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Scarborough Borough Council

Mr Paul Norris

Request-114851-
8c04aaa6@whatdotheyknow.com

Your Ref:
Our Ref:
MR/CP01/137/FOIA2027

30 April 2012

Dear Mr Norris

Freedom of Information Act 2000 – 2027

Date of Receipt: 26 April 2012

Last Date for Response: 25 May 2012

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

1. The addresses and a brief description, BA reference and rateable value of all vacant commercial premises with a current rateable value over £40,000.00 within the Scarborough Borough Council area.
2. The names and addresses of the organisations or companies who are liable to pay rates at the premises referred to in (1).

Response

I can state that the Council does hold information relevant to part of your request; however I consider that some information is exempt from disclosure under sections 21, 40(2) and 41 of the FOIA respectively. 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 21 – Information accessible to applicant by other means

Section 21(1) of the FOIA states:

“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”

Complete rating lists for Scarborough Borough Council's area can be found on the Valuation Office Agency's website at www.voa.gov.uk/. So far as is relevant to your



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request, the full postal address of the property and the rateable value are all available at this address.

I am satisfied that some of the information you seek is therefore available via this website and that the exemption at section 21 FOIA applies to that part of the information requested.

Section 40(2) – Personal information

You have also requested information which is personal data, being the name of the owner. It is accepted that some owners will not be individuals but companies; therefore this exemption only applies to that data which relates to living individuals.

While considering this part of your request I have had regard to the following guidance documents:

- Information Commissioner's Office Guidance on the exemption for personal data.
- Information Commissioner's Office Update Note – Applying the exemption for third party personal data: the Tribunal's approach in *House of Commons v IC & Leapman, Brooke and Thomas*.

All of the above documents can be accessed at the Information Commissioner's Office website at www.ico.gov.uk

So far as is relevant, section 40 states:

“(2) Any information to which a request for information relates is also exempt information if—

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied.

(3) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and...”

To satisfy this exemption it is necessary to consider whether any of the data protection principles of the Data Protection Act 1998 (DPA) would be contravened by disclosing the requested information.



The data protection principles are contained within Schedule 1 of the DPA. The first principle states that:

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”

Schedule 2 of the DPA contains a number of conditions, at least one of which has to be met in order that the processing (in this case disclosure) becomes lawful.

The only condition contained within Schedule 2 of the DPA which may be of relevance to your request is condition 6(1), which states:

“The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.”

The ICO guidance states that I am required to balance the legitimate public interest in disclosure against the interests of the occupier/ratepayer to whom the personal data relate. In following the High Court decision in *Corporate Officer of the House of Commons v Information Commissioner and Leapman, Brooke and Ungoed Thomas* [2008] EWHC 1084 (Admin), a copy of which can be found at www.bailii.org, the Information Commissioner has recommended that public authorities approach Condition 6 as a three-part test:

1. there must be a legitimate public interest in disclosure;
2. the disclosure must be necessary to meet that public interest; and
3. the disclosure must not cause unwarranted harm to the interests of the individual.

Is there a legitimate public interest in disclosure?

It is accepted that you, as the applicant, have an interest in the personal data requested. In deciding whether there is a legitimate interest, it is the collective public interest which must be taken into account and not the specific interest of the applicant. The guidance further states that there must be a genuine public interest, and not merely public curiosity.

It is therefore difficult to identify a legitimate public interest in disclosing the personal data of the ratepayers concerned. Although it is accepted that there is a public interest in ensuring accountability and transparency and in seeing that the Council are aiding all businesses during the recession, this interest is reduced by the fact of there being no discretion exercisable by the Council.



Is disclosure necessary to meet that public interest?

What the guidance does make clear is that personal information should only be released if there is a genuine reason to disclose and it would not involve unfairness to the individual.

Examples of a genuine reason could be where there are controversies or credible allegations, a lack of safeguards against corruption or failure to follow normal procedures. In essence what is required is more than a mere suggestion of wrong-doing or malpractice. There is certainly no such allegation against the Council.

The Council have in place adequate safeguards, policies and procedures to regulate the administration of business rates. There are also relevant provisions within the Council's Constitution, and the Council's Monitoring Officer is responsible for ensuring that the Council and its officers act within the law. The Local Government Ombudsman and the Audit Commission also externally regulate the Council's activities. I consider that these established means of check and balance satisfy any public interest in ensuring transparency and accountability, and it is not necessary to disclose the personal data of occupiers to meet the public interest.

Would disclosure cause unwarranted harm to the interests of the individual?

In dealing with the third consideration, persons supplying the Council with personal data for the purpose of administering business rates and any applicable relief have a legitimate expectation to privacy, and protection from harm or distress. It would be unwarranted and contrary to those persons' expectations and legitimate interests for the Council to disclose their personal data. When supplying their personal data those persons are aware that it will be used to administer business rates and any applicable relief, but would not expect that their personal data would be released into the public domain.

It is also of relevance that the second data protection principle contained within Schedule 1 of the DPA states:

"Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes."

The personal data in question was obtained by the Council for the purposes of the administration of business rates and the necessary processing this involves. It was not specified to the persons in question that their data may be disclosed into the public domain. Indeed it is possible that some of the persons in question may not have supplied full information if they were aware that their personal data may be disclosed into the public domain. In any case I consider that a disclosure would also breach this second principle as it would be incompatible with the purpose for which the personal data was obtained.

For completeness, I must consider whether disclosure would be fair and lawful in accordance with the first data protection principle. The guidance states that for practical purposes, disclosure will generally be fair if Schedule 2 Condition 6 has been satisfied. As it has not in my opinion, it follows that a disclosure would not be fair under the first principle.

For these reasons I am satisfied that disclosure of personal data would not comply with the first or second DPA principle, and therefore the absolute exemption at section 40(2) of the FOIA is engaged.



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*
 - 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

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.

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.

Yours faithfully



Mark Robinson
Solicitor
Freedom of Information Officer

