



## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Dated 25 July 2006**

**Public Authority: Bexley Council**

**Address: Bexley Civic Offices  
Broadway  
Bexleyheath  
Kent  
DA6 7LB**

### **Summary Decision and Action Required**

The Information Commissioner's ("the Commissioner") decision in this matter is that Bexley Council ("the Council") has not dealt with the complainant's request in accordance with Part I of the Freedom of Information Act 2000 ("the Act") in that it has failed to comply with its obligations under section 1(1) of the Act.

- 1) The Council has not complied with its' obligations under section 1(1) of the Act in that it failed to communicate to the complainant information to which he was entitled on the basis that it is exempt from disclosure under section 31(1)(a) of the Act.
- 2) The complainant's request included information about the ownership of empty residential properties. This information is accessible to the complainant by other means and is therefore exempt from disclosure by virtue of section 21 of the Act.

In view of the matters referred to above the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he requires that:

The Council shall, 35 calendar days from the date of this notice, disclose a list of the addresses of long term empty and uninhabitable empty properties in the Borough, in accordance with its duty under section 1(1) of the Act.



## Freedom of Information Act 2000 – Applications for a Decision and the Duty of the Commissioner

- 1.1 The Information Commissioner (the “Commissioner”) has received an application for a decision whether, in any specified respect, the complainant’s request for information made to the Public Authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000.
- 1.2 Where a complainant has made an application for a decision the Commissioner is under a duty to make a decision, unless:
  - a complainant has failed to exhaust a local complaints procedure, or
  - the application is frivolous or vexatious, or
  - the application has been subject to undue delay, or
  - the application has been withdrawn or abandoned.
- 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

## 2. The Complaint:

- 2.1 In a letter to the Council of 5 February 2005 the Complainant requested information listing the vacant, empty or abandoned residential properties in the Council’s area. In an email dated 11 February 2005 the Council disclosed numerical data regarding empty residential properties, along with a copy of the Council’s empty property strategy. It also provided statistical information about empty residential properties obtained from its Council Tax database. In an email to the Council dated 12 February 2005, the Complainant further clarified the nature of his request. In this email the Complainant stated that he wished to have:

*...the addresses of the properties concerned, perhaps it would be helpful of I asked for the addresses of the properties listed in your email under reply as ‘long term empty’ and ‘uninhabitable empty properties’. If you could give me a note of any information you have as to why the property is empty or other information as to ownership etc that would be most helpful.*

- 2.2 In a letter dated 5 April 2005 the Council refused to disclose the information requested as clarified in an email of 12 February 2005. The Council’s refusal was based on its assessment that the requested information is exempt from disclosure by virtue of section 31(1)(a) of the Act. The Council argued that disclosing the addresses of empty properties would, or would be likely to, prejudice the prevention of crime. The Council also asserted that the public interest in maintaining the exemption outweighed the public interest in disclosing the information.



- 2.3 In an email dated 6 April 2005, the Complainant requested that the Council review its decision to withhold the requested information.
- 2.4 The Council outlined its internal review decision in a letter dated 11 April 2005. In summary, the Council upheld its' original refusal on the basis that disclosure of the requested information would, or would be likely, to prejudice the prevention of crime. Further, the Council maintained that the public interest in maintaining the exemption outweighed the public interest in disclosure. It concluded, therefore, that the requested information was exempt from disclosure by virtue of s.31(1)(a) of the Act.
- 2.5 In a letter dated 18 April 2005 the Complainant requested that the Commissioner carry out a review of the Council's application of section 31(1)(a) of the Act to the information he requested. The Commissioner has treated the Complainant's request as a complaint under section 50 of the Act. In addition, the Complainant requested that the Commissioner review the Council's internal review procedure on the basis that the Council had not taken full account of the grounds of his appeal. In respect of the Borough's internal review procedure, the Act does not impose any standard which a public authority must adhere to when carrying out an internal review. The Commissioner notes that Part VI of the Code of Practice under section 45 of the Act recommends that a public authority have an internal review procedure. However, the Act does not impose a legal obligation on public authorities whom do not have such a procedure. For this reason the Commissioner has not considered this aspect of the complaint in reaching his decision under section 50 of the Act.
- 2.6 The Commissioner allocated the case to a Complaints Resolution Officer who began her investigation of whether the Council had dealt with the complainant's request for information in compliance with Part 1 of the Act.

### **3. Relevant Statutory Obligations under the Act**

- 3.1 **Section 1(1)** states that any person making a request for information to a public authority is entitled:
  - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
  - (b) if that is the case, to have that information communicated to him.
- 3.2 **Section 21** (information accessible to the applicant by other means) states that:

"21. - (1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.



(2) For the purposes of subsection (1) -

- (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
- (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.

(3) For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme."

3.3 **Section 31** (law enforcement) states:

"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,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.

(2) The purposes referred to in subsection (1)(g) to (i) are-



- (a) the purpose of ascertaining whether any person has failed to comply with the law,
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
- (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
- (e) the purpose of ascertaining the cause of an accident,
- (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
- (g) the purpose of protecting the property of charities from loss or misapplication,
- (h) the purpose of recovering the property of charities,
- (i) the purpose of securing the health, safety and welfare of persons at work, and
- (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.

(3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1)."

#### **4. Review of the case**

- 4.1 The Commissioner understands that the addresses of long term empty and uninhabitable empty properties are included in the database that the Council holds to administer the collection of Council Tax. The Commissioner also understands that the Council categorises "long term empty properties" as those that have been empty for longer than 6 months. The Council categorises "uninhabitable empty properties" as those properties that are uninhabitable, for instance, because they are in need of repair.
- 4.2 The Council asserts that empty properties are subject to the risk of squatting, break-ins and vandalism. In addition, the Council asserts that empty properties are associated with an increased climate of anti-social behaviour. The Council argued that disclosure of a list of empty properties would be likely to prejudice the prevention of crime because the vulnerability of empty properties to crime is well established.
- 4.3 The Council provided the Commissioner with an internet link (<http://www.met.police.uk/crimefigures/datatable.php?borough=ry&period=year>) to the latest crime statistics for Bexley. The Council also pointed out that for the 12 months to August 2005, there were 1,059 residential burglaries compared to 1,027



for the 12 month period to August 2004. The Council submitted that it can produce examples of cases where empty properties have been broken into and used for crime.

- 4.4 The Council also outlined the joint efforts of Crime Concern and the Empty Home Agency in respect of reducing crime associated with empty properties.
- 4.5 In addition, the Council submitted that properties' owners sometimes go to great lengths to disguise the fact that their property is empty because they are concerned about crime being committed on or about their property as a result of public knowledge that the property is empty.
- 4.6 In the Commissioner's opinion the evidence provided by the Council is not sufficiently compelling to support its view that disclosure of a list of empty properties would, or would be likely, to prejudice the prevention of crime. It has not shown how, in practice, the availability of the list would influence the prevention of crime in the area. In particular, the Council has not established that there is a causal link between the release of information identifying empty properties and prejudice to the purposes of law enforcement, including the prevention of crime.
- 4.7 It is worth noting that other local authorities have released lists of empty properties in their areas. For instance, Dartford Borough Council has released a list of empty properties in the Borough, apparently with no detrimental effect. The Commissioner also understands that the Council did not seek to contact other local authorities that have released such information in order to find out what consequences, if any, this had.
- 4.8 The Commissioner accepts that empty properties may be the target of crime. He does not accept, though, that disclosure of a list of empty properties would lead to more crime being committed or to more of it going undetected. In fact, one could just as easily conclude that because empty properties may attract crime, the availability of a list of such properties that could be used for the purposes of local regeneration and to facilitate the reoccupation of empty properties could, in fact, help to reduce local crime levels. The Council has acknowledged that there are commercial reasons for third parties seeking to identify empty properties in the Borough. For instance such third parties may wish to seek opportunities in respect of sales and letting, property management or development services.
- 4.9 Further, it is accepted practice that letting agencies and estate agents make public the addresses of vacant properties on their books. The Commissioner is unaware of any evidence to suggest that this practice has facilitated crime or prejudiced its prevention.
- 4.10 The Commissioner is also aware that a list of empty properties reflects a snap shot in time, and as such the list is likely to change over time. This would reduce any value it may have had to those wishing to commit crime.



- 4.11 Section 31(1)(a) of the Act applies to information if its disclosure would, or would be likely to prejudice the prevention or detection of crime. The Commissioner does not accept that disclosure of a list of the addresses of empty properties would, or would be likely, to prejudice the prevention or detection of crime. He does not accept, therefore, that section 31(1)(a) is engaged in respect of disclosure of the requested information.
- 4.12 The Commissioner also understands that information recording the reasons for a property being empty is held on the database the Council holds to facilitate the collection of Council Tax. This statistical information [showing a breakdown of the reasons for local properties being empty] was provided to the Complainant in an email of 11 February 2005.
- 4.13 The Commissioner understands that the Council holds some information in respect of the ownership of empty properties on the Council tax database. However, according to the Council it does not normally require this information and therefore it does not hold information about ownership in respect of every property in the Borough. In any case, information about ownership of UK properties is made available to the public for a small charge through the Land Registry's database. Therefore, the information that the complainant requested about the ownership of empty properties is exempt from disclosure by virtue of section 21 of the Act because it is readily accessible to him by other means.

## **5. The Commissioner's Decision**

- 5.1 The Commissioner is not satisfied that disclosure of a list of the addresses of empty properties in the Council area would, or would be likely to prejudice the prevention or detection of crime under section 31(1)(a). The Commissioner does not accept, therefore, that the exemption at section 31(1)(a) of the Act is engaged in respect of the requested information. His decision is, therefore, that the Council has not dealt with the complainant's request in accordance with the requirements of Part 1 of the Act because it failed to communicate to the complainant requested information to which he was entitled.
- 5.2 As the Commissioner has concluded that the exemption at section 31(1)(a) of the Act is not engaged, he has not undertaken a consideration of the public interest test.
- 5.3 The Commissioner is satisfied that information about the ownership of empty properties is information which is reasonably accessible to the complainant by other means. Therefore this part of the requested information is exempt from disclosure by virtue of section 21 of the Act.



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**6. Action Required**

6.1 In view of the matters referred to above the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he requires that:

The Council shall, 35 calendar days from the date of this notice, disclose a list of the addresses of long term empty and uninhabitable empty properties in the Borough, in accordance with its duty under section 1(1) of the Act.

**7. Right of Appeal**

7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

**Dated the 25<sup>th</sup> day of July 2006**

**Signed .....**

**Richard Thomas**  
**Information Commissioner**

**Information Commissioner**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**