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## Scarborough Borough Council

FAO Mr R Watters

By e-mail to:

[request-123754-  
fc324fcd@whatdotheyknow.com](mailto:request-123754-fc324fcd@whatdotheyknow.com)

Our Ref:  
MR/CP01/137/FOIA2206

21 August 2012

Dear Mr Watters

**Freedom of Information Act 2000 – 2206**  
**Date of Receipt: 31 July 2012**  
**Last Date for Response: 29 August 2012**

I thank you for your request for information under the Freedom of Information Act 2000 (FOIA). You requested the following information:

*'I request the addresses of any properties that are privately owned, council owned, or commercial, that have been empty for 6 months or longer, of which you have knowledge. I do not require any information covered by the data protection act.'*

### Response

I can state that the Council does hold information relevant to part of your request; however I consider that the information is exempt from disclosure under section 41 of the FOIA. It is important to state at this stage that any response given under the FOIA is a response into the public domain, and not merely to the applicant. When considering exemptions and reliefs it is this perspective which must be taken into account.

### Section 41 – Information provided in confidence

Section 41 of the FOIA states:

- 1) *Information is exempt information if-*
  - a) *it was obtained by the public authority from any other person (including another public authority), and*



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*b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.*

2) *The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.*

I have taken into account the following documents and decisions relevant to this exemption:

1. Information Commissioner's Decision Notice Ref: FS50121245
2. Information Commissioner's "Freedom of Information Act – Awareness Guidance 2 – Information provided in confidence"
3. Information Commissioner's "Freedom of Information Act – The duty of confidence and the public interest"

All of the above documents and decisions can be found at the Information Commissioner's website [www.ico.gov.uk](http://www.ico.gov.uk)

Section 41(1)(a) requires that the information in question was obtained from any other person. The Commissioner's Guidance listed at 2 above states at page 1:

*A person may be an individual, a company, a local authority or any other "legal entity"*

The information in question was obtained by the Council from both individuals and non-individuals such as a company. This part of the exemption is therefore satisfied.

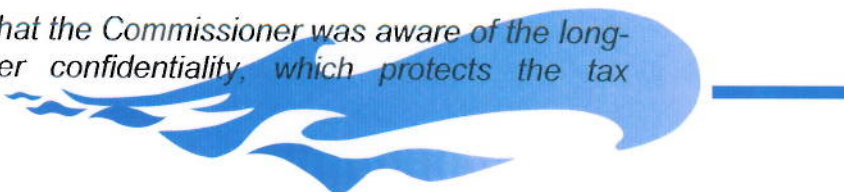
Section 41(1)(b) requires the disclosure by the Council to constitute an actionable breach of confidence by that person. The information must therefore have the necessary quality of confidence.

In my opinion the information does have the necessary quality of confidence. It is recognised in English law that an important duty of confidentiality is owed to taxpayers. This is what is known as "taxpayer confidentiality". This is a long established principle of common law, protecting taxpayers' affairs against disclosure to the public, and has been recognised to be of the utmost importance when dealing with the administration of tax and rates.

I am satisfied that the requested information is not trivial, nor is it available by any other means. If the Council were to disclose the requested information individual business ratepayers could issue legal proceedings.

The Information Commissioner is also aware of the common law duty of taxpayer confidentiality, as noted in paragraph 17 of the Decision Notice listed at 1 above, which states:

*The Council sought to ensure that the Commissioner was aware of the long-standing principle of taxpayer confidentiality, which protects the tax*



*arrangements of taxpayers from release to the public. The principle of taxpayer confidentiality exists, in part, to prevent prejudice to the commercial interests of taxpayers.*

The duty of confidence is not absolute, and the courts recognise three circumstances under which confidential information may be disclosed:

- Where the person to whom the duty of confidentiality is owed consents to the disclosure.
- Where the disclosure is required by law.
- Where there is an overriding public interest in disclosure.

In the context of this request, no consent has been obtained from the individual taxpayers, nor is the disclosure required by law.

Of more relevance is whether there is an overriding public interest. The Information Commissioner states in his guidance listed at 2 above, that *“the courts have taken the view that the grounds for breaching confidentiality must be valid and very strong. A duty of confidence should not be overridden lightly.”*

The Information Commissioner has produced further guidance upon the duty of confidence and the public interest test, listed at 3 above. I have had particular regard to the content of this guidance in dealing with your request.

It is stated at page 2 of this guidance that *“the public interest test within the duty of confidence assumes that information should be withheld unless the public interest in disclosure outweighs the public interest in maintaining the duty of confidence.”*

It is appreciated that there may be a public interest in scrutinising how the Council administers its business rates, however this interest is vastly reduced in the absence of any allegations of serious misconduct, wrongdoing or risks to the public. Furthermore, as already mentioned in relation to the exemption under section 40(2) FOIA, the administration of empty property Business Rates does not involve any discretion or subjective element which again reduces the weight of any public interest in disclosure.

Ratepayers provide information (including names and addresses) to the Council in confidence, and have a legally supported expectation that this confidence is maintained. Disclosure of any rate or tax related information may discourage rate and taxpayers from providing full information to the Council if there were not a degree of certainty that such confidences would be respected. Furthermore, there is a public interest in maintaining trust and preserving a free flow of information to the Council where this is necessary for the Council to perform its statutory functions relating to the administration of business rates and council tax. Such functions are undertaken for the benefit of the public.

I consider that it would be excessive to override the duty of taxpayer confidentiality and disclose information relating to the affairs of business ratepayers. Your request for disclosure is therefore refused under section 41 of the FOIA.




## Review

If you are unhappy with the service you have received in relation to your request and wish to make a complaint or request a review of our decision, you should write to the Freedom of Information Officer, Town Hall, St Nicholas Street, Scarborough, North Yorkshire, YO11 2HG or email [foi@scarborough.gov.uk](mailto:foi@scarborough.gov.uk).

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner for a decision. Generally, the Information Commissioner's Office cannot make a decision unless you have exhausted the complaints procedure provided by Scarborough Borough Council. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF | Tel: 01625 545745 | Fax: 01625 524510 | Web: [www.ico.gov.uk](http://www.ico.gov.uk).

Yours faithfully

A handwritten signature in black ink, appearing to read 'M. Robinson', with a long horizontal line extending to the right.

**Mark Robinson**  
**Solicitor**  
**Freedom of Information Officer**

