Freedom of Information Act 2000 ('FOIA')

Decision notice

Date: 4 December 2012

Public Authority: Westminster City Council
Address: Westminster City Hall
64 Victoria Street
London
SW1E 6QP

Decision (including any steps ordered)

1. The complainant has requested details of people for whom Westminster City Council ('the council') has arranged 'paupers' funerals for in the last 10 years. The Commissioner's decision is that the council has correctly applied the law enforcement exemption at section 31(1)(a) of the FOIA. The Commissioner does not require the council to take any steps to ensure compliance with the legislation.

Request and response

2. On 27 April 2012 the complainant submitted a request for information via the council's website in the following terms:

> "We require the following to be released to us:-
>
> 1. List of names of persons for whom the council has arranged "pauper" funerals in the last 10 years.
>
> 2. Please provide:-
>
> Name
>
> DOB
>
> Address of deceased."

3. The council responded on 4 May 2012 and refused to provide the requested information citing the exemption at section 31(1)(a) of the

FOIA. It stated that the exemption applies because the release of personal details of a deceased individual with no known relatives and no will may make the assets of that person vulnerable. It explained that the assets of the deceased need to be secured and disclosure of the information may lead to the commission of offences and cause loss to the unsecured estates.

4. An internal review was requested on 7 May 2012 and the council provided its response on 22 June 2012 maintaining its original position. In addition to the risk to the assets of the deceased, the council also stated that disclosure of the information could also lead to deceased identity fraud.

Scope of the case

5. The complainant contacted the Commissioner to complain about the way his request for information had been handled.

6. The Commissioner has considered whether the exemption at section 31(1)(a) has been correctly applied in this case.

Reasons for decision

7. 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?

8. In Hogan v the ICO and Oxford City Council[1] the Information Tribunal stated that:

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

> "The application of the "prejudice" test should be considered as involving a number of steps. First, there is a need to identify the applicable interest(s) within the relevant exemption…Second, the nature of the 'prejudice' being claimed must be considered…A third step for the decision-making concerns the likelihood of occurrence of the prejudice".

9. The relevant applicable interest in this exemption is the prevention or detection of crime and the Commissioner accepts that the arguments made by the council directly address this prejudice.

10. When considering the second step as set out in the Hogan case, 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.

11. The nature of the prejudice argued by the council is that disclosure of the addresses of the recently deceased may identify a residential property as empty thereby rendering it vulnerable to illegal occupancy, vandalism and, depending on how much time has elapsed, theft of personal effects and property. It also argued that the disclosure of names, addresses and/or dates of birth would be likely to prejudice the prevention of crime by enabling the commission of identify fraud.

12. Turning first to identification of empty properties, the Commissioner and the then Information Tribunal have considered requests for similar information before and the Commissioner believes it appropriate to consider those outcomes as part of this decision.

13. The Commissioner has had particular regard to the case of the London Borough of Bexley v Mr Colin P England and the Information Commissioner[2]. 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 9 of this decision 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

[2] Appeal numbers EA/2006/0060 and 0066.

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).

14. Although the Commissioner appreciates the difference in the information requested in the Bexley case and the information in this case, he believes that the prejudice arguments in the Bexley case demonstrate that there would be prejudice to the prevention of crime in this case in those circumstances where disclosure of the addresses of the recently deceased identify a residential property as empty.

15. In the internal review request, the complainant stated that in his view the deceased individuals would not have had any assets to protect and that as the request asked for information going back 10 years, for cases that died more than two years ago the estate would have been wound up by the Treasury Solicitor meaning there would be no assets that require protecting.

16. The council explained that it is required to arrange funerals under section 46 of the Public Health (Control of Disease) Act 1984 in "any case where it appears to the [council] that not suitable arrangements for the disposal of the body have been or are being made otherwise than by the [council]." Consequently the council will arrange funerals in circumstances where the deceased has not made their own arrangements, there is no next of kin or relatives have refused and this is done irrespective of the value (or lack thereof) of the deceased estate.

17. It also explained that when cases have been referred to the Treasury Solicitor, the council does not hold any records in respect of which estates have been secured and therefore disclosure of the requested information would still put estates at risk even after the matter has been referred on. The council also clarified that regardless of the value of the estate the risk of the name, address and date of birth being used for

deceased identify fraud could occur at any time thereby prejudicing the prevention of crime.

18. In relation to identity fraud, the council stated that, in this instance, disclosure of the name, address and/or date of birth of deceased persons to the world at large would enable any person to use such information to falsely obtain documents such as birth certificates, passports and driving licences. It explained that false documents are used for the commission of crimes such as driving without insurance, fraudulent credit applications, committing bigamy, tax evasion, money laundering, drug smuggling, terrorism and people trafficking. For context, it stated that in 2010 the BBC reported the arrest of 3 people in 2009 for the fraudulent use of more than 20 deceased infants' birth certificates which they used to obtain driving licences and student loans.

19. The council also stated that the disclosure of addresses of empty residential properties can enable criminals to physically intercept mail, or to set up a mail redirection from the deceased's address to their own. Post will continue to be sent to the deceased until all relevant parties have been informed that the intended recipient has died. This will include correspondence relating to bank and/or building society accounts and other financial details. As a result this enables the person(s) intercepting the mail to access and use the deceased's accounts and to fraudulently obtain credit cards and/or loans and purchase goods without paying for them.

20. The Commissioner is satisfied that the council has adequately demonstrated a 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 Hogan is satisfied.

21. 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.

22. In order to demonstrate that the prejudice in relation to identify fraud would be likely to occur the council provided the following statistics taken from the Deceased Preference Service website:

- An estimated 80,000 incidences of deceased identity fraud occurred in 2008[3]
- 16% of all people who died in 2008 had their ID's stolen[4]
- There was a 32% surge in ID crime in 2009[5]
- At any one time pensions are being paid to 70,000 deceased persons[6]

23. It stated that there is no evidence to suggest that the trends highlighted above are on the decrease and, on the contrary, in 2011 according to research commissioned by Fellowes, the number of victims was still rising with 7% of the UK population being victims of identity fraud, equating to over 4 million people.

24. In addition, the council stated that a report by CIFAS (the UKs fraud prevention service) in 2009 identified Westminster as one of the London boroughs with the most reported identity fraud cases, rendering its residents at an increased risk.[7]

25. The Commissioner has considered the evidence the council provided and believes that the risk of an adverse effect to the prevention of crime is real and significant. He believes that the chance of prejudice being suffered from disclosure of the requested information is more than a hypothetical possibility; it is a real and significant risk.

26. For the reasons set out above, the Commissioner considers that the council has satisfied all three stages of the prejudice test set out on 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.

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[3] Source CIFAS

[4] Source CIFAS

[5] Source CIFAS

[6] Source BDO Stoy Hayward

[7] www.cifas.org.uk/secure/contentPORT/uploads/documents/CIFAS%20Reports/The_Anonymous_Attacker_CIFAS_Special_Report_Oct_2009.pdf

The public interest test

27. 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

Public interest arguments in favour of disclosing the requested information

28. The Council identified the following public interest arguments in favour of disclosure:

    - Disclosure of the information would give some transparency to the records that the council holds in respect of its part of the process of administering the funeral, and estates, of the deceased in its borough.

    - It is acknowledged that there is an 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 enabling individuals to exercise that entitlement.

29. 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

30. The council identified the following public interest arguments in favour of maintaining the exemption:

    - Maintaining the exemption would protect the public purse from criminal activity in terms of financial impact. For context, it stated that identity fraud cost the economy £1.2 billion in 2008[8] and the Annual Fraud Indicator March 2012 put the annual amount lost to fraudulent activity at £73 billion which includes activities used to

[8] Source Identify Fraud Steering Committee

obtain fraudulent goods and services from the estate of deceased persons[9].

- Maintaining the exemption would protect the availability of public resources (such as the police) which would otherwise be dedicated to the detection of identity fraud using deceased people's details.

- Maintaining the exemption is therefore in the public interest as it benefits taxpayers on the whole.

- In terms of the benefits to certain members of the public (as set out in paragraph 28) some of the information will be made available to them at a later date in the process when the risk of fraudulent activity on the estate is reduced. It therefore remains in their interest, to avoid losing time and money in dealing with fraudulent activity on their entitlement, to not make information about the deceased available to the general public until the estate had been secured.

31. The Commissioner considers that there is a strong public interest inherent in section 31(1)(a), which in this case is avoiding prejudicing crime prevention.

32. The Commissioner also considers that there is a strong public interest in preventing the impact of crime on individuals. To this extent he asked the council to clarify how the crimes that could be committed would be done so against individuals where there is no individual to whom the estate would be left. The council confirmed that the fact it has arranged a funeral does not in all cases mean that there are no next of kin. It also provided the following examples of how offences which may be committed using the name, address and/or date of birth of the deceased could be against any of the following victims:

    - Any relative(s) of the deceased who:

        - Are financially affected if they are the heirs to any estate which has been stolen from.

        - Would suffer damage and distress as a result of fraud being committed using the deceased's details.

[9] www.homeoffice.gov.uk/publications/agencies-public-bodies/nfa/annual-fraud-indicator/annual-fraud-indicator-2012?view=Binary

- Would spend time rectifying any situations brought about by the fraudulent activity (CIFAS put this figure at between 3 and 48 hours but the process may take months).

- Any "person" (whether a private individual, landlord company or public authority) that owns a property which is broken into, vandalised and/or illegally occupied as a result of it being made known to the public that it is empty.

- Any organisation providing credit as a result of fraudulent applications. For example, the estimated cost to pensions companies id £200 million a year[10].

- The authority's ability to reclaim the cost of the funeral from any money in the deceased's estate may be compromised if the account is accessed and funds stolen in the interim.

- The crime has a significant impact on the public purse.

Balance of the public interest arguments

33. As stated above, the Commissioner recognises that there is always some public interest in the disclosure of information. He also recognises that there is 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 enabling individuals to exercise that entitlement. However, he has not given this argument significant weight as there are other mechanisms in place for the administration of estates of persons who die intestate and without a known kin, such as the Bona Vacantia Division of the Treasury Solicitor's Department.

34. However, in favour of maintaining the exemption, the Commissioner recognises that there is an inherently strong public interest in avoiding likely prejudice to the prevention of crime. The crime in this case would be likely to include a diverse range from anti-social behaviour, criminal damage, arson, organised groups stripping empty properties to identity fraud and the crimes that can be committed using false documents. 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

[10] Source BDO Stoy Hayward

related to empty properties, to those in the wider neighbourhood who may be affected.

35. The Commissioner has also placed weight on the fact that Westminster is one of the London boroughs with the most reported identity fraud cases.

36. Taking all of the above into consideration, the Commissioner decision is that the public interest in avoiding prejudice to the prevention of crime outweighs the public interest in disclosure in all the circumstances of this case.

Right of appeal

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: 0116 249 4253
    Email: informationtribunal@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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 .....

Andrew White
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