

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 November 2022

Public Authority: Stockton-on-Tees Borough Council

Address: PO Box 11
Municipal Buildings
Church Road
Stockton-on-Tees
Cleveland
TS18 1LD

Decision (including any steps ordered)

1. The complainant requested from Stockton-on-Tees Borough Council (the Council) information relating to properties listed as empty within a specific postcode area. The Council withheld information within the scope of questions 3 to 5 of the request and cited section 40(2) (personal information) of FOIA, but provided information within the scope of questions 6 and 7 of the request. The Council also, subsequently relied on section 31(1)(a) (prevention or detection of crime) of FOIA to questions 1 and 2 of the request.
2. The Commissioner's decision is that the Council was entitled to withhold the information within scope of questions 3 to 5 of the request under section 40(2) of FOIA and section 31 to questions 1 and 2. Therefore, the Commissioner does not require the Council to take any steps as a result of this decision.

Request and response

3. On 16 March 2022 the complainant wrote to the Council and requested information in the following terms:
 - “1. How many properties are listed as empty on council tax records in postcode TS17 5GD
 2. Of those properties the length of time that they have been empty e.g. Number of properties empty in excess of 2 financial years and number of properties empty for less than 2 financial years
 3. Of those properties, how many are subject to a council tax premium charge due to their empty status
 4. Of this properties how many are in council tax arrears and what is the overall council tax sum owed in respect of those properties, including added court costs/recovery costs and empty premium charges
 5. Of those properties how many have a charging order secured on them in lieu of unpaid council tax charges
 6. What is the Council’s policy for pursuing an order for sale against empty properties which charging orders i.e. at what stage is an order for sale pursued. If the Council has no policy for pursuing orders for sale please explain why
 7. What is the Council’s policy for bringing unused properties into use?”
4. On the same day, the Council responded, it refused to release the information requested and cited section 40 (personal information) of FOIA. The Council explained that this is due to the low numbers involved and said individuals could be identifiable. Therefore, providing the information requested would breach their data protection rights.
5. Following a request for an internal review, on 29 March 2022, the Council provided its internal review response and maintained its original position to rely on section 40 of FOIA. The Council withheld the information within scope of questions 1 to 5 and provided the complainant with information to questions 6 and 7 of his request.
6. During the Commissioner’s investigation, the Council reconsidered its response and relied also on section 31(1)(a) (the prevention or detection of crime) of FOIA to questions 1 and 2 of the request.

Reasons for decision

7. The following analysis focuses on whether the Council was entitled to withhold information to questions 3 to 5 of the request under section 40(2) of FOIA, and rely on section 31(1)(a) to questions 1 and 2.

Section 40(2) – personal information

8. Section 40(2) of FOIA says that information is exempt information if it is the personal data of another individual and disclosure would contravene a data protection principle.
9. The Council stated the information requested at questions 3 to 5 is exempt under section 40 of FOIA because of the low numbers involved, and individuals could be identified. The Council said that the number of properties in question is lower than five, and it believes the properties are easily identifiable and the owners of the properties are also identifiable. The Council, therefore, considers providing the financial information requested would breach the data protection rights of those individuals.
10. The Council explained why the information is the individual's personal data. It said it is not the property, but the owner of the property that is subject to council tax payments and is responsible for any arrears. Therefore, information relating to those charges is the personal information of the individuals that own those properties.
11. The Council's position is that not all of the withheld information is personal data. It does not consider the number of properties listed as empty within the specific postcode, and the length of time they have been empty, to be personal information. However, the Council cited section 31(1)(a) of FOIA to this specific information (within the scope of questions 1 and 2 of the request). Therefore, the Commissioner will analyse the Council's reasons for applying section 31 of FOIA to questions 1 and 2 of the request later in this notice.
12. The Council said it has not found any legitimate interest the public may have which would make it necessary to disclose the personal information of the owners of the empty properties. The Council stated disclosure of the number of empty properties and the time that they have been empty, could be consistent with the Council's policy for greater transparency and accountability.
13. The Council considers the legitimate interests are met by the transparency it has in the availability of its policies relating to empty properties and council tax charges.

14. The Council is of the view that the general public would have reasonable expectations for information regarding their council tax charges and arrears, not to be disclosed to the world at large. The Council believes that disclosure is likely to cause distress to the individual's, and also damage to their reputation.
15. The complainant explained the reasons for disagreeing with the Council's refusal to provide the information he requested. He said he had not asked for any address details, names of owners or liable parties, but requested only a binary count for each category and a financial sum with regard to arrears levels across all properties. The complainant disputes the Council's view that he could establish personal details from the information if it was disclosed, and he reiterated that he had not asked for any personal or domestic address information.
16. In response to the complainant's argument that he has only asked for a binary count, the Council said the low numbers of properties that fall within the scope of the information requested, together with the complainant's personal knowledge of the area, the empty properties and their owners, it would be possible for the complainant to identify the individuals if the information was disclosed.
17. The Commissioner is satisfied that the withheld information (questions 3 to 5 of the request) is personal data of identifiable individuals. The owners of the properties can be found by piecing together information already in the public domain, such as through the electoral register. The information sought from questions 3 and 5 of the request would clearly be financial information linked to the owners of the properties.

The Commissioner's position

18. The Commissioner considers the individuals have a strong expectation of privacy relating to the information requested. He has therefore determined that disclosure of the information, which consists of personal data would be unlawful as it would contravene a data protection principle; that is set out under Article 5(1)(a) of the UK General Data Protection Regulation.
19. The Commissioner's position is that the Council is entitled to withhold information within scope of questions 3 to 5 of the request under section 40(2) of FOIA.

Section 31 – law enforcement

20. 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,”

21. The Council considers the release of the requested information into the public domain would be likely to prejudice the prevention and detection of crime. It said, in providing numbers of empty properties within a postcode, would be providing information which could be used to target crimes such as; arson, metal theft, identity theft, vandalism and damage to property. Disclosure would increase the likelihood of those properties being used by unlawful residents (“squatters”) which may lead to the theft of services such as gas and electricity and other criminal damage. The Council stated the potential consequences of criminal damage; the direct costs of repairing property and the indirect costs of the impact on local property values, increased insurance premiums and the costs of evictions.
22. 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) of FOIA is designed to protect.
23. 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 the number of empty properties within a postcode, 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.

Public interest test

24. Section 31(1)(a) is a qualified exemption and is subject to the public interest test set out in section 2(2)(b) of FOIA. The Commissioner has considered whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure.

25. 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 properties. He acknowledges that there is availability of the Council's policies relating to empty properties and council tax charges. 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.
26. The Commissioner recognises that information relating to the number of empty properties and the length of time they have been empty, is of interest to the complainant as it could help in assessing the scale of empty properties and arrears within a geographical postcode area. It could possibly indicate the corporate approach to the scale of the issue, specifically with regard to the arrears attributed to them. 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.
27. While those intent on committing organised crime would find opportunities simply from visiting an area, disclosing the number of empty properties within the postcode area in question, would be likely to widen the list of potential properties which criminals are aware of and the number of possible targets of crime will therefore increase. The provision of this number makes it easier to commit crime and therefore prejudices the prevention of crime.
28. In view of this, the Commissioner is mindful the Council expressed concerns that disclosure of the information requested would be likely to impact on local residents. He has taken into account the argument that release of the withheld information would be likely to encourage criminal activities which would have an adverse effect on the community. Having found the exemption is engaged as disclosure would be likely to result in prejudice to the prevention or detection of crime, the Commissioner believes that this outcome would be counter to the public interest. The Commissioner concludes that the public interest in maintaining the exemption outweighs the public interest in disclosure.

29. The First-tier Tribunal (Information Rights) has previously considered the issue of requests made to local authorities for information on empty properties, and has concluded that such information should be withheld under section 31(1)(a). The Commissioner's position is supported in several ICO decision notices¹ concerning local councils². The ICO guidance also reflects this position which is evident within paragraphs 20 and 91 to 98 of the guidance.

The Commissioner's conclusion

30. The Commissioner is satisfied that disclosure of the withheld information within scope of questions 1 and 2 of the request, would be likely to prejudice the prevention or detection of crime. Therefore, section 31(1)(a) of FOIA is engaged and the Council was entitled to rely on this exemption.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617622/fs50866638.pdf>

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615022/fs50786336.pdf>

Right of appeal

31. 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.

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

32. 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.
33. 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

Phillip Angell
Head of Freedom of Information Casework
Information Commissioner's Office
Wycliffe House
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