

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 October 2015

Public Authority: Birmingham City Council
Address: Council House
Victoria Square
Birmingham
B1 1BB

Decision (including any steps ordered)

1. The complainant has requested recorded information about public health funerals undertaken by Birmingham City Council, and in particular, he seeks the names and addresses of the deceased persons and the dates of their funerals.
2. The Commissioner's decision is that Birmingham City Council has properly applied section 31(1)(a) to the requested information in this case. The Council is therefore entitled to withhold the requested information.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. The complainant wrote to Birmingham City Council and requested information in the following terms:
 1. *"Does your Council publish a list of public Health Funerals it has carried out?"*
 2. *How often is the list updated (including the last time it was updated)?*
 3. *Does the Council have any Public Health Funeral cases on record that are not presently on the website?*

- 4. If the answer to question 3 is Yes (either because there is no list or because the list is not up-to-date), what are the details (including names, last known address, date of birth, date of death, date of funeral, and whether the case has been/will be/or even might be referred to the Treasury Solicitor?*
 - 5. Has the Council given any of this information away to another individual or organisation, either formally through an FOI request or informally through other communications?*
 - 6. Have you been approached by any research or probate firms for this information, if so which ones?*
 - 7. What is the name, email and telephone number of the individual(s) responsible for overseeing public health funerals within the Council?*
 - 8. What is the name email and telephone number of the individual(s) responsible for overseeing Treasury Solicitor referrals within the Council?"*
5. On 24 April 2015, the Council responded to the complainant's request by providing recorded information relevant to his questions or by confirming that it does not hold or publish the information he seeks.
 6. In answer to answered question 4 the Council stated, "We are not prepared to release any detailed data about individual cases – neither names, date of birth or address details. Under FOI, the Authority has a right to refuse to release information held if an exemption applies". The Council went on to apply sections 41 and 44 of the FOIA to the information it holds, which is relevant to question 4.
 7. On 30 April the complainant wrote to the Council to request a review of its decision to withhold information relevant to question 4.
 8. The Council completed its review and wrote to the complainant on 15 May to advise him of its final decision. The Council agreed with the complainant's arguments that sections 41 and 44 were not applicable. It noted that a similar request had been made to other public authorities and pointed out that these had resulted in a variety of responses, including full disclosure, partial disclosure or refusal.

9. Having considered the matter further the Council determined that the information it holds, relevant to question 4, should be withheld in reliance on section 31(1)(a) – where disclosure would, or would likely prejudice the prevention or detection of crime. To support its application of section 31(1)(a), the Council identified its public interest considerations and provided the complainant with a copy of the Commissioner's decision notice in case FS50454267: A decision which concerns a request to Westminster City Council for similar pieces of information.
10. The Council's review also corrected its initial response to question 5 of the complainant's request. It acknowledged that the Council has provided information about public health funerals to the Treasury Solicitor's Office and to a contractor whose contract is to locate next of kin.
11. On 4 June the complainant wrote to the Council to appeal its application of section 31(1)(a) to the information he seeks at question 4.
12. The Council responded to the complainant's request by informing him that its decision remains unchanged. The Council advised the complainant of his right to refer the matter to the Information Commissioner's Office.

Scope of the case

13. The complainant contacted the Commissioner on 4 June 2015 to complain about the way his request for information had been handled. He was particularly concerned about the Council's refusal to review its subsequent application of 31(1)(a) of the FOIA to the information he seeks at his question 4.
14. The Commissioner's investigation sought to determine whether Birmingham City Council is entitled to rely on section 31(1)(a) of the FOIA as proper grounds for refusing to provide the information requested at question 4 of your request. This notice is the Commissioner's decision.

Reasons for decision

Relevant information

15. Public health funerals are funerals arranged by Local Authorities for those people who have died and have no known relatives to arrange or

pay for their funeral; or have relatives who do not want to; or are unable to arrange their funeral. Local Authorities have a responsibility to arrange such funerals.

Section 31(1)(a)

16. Section 31(1) states that:

“Information which is not exempt information by virtue of section 30 [information held for the purposes of investigations and proceedings conducted by public authorities] is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

a) the prevention or detection of crime ...”

Would disclosure be likely to prejudice the prevention and detection of crime?

17. The Commissioner has examined the information which the Council is withholding from the complainant. This information is comprised of a spreadsheet listing the names and details of named deceased individuals, including the costs to the Council of their funerals. The spreadsheet is marked 'Strictly Private and Confidential'.
18. The Council asserts that section 31(1)(a) is engaged on the grounds that the withheld information could be used to facilitate criminal acts such as identity fraud, theft of physical assets from a deceased's estate and criminal trespass. It points out that the requested information directly identifies deceased individuals in circumstances which could suggest that they did not leave relatives and did not leave a will. Consequently the Council asserts that disclosure of the requested information could make the assets and identity of those deceased persons vulnerable.
19. Where a deceased person has not made their own arrangements and there is no next of kin or the relatives have refused, the Council will arrange funerals irrespective of the value of the deceased's estate: It does not follow that the deceased left no assets.
20. In *Hogan v the ICO and Oxford City Council*¹ the Information Tribunal considered the application of the “prejudice test”. The Tribunal identified three elements which need to be considered in determining whether the exemption is engaged – these elements are:

¹ Appeal numbers EA/2005/0026 and EA/2005/0030

- (i) the public authority needs to identify the applicable interest(s) within the relevant exemption,
- (ii) the public authority should consider the nature of the 'prejudice' being claimed, and
- (iii) the public authority should consider the likelihood of occurrence of the identified prejudice".

21. The relevant applicable interest in this exemption is the prevention or detection of crime. The Commissioner accepts that the arguments made by the council directly address this prejudice.
22. When considering the second element, the Commissioner must be persuaded that the nature of the prejudice is "real, actual or of substance" and not trivial or insignificant. He must also be satisfied that some causal relationship exists between the potential disclosure and the stated prejudice.
23. The Council strongly assert that disclosure of the addresses of deceased persons may identify a residential property as being empty, thereby rendering it vulnerable to illegal occupancy and vandalism. Similarly, depending on the length of time since the person's death, the property may be subject to theft of personal effects and property².
24. Likewise, the Council points to the Commissioner's decision in a similar case involving Westminster City Council.³ Here, the nature of the prejudice associated with the release of the personal details of a deceased individual with no known relatives and no will, concerns the vulnerability of the deceased's assets. In that case the Commissioner agreed with the Council finding that the assets of the deceased persons need to be secured and disclosure of the information may lead to the commission of offences and cause loss to unsecured estates.
25. Westminster Council explained that the publication of the last known address may be that of an empty property. This might lead to squatting and an increase in the instances of various types of criminal activity directly connected to it; or 'stripping' as in the removal of copper pipes and floor boards. It said that publishing the date of death and the date of the funeral might provide an indication of the window of opportunistic theft of personal effects and property, and that the name of the deceased person, along with their date of birth, might lead to fraud, and

² London Borough of Bexley v Mr Colin P England and the Information Commissioner

³ https://ico.org.uk/media/action-weve-taken/decision-notices/2012/783218/fs_50454267.pdf

specifically identity theft, whilst records are updated and before they can be cross-referenced.

26. Turning first to the identification of empty properties, the Commissioner and the Tribunal have considered requests for similar information previously and the Commissioner believes it appropriate to consider those outcomes as part of this decision.
27. The Commissioner has had particular regard to the case of the London Borough of Bexley. In that case, the requester had asked for the addresses of vacant, empty or abandoned properties that had been listed as "long term empty" and "uninhabitable properties". The information had been withheld using the exemption under section 31(1)(a). In summary, the Tribunal accepted that the second and third tests set out in paragraph 20 of this notice were satisfied based on the following facts:
 - The Tribunal accepted evidence that empty properties are associated with criminal activity from organised local gangs. In particular, the Tribunal in paragraph 41 identified occasions of organised "stripping" of empty properties. This was the removal of all things of value (such as pipes and floor boards) leaving an empty and uninhabitable shell property.
 - The Tribunal also accepted evidence that while squatting is not a crime in itself, it is associated with criminal activity. The Tribunal identified a number of instances in the evidence it heard between paragraphs 48 and 57.
 - The Tribunal accepted that the disclosure of the list of properties would be of use to squatters and would be likely to lead to significant harm in the form of criminal activity (paragraph 63).
 - Based on the evidence it heard, the Tribunal considered that disclosure of the information would be likely to have a significant negative impact on the prevention of crime (paragraph 63).
28. The Commissioner appreciates the difference in the information requested in the Bexley case and the information in this case. Nevertheless he believes that the prejudice arguments in the Bexley case demonstrate that the prejudice to the prevention of crime in this case is equally relevant. This is particularly the case where the disclosure of the addresses of recently deceased persons could identify residential properties as being empty.
29. In respect of the potential identity fraud which might flow from disclosure, the Council drew the Commissioner's attention to the statistics available on the Deceased Preference Service website. The

website estimates that there were 80,000 incidences of deceased person identity fraud in 2008, representing 16% of all people who died that year.

30. When cases have been referred to the Treasury Solicitor, the Council does not hold records of which estates have been secured and therefore disclosure of information relating to the addresses of deceased persons could still put their assets and estates at risk. It would be possible for criminals to redirect or intercept the deceased's post, including that relating to bank accounts and this increases the risk of identity fraud. Having obtained the names, addresses and dates of birth of individuals, persons with criminal intent could go on to obtain birth certificates, passports and driving licences and through these access services for bank loans and credit cards. The Council considers that such criminal activity associated with a deceased person's properties does not necessarily reduce over time.
31. The Council considers that it is likely that the prejudice to the prevention of crime is more likely than not to occur given the size of the City of Birmingham and the current levels of crime. To justify its assertion, the Council asked the Commissioner to consider a variety of information taken from the websites of The Daily Telegraph, Equifax, the BBC and ThisIsMoney. These websites identify Birmingham as being an 'identity fraud hotspot'.
32. The information provided by the Council list Birmingham as being one of the top 20 UK locations for identity theft fraud. The Council points out that Birmingham is a city of 1.1 million people and that this is a similar size to an inner London Borough. That being the case, the Council believes that the arguments advanced in the Westminster case are also relevant to its circumstances.
33. Having considered the Council's representations and the information it provided in support of its position, the Commissioner has decided that disclosure of the requested personal details to the world at large could enable a person to use such information for criminal purposes. He readily accepts the requested information could be used to falsely obtain the documents described at paragraph 30, and that such documents could be used for the commission of crime.
34. The Commissioner is satisfied that there is causal link between the disclosure of the requested information and a prejudice to the prevention of crime, and that the prejudice is real and of substance in this instance. He therefore finds that the second stage of the test from the Hogan case is satisfied.

35. When considering the third step as set out in Hogan, the Commissioner notes that the Council has claimed that the stated prejudice 'would be likely to' occur. The Commissioner considers that this means there must be a "real and significant risk" of prejudice although the risk need not be more probable than not.
36. The Commissioner has considered his own guidance on 'Information in the public domain'⁴. He believes that disclosure in response to this request would provide collated information in a more useable form than that which can be obtained from information supplied by or found in the British Library or General Register Office. The information which the complainant seeks from the Council would not require time consuming activity to work out which properties are empty.
37. Taking the above into account, the Commissioner considers that disclosure of the requested information would increase the risk of prejudice occurring over and above the current risk from publicly available information.
38. The Commissioner has considered the evidence the Council has provided. He believes that disclosure of the requested information would adversely effect to the prevention of crimes which are real and significant. He considers that potential for crime arising from the disclosure of the requested information is more than a hypothetical possibility; it is a real and significant risk.
39. For the reasons set out above, the Commissioner considers that the council has satisfied all three stages of the prejudice test set out in Hogan and therefore accepts that the exemption at section 31(1)(a) is engaged. He has therefore gone on to consider the application of the public interest test associated with this exemption.

The public interest test

40. As the exemption under section 31(1)(a) is a qualified exemption, it is subject to a public interest test. In accordance with that test, as set out in section 2(2)(b), the Commissioner must consider whether in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information.

⁴ <https://ico.org.uk/media/for-organisations/documents/1204/information-in-the-public-domain-foi-eir-guidance.pdf>

Public interest arguments in favour of disclosing the requested information

41. The Council accepts that a public interest is associated with it being transparent in respect of its use of public funds to meet the cost of funerals in the first instance. This is particularly the case during a period of financial austerity which the Council is experiencing.
42. The Council considers that the transparency afforded by disclosure could possibly assist members of the public who may have an entitlement to an estate or assist organisations representing such members of the public.
43. Additionally, the Commissioner considers that disclosure of the requested information would assist the public in scrutinising the ways in which the Council spends public money, particularly in relation to its role in arranging these funerals.
44. The Commissioner accepts that disclosure of the requested information would provide greater transparency and enable people to claim their entitlement from estates. He acknowledges that some of the requested information is in the public domain and likewise that it is possible for a member of the public to piece together that information to gain much of the information the complainant seeks.
45. The Commissioner has no difficulty in accepting that disclosure could speed up probate work and in doing so could reduce the threat of prejudice to law enforcement by virtue of enabling the legal owners of the deceased's property to be located and make their claim(s) on the estates. He likewise accepts that disclosure increases the likelihood of relatives being made aware of a deceased person's passing and once they are found, relatives may voluntarily pay for the funeral and thereby save public money.
46. The Commissioner considers that disclosure might speed up the probate process and save both the local authority and the Government's Legal Department (if there is an estate to refer) time and research in finding a next of kin which in turn would save public funds.
47. The Commissioner considers that the 'default setting' of the FOIA is in favour of disclosure. This is based on the underlying assumption that disclosure of information held by public authorities is in itself of value because it promotes better government through transparency, accountability, public debate, better public understanding of decisions and informed and meaningful participation of the public in the democratic process.

Public interest arguments in favour of maintaining the exemption

48. The Council considers that the public interest in maintaining the exemption lies in the reduction of crimes and in the prevention of crimes associated with the estates and properties of the deceased persons who received public burials. The Council assert that the cost to the public purse of these crimes would be of significantly amounts.

49. The Council's assertion has prompted the Commissioner to be mindful of the words of Upper Tribunal Judge Edwards in not increasing burdens on the public purse where information about properties is likely to lead to theft or vandalism. Judge Edwards said that –

“Preventing crime prevents the criminal acts themselves and the consequences that accompany or follow them. These factors have to be taken into account as part of the assessment of the public interest. The consequences of a crime may be financial or social. They may be direct or indirect. Just to take criminal damage, there are the costs of security measures, the cost of repairs, increased insurance premiums for the area and an impact on the local property values. There is no justification for taking account of only some of these financial consequences. There is no difference in principle between the costs that are carried by private individuals, by the public purse or spread through insurance premiums. Nor is there a difference in principle between the cost of repairing the damage and the cost of evicting someone who caused the damage in order to gain entry and possession. And there is no justification for severing financial costs from social costs....Criminal damage and its consequences can reduce the quality of life in a neighbourhood. There is a psychological element involved, which may not be rational. People may feel more vulnerable or threatened than they really are. But the impact is none the less real for that.”⁵

50. The Commissioner has found only one instance where a public authority routinely publishes the information sought by the complainant. The public authority concerned is East Cambridgeshire District Council.⁶

51. The Commissioner considers that the Council owes the equivalent of a duty of confidence to a deceased person. There may be no next of kin,

⁵ Yiannis Voyias v Information Commissioner and the London Borough of Camden (EA/2011/0007 22 January 2013). http://www.informationtribunal.gov.uk/DBFiles/Decision/i942/EA-2011-0007_2013-01-22.pdf

⁶ Open Data: Public health funerals since January 2013. <http://www.eastcambs.gov.uk/notices/open-data>

but there might be neighbours, friends or acquaintances, and these are sensitive circumstances that should be managed with dignity and the minimum of distress to any party.

52. The Local Government Association has reported an increase in the number of family or friends unable or unwilling to contribute to the costs of a funeral. This increase means that councils are called upon more often to exercise their duty under Public Health (Control of Disease) Act 1984. Under this Act, when someone dies within the Council's area, outside of a hospital, and there is no one else willing or able to pay, the Council must make the necessary arrangements for a public health funeral.⁷
53. The increase in public health funerals may many and varied reasons, but whatever the circumstance, the Council does not believe that the publication of this information, except in some anonymised and summarised annual form, is in the wider public interest.
54. The Commissioner considers that there is a strong public interest inherent in section 31(1)(a), which in this case is avoiding prejudice to crime prevention.
55. He also considers that there is a strong public interest in preventing the impact of crime on individuals, for example, relatives of a deceased person who are financially affected if an estate which has been stolen from or who would suffer damage and distress as a result of fraud being committed using the deceased's details.
56. In addition to the above, the Commissioner recognises that there is public interest in reducing the impact of crime on the public purse and in protecting the availability of public resources, such as the police, which would otherwise be utilised in the in the handling of burglary and identify fraud cases.

Balance of the public interest arguments

57. The Commissioner recognises that there is always some public interest in the disclosure of information held by public authorities.
58. He recognises that the withheld information is of practical interest to certain members of the public who may have an entitlement to the estate of a particular deceased person's estate, and/or organisations

⁷ Local Government Association, Public Health Funerals Final Report October 2011.
http://www.local.gov.uk/c/document_library/get_file?uuid=59d4ed48-08a5-4f9b-80c3-00ce5fcd341b&groupId=10180

enabling individuals to exercise that entitlement. Nevertheless, the Commissioner has not given this argument significant weight.

59. The Commissioner considers that there are other mechanisms in place for the administration of estates of persons who die intestate and without a known kin. One such mechanism is provided by the Bona Vacantia Division of the Government Legal Department.
60. The Commissioner notes that the routine publishing of estates that have been referred to the Bona Vacantia division has enabled more people to claim their entitlement from estates⁸.
61. The Commissioner recognises that there is an inherently strong public interest in avoiding the likely prejudice to the prevention of crime.
62. The potential crimes identified as being relevant in this case would likely include anti-social behaviour, criminal damage, arson, organised groups stripping empty properties, identity fraud and the crimes that can be committed using false documents.
63. The Commissioner accepts that tackling issues like these would involve significant public expense and believes it is in the public interest to protect property and to ensure that public resources are used efficiently. He also accepts that there is a strong public interest in avoiding personal distress to the direct victims of the crime and, in the case of crime related to empty properties, to those in the wider neighbourhood who may be affected.
64. Taking all of the above into consideration, the Commissioner decision is that the greater public interest rests in avoiding prejudice to the prevention of crime. He has concluded that the public interest factors which favour withholding the requested information significantly outweigh the public interest factors which favour its disclosure. Consequently, the Commissioner's decision is that the Council has properly applied section 31(1)(a) of the FOIA and it is therefore entitled to withhold the information which the complainant seeks.

⁸ <https://www.gov.uk/government/news/transparency-transforms-total-estates-claimed-by-relatives>

Right of appeal

65. 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

66. 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.
67. 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
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