

Freedom of Information Act 2000

Refusal Notice



Ref: LCG/SD/FOI101003194644

Details of Request:

Thank you for your request below to Swindon Borough Council for information under the Freedom of Information Act. I have prepared the data for you; it is contained in the attached spreadsheet. Please note that the Council will not provide details of the empty/occupied status of non-domestic properties, nor details of empty property reliefs which would indicate the status, for the reasons given in the attached document.

Response:

I'm afraid your refusal under Section 31(1)(a) is completely unacceptable. Not only have you on three previous occasions provided the requested data without incident (https://www.whatdotheyknow.com/body/swindon_borough_council?utf8=%E2%9C%93&query=chair&request_date_after=&request_date_before=&commit=Search) but you are also refusing to comply with an ICO ruling on exactly this matter.

In November 2016, I appealed this class of refusal - specifically as it relates to this request - to the Information Commissioner's Office and they issued a Decision Notice (FS50628943 - <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2013577/fs50628943.pdf>, and FS50628978 - <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2013576/fs50628978.pdf>) on 28 February 2017 finding that "it is not correct to withhold this information under Regulation 31(1)(a)", and that "the public interest in the information being disclosed outweighs that in the exemption being maintained".

And choosing to support your refusal with claims of terrorism is absurd.

Please could you save us both a great deal of time and effort and provide the data as requested, and as you have done in the past, or I shall refer this to ICO.

1) Exemptions relied On:

Section 31(1) 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,

Reasons:

Section 31(1)(a) the prevention and detection of crime:

We have considered the arguments as set out in your email dated 11th August 2017, but in our view other relevant decisions are as follows:

The ICO advises;

19. The exemption also covers information held by public authorities without any specific law enforcement responsibilities. It could be used by a public authority to withhold copies of information it had provided to a law enforcement agency as part of an investigation. It could also be used to withhold information that would make anyone, including the public authority itself, more vulnerable to crime for example, by disclosing its own security procedures, such as alarm codes.

Example

In Yiannis Voyias v Information Commissioner and the London Borough of Camden (EA/2001/0007 23 January 2013) the First Tier Tribunal upheld the council's decision to withhold the addresses of empty houses under section 31(1)(a).

The information had been collected for council tax purposes and to inform the council's policies aimed at returning empty homes to the housing market. However, the First Tier Tribunal was satisfied that, if disclosed, the information could be used by squatters. Although squatting was not at that time a criminal offence, squatting is associated with criminal damage, for example when entering and securing properties. Criminal gangs who stripped buildings of valuable materials and fixtures could also use the list to target properties.

The Council considers from this decision this exemption is not limited to residential properties as there is still the issue of any damage that may be caused to commercial properties as outlined in the appeal decision;

46. As to the issue of stripping; the removal of all things of value (such as pipes, boilers, sanitary wear and floor boards) leaving an empty and uninhabitable shell, in the Bexley case the Tribunal found that empty properties are associated with criminal activity from organised local gangs. The Tribunal does accept as stated in the Appellant's evidence (including the Police Officers he contacted) that stripping is usually associated with building work and refurbishment (e.g. houses with scaffolding and following skip lorries), and local knowledge. The suitability of a property for stripping will depend upon:

- the price and demand for scrap materials and*
- whether the premises have these materials, and*
- whether the property has security, or is accessible (has scaffolding etc.)*

'We are also satisfied that the list would be of use for the criminal purposes of organized criminals. The level of prejudice is real, actual and of substance.'

FS50538789 Stoke-on-Trent City Council also supported the view that Section 31(1) was engaged. In this case the request concerned addresses and rateable values of empty commercial properties. It presented a real and significant risk if the information was released.

Property Services are firmly of the view that the risk presented 'would likely be' to put the buildings at risk to be broken into. So we do consider the alleged prejudice is of real and actual substance. We are aware that this information has been released in the past but having reviewed the risk the Council considers to release this information would be unwise at this time.

As already advised enquiries have been made to Wiltshire Police and Dorset & Wiltshire Fire & Rescue Service, concerning all the empty commercial properties within the Borough. Both of whom indicate the release of this type of information, because of where commercial buildings are situated, it would increase the potential for crime.

For example:

- Buildings to be targeted by squatters
- Buildings to be targeted by criminals or terrorists intent on hiding or depositing proceeds of crime of terrorist materials
- Premises to be identified as short-term hiding places by criminals or terrorists
- Premises to be targeted by vandals or street artists
- Theft of valuable items, such as copper piping.

Therefore we consider the exemption is engaged and it would unwise to release the information at this time.

Decision on Public Interest test:

The Council consider there is a public interest in protecting the security of empty commercial buildings so that public money is not spent on restoring their condition if they are broken into. There is a general public interest in protecting confidential and commercial information.

The Council is aware that some Councils publish this information and others have taken the view there are specific risks that exist within their Borough that means the information should not be released. There is a public interest in the properties being re-let to avoid them being vandalised in the first place. Property Services consider this should be managed with due consideration and it would not be in the public interest to allow lists of empty commercial properties to be released in this way.

In this case, it is considered that the public interest in withholding the information is not outweighed by the public interest in releasing it.

Signed S. Druett
Sharon Druett
Freedom of Information Officer

Dated 01-09-2017

