

**Date:** 28 May 2018  
**My ref:** 1845696  
**Your ref:** 480710-32f96ccd  
**Contact:** Mike Riggall  
**Direct dial:** 01934 426385  
**Email:** mike.riggall@n-somerset.gov.uk



Information Governance Team

North Somerset Council  
Town Hall  
Weston-super-Mare  
BS23 1UJ

Ms L. Marshall  
By email to:  
request-480710-32f96ccd@whatdotheyknow.com

DX 8411 Weston-super-Mare

Dear Ms Marshall,

I have been asked to carry out a review of your Freedom of Information request, given reference number 1845696 by the council. I am sorry that you are dissatisfied with the way in which your request has been handled.

### **Your request**

On 27 April 2018, you submitted a request under the Freedom of Information Act (the Act) to North Somerset Council via the What Do They Know web site:

*We are cognizant of the fact that Billing Authorities hold on account sums of money that are due to be returned to ratepayers and for a variety of reasons have not been repaid.*

*I therefore request a breakdown of credit balances accrued since your earliest records, for the amounts owing to all incorporated companies within your authority's billing area, including the following information:*

- A. The legal name of each business in respect of which non-domestic rate credit balances remain payable*
- B. The value of overpayment in each case which remains unclaimed*
- C. The years(s) in which overpayment was made*
- D. The hereditament address*
- E. The legal name of each business in respect of which non-domestic rate credit balances have been written back on to the NDR account*
- F. The value of write back in each case which remains unclaimed*
- G. The years(s) in which the write back was made (if available)*
- H. The hereditament address that the write back relates to*

### **Our response**

Your request was assigned to the council's Information Governance Officer, who responded to you on the same day. In her response, she explained that the council held the information you requested however she believed that to disclose it would prejudice the prevention or detection of crime and as a result withheld the information under section 31(1)(a) of the Freedom of Information Act.

Her response explained that potential fraudsters could use the information to identify

those businesses which are eligible to claim business rates credits. These individuals would then be able use the requested information as a source of intelligence to make fraudulent claims for the unclaimed business rates credit.

An exemption engaged under Section 31(1)(a) is subject to a public interest test which was included within the council's response to your request. The officer considered the balance of the effect of disclosing the information against the impact of withholding it. The factors in favour of disclosure included an acknowledgement that it is in the public interest for the council to be transparent about its use of public money, particularly with records about business rates. This is because these records may be useful to business owners who are due a refund on their business rates, but who have not received the usual notifications sent by the council, not acted upon them or have failed to understand them.

In assessing the factors in favour of withholding the information, the officer concluded that it is not in the public interest to generate an opportunity for overpayments to be claimed fraudulently. In such cases the council would be left with the original liability to the rightful owner of the business, having already refunded the sum once. It would also be left with the onerous duty of pursuing recovery of the monies paid out as a result of the fraudulent claim. The officer also considered that disclosure of the information would result in additional verification steps needing to be implemented into the normal identification process, which would result in additional burden and time delays to the public, and cost for the authority. She also advised that the council's current process for verifying refund claims is cost-effective.

Balancing these arguments with the factors in favour of disclosure, the officer concluded that there is greater public interest in withholding the information under section 31(1)(a) than there is in disclosing it.

### **Your request for an internal review**

On 28 April you contacted the council via the What Do They Know web site to request an internal review of the decision taken by the Information Governance Officer.

*Please pass this on to the person who conducts Freedom of Information reviews.*

*I am writing to request an internal review of North Somerset Council's handling of my FOI request 'NNDR Credits'.*

I have been asked to carry out the internal review as I was not involved in handling your original request. I apologise for the length of time that has elapsed between you requesting this review and me being able to complete it; I unexpectedly had to take time away from the office last week which prevented me completing my work as originally planned.

### **My findings**

Whilst you did not include a rationale for requesting an internal review, I can only assume that it is because you fundamentally disagree with the council having engaged the exemption afforded under section 31(1)(a).

In carrying out this internal review, I will draw on the guidance published by the Information Commissioner's Office (ICO) which is publicly available at:

<https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf>

As stated, section 31 provides an exemption from disclosing information which would, or would be likely to, prejudice the prevention or detection of crime. Public authorities are required to conduct a 'prejudice test' to consider the likelihood of this prejudice occurring. This test involves a number of steps which are explained below:

#### *Applicable interest within the exemption*

This first step states that, if disclosed, the requested information must harm one of the law enforcement interests covered by the exemption. Section 31(1)(a) covers all aspects of the prevention and detection of crime, including information held by public authorities which have no specific law enforcement responsibilities. The guidance states that the exemption also applies to any information held by a public authority which could leave any individual, or the public authority itself, vulnerable to crime if the information were to be disclosed. I believe that the information that forms the subject of this request is covered by the exemption, as its disclosure could leave the council open to fraudulent requests for business rate refunds. Additionally, the council tax payers of North Somerset would have to fund any subsequent genuine claims for refunds as well as having to fund any subsequent recovery action against the fraudsters.

#### *The prejudice claimed must be real, actual or of substance*

The above guidance states that this prejudice must be real, actual or of substance and if the potential harm caused would only be trivial, then the exemption cannot be applied.

Having reviewed the Local Government Counter Fraud and Corruption Strategy 2016-2019<sup>1</sup> as supported by the Department for Communities and Local Government, CIPFA and the Local Government Association, the scale of annual fraud losses affecting local government amounted to £2.1bn in 2013. Whilst the strategy does not provide any assessment of the value attributed to false claims for overpaid business rates, the value of the "honey pot" for this council alone amounts to £945k. I assess that servicing fraudulent claims amounting even to a small proportion of this value represents a significant burden on the council tax payers of North Somerset.

Therefore, I am satisfied that the prejudice which would be likely to arise upon disclosure, would not be trivial and that there is a causal link between the prejudice and the disclosure of the information.

#### *The likelihood of prejudice*

The ICO guidance also requires public authorities to consider the likelihood of the prejudice occurring. Within the fraud strategy referenced earlier, identity fraud is recognised as a known fraud risk for the 2016-19 period, and the level of risk is classed as *remains significant*. Fraudulent applications relating to business rates, and cyber-enabled and cyber-dependent crime enabling a range of fraud types resulting in diversion of funds, creation of false applications for services and payments are recognised as *Emerging / Increasing fraud risks*.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/503657/Fighting\\_fraud\\_and\\_corruption\\_locally\\_strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/503657/Fighting_fraud_and_corruption_locally_strategy.pdf)

Disclosing the requested information would make it easier for individuals to submit plausible fraudulent claims supported by false accounts and faked business documents. The increasing availability of resources available to fraudsters through the Internet, and the ease of generating such supporting documents on any PC to my mind makes the fraud both real and likely. Publishing the highly specific details of monies owed by the council to businesses to the world at large is highly likely to invite a flow of fraudulent claims.

Having considered this three-part test, I am satisfied that the council has correctly engaged the exemption afforded by section 31(1)(a) of the Act.

### **Additional considerations**

As part of my research for this internal review I looked at previous decisions taken by the Information Commissioner and specifically whether any such decisions were taken in response to similar requests made to other local authorities. I fully recognise that the Commissioner makes her decisions based on the specific circumstances of each individual case and it is not possible simply to assume that a previous decision would automatically apply to a different case. On 6 February 2017 however, the Commissioner published a decision in relation to a very similar request to yours under case reference number FS50619844. The decision can be found on the ICO web site at:

<https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2013485/fs50619844.pdf>

The similarities between the two requests, as well as the similar procedures used by both Wandsworth Council and North Somerset Council in relation to managing the over-payment of business rates, and the fact that all local authorities operate in the same challenging environment in relation to the widespread nature and sophistication of fraudulent activity, in my opinion, allow some conclusions to be drawn in this case:

- It is likely that the Commissioner would accept that the prejudice claimed by the council relates to the prevention of crime;
- It is likely that the Commissioner would accept that the prejudice being claimed by the council is not trivial nor insignificant and that there is the relevant causal link;
- It is likely that the Commissioner would accept that disclosure of the information requested would be likely to prejudice the prevention of crime.

Whilst I would not wish to make any presumptions around the Commissioner's consideration of the public interest test in this particular case, I remain confident that the council could construct very similar arguments and provide similar detail in relation the processes it follows in alerting businesses to NNDR credits owed to them.

Whilst the credits that are due to the businesses involved are undeniably of interest to those specific companies, this does not automatically make it in the wider public interest to publicise the specific detail through Freedom of Information disclosure, particularly as the council has processes in place to alert those companies in place to the credits which are due. I therefore believe that the public interest test does not favour disclosure of the information.

### **Outcome of the internal review**

In carrying out this internal review, it is my opinion that the council has correctly engaged the exemption afforded under section 31(1)(a) of the Act. The prejudice relates to the prevention of crime, it is likely to be significant given the sums of money involved, and it is likely that the council will receive fraudulent claims as a result of disclosure of the information. As a result, the council will need to revise its efficient processes to combat such claims to the

detriment of the wider public interest.

### **What you may do next**

North Somerset Council now considers that it has complied with your request for an internal review of your Freedom of Information request. If you are not happy with the outcome of this internal review, you have the right to appeal directly to the Information Commissioner for a decision.

The Information Commissioner can either be contacted in writing at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire.  
SK9 5AF

Or online at: <http://ico.org.uk>

Yours sincerely,

Mike Riggall

**Mike Riggall**  
**Client ICT Manager, North Somerset Council**

This letter can be made available in large print, audio, easy read and other formats.

Documents on our website can also be emailed to you as plain text files.

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