDC stressed that it was concerned to avoid loss arising to the legally entitled owner of any credit, also to the risk of further loss arising to TDC itself if it made a payment in error to a person not entitled to receive it.
19. In her investigation, the Commissioner noted that TDC appeared to have published information about business credits due in its area, including on the named property, in or around 2016. The complainant held a copy of information dating from 2016. He said that this had been published by TDC thereby setting a precedent which TDC should continue to follow. However, TDC said that it did not now make public information

about refunds due and had not done so since February 2017 because their publication had, in the past, led to fraudulent activity and loss to itself likewise for many other local authorities. TDC said that while it now held no record of publication of the 2016 data, it did appear that publication may have been made; if it had, that had been in error. Following her investigation the Commissioner accepted that recent business rates credit information was not publicly available for properties in the area served by TDC.

20. TDC provided the Commissioner with evidence that publication of business rates refund information could be combined with other information available to the public to facilitate fraudulent activity, the so called 'mosaic effect'.
21. The Commissioner is aware that some other councils had responded differently in the past with some disclosing credit information which others withheld. She considers each case on its own merits and in the light of the evidence and representations presented to her by the parties augmented by the findings from her own investigations.
22. The Commissioner has also had regard for the First-Tier Tribunal (Information Rights) finding in the *London Borough of Ealing v The Information Commissioner (EA/2016/0013)*. There the Tribunal concluded that disclosure of similar information would constitute "a real and substantial risk of prejudicing the prevention of crime".
23. Taking account of all the evidence before her, the Commissioner accepted that section 31(1)(a) FOIA was engaged. As the section 31 FOIA exemption is qualified, she proceeded to consider whether or not the public interest in maintaining it outweighed the public interest in disclosure.

## **Public interest test**

### **Public interest arguments in favour of disclosing the information**

24. The complainant told the Commissioner, without any supporting evidence or representations, that he did not believe that the arguments provided by the Council were a valid basis for withholding the information. He was concerned that a business rates credit might be due to his business.
25. TDC acknowledged that there is in FOIA a presumption in favour of disclosure. TDC also pointed to the need for openness and transparency in relation to the way in which public funds are collected and used.

### **Public interest arguments favouring maintaining the exemption**

26. TDC told the Commissioner that the public interest in maintaining the exemption in this case was strong. TDC accepted that disclosing the totality of business rates credits for sums held by it might be of general public interest. However providing details for individual business premises would be open to abuse and criminal activity. Disclosure would make the commission of fraud relatively easy, there was therefore a strong public interest in maintaining the exemption.
27. TDC said that searches of other sources of business information, such as that held at Companies House, might mitigate the risk it faced of crediting someone other than the person lawfully entitled to it. However carrying out checks would be time consuming and costly, and possibly out of proportion to the sums involved. Moreover any such investigation would be an additional cost to the public purse.
28. TDC added that there was the potential for losses to itself and to the public purse extending far beyond this particular matter when mosaic and precedent effects were taken into account.
29. TDC said that, while disclosure of business rates credit due on individual business premises would be in the private interest of individual businesses, it would not benefit the public. Moreover such disclosure would provide an opportunity for fraudulent activity and so cause harm.

### **Balance of the public interest**

30. The Commissioner believes that there is a very strong public interest in protecting the law enforcement capabilities of public authorities. When considering the public interest in preventing crime, it is important to take account of the consequences that can reasonably be anticipated.
31. The Commissioner recognises the public interest in transparency and openness in relation to the procedures and decision making of public authorities, especially in relation to the collection of taxes and financial management. However, the general public interest could be met by the release of aggregated information about credits which does not identify individual businesses.
32. The Commissioner noted TDC's processes to pay credits where they were due and also the steps that it took to alert businesses to outstanding credits.
33. From her inspection of the information withheld by TDC, the Commissioner saw that disclosing it would provide the public with information about the amounts of individual business rate credits and identify businesses that had not yet claimed them. The Commissioner

considered that disclosing that information would not advance the public interest, only the private interests of interested businesses.

34. The Commissioner considers that efficient businesses generally identify when they are owed money and act to reclaim it, particularly given the efforts TDC made to alert them to credits due. She noted too that the number of businesses affected would generally be small. She therefore viewed the public interest in public disclosure as limited.
35. In this particular case, the Commissioner accepted the strong TDC case that disclosure would prejudice its attempts to prevent related fraudulent activity. This created a significant public interest in favour of withholding the requested information.
36. The Commissioner therefore decided that the strong public interest in maintaining the exemption outweighed the public interest in disclosure and that TDC had applied the section 31(1)(a) FOIA exemption correctly.

## Right of appeal

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37. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

38. 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.
39. 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 .....**

**Dr R Wernham  
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