

Public Interest Test: Exemption under The Freedom of Information Act 2000 Section 31 – Law Enforcement

Freedom of Information Requests.

We are frequently asked for lists of all empty residential properties within the borough.

Please note that we do not hold a comprehensive list of *all* empty residential properties, however we do hold information about those properties which we have been advised are empty in relation to Council Tax or for which we have received and investigated a report of an abandoned property.

Exemption Under the Freedom of Information Act 2000, Section 31 – Law Enforcement.

We are unable to provide addresses of vacant residential properties as we consider disclosing this information would make them a target of crime. Therefore, this information is exempt from disclosure under section 31 of the Freedom of Information Act 2000.

Pursuant to section 31(1)(a) of the Freedom of Information Act 2000 (FOI Act), public authorities are not obliged to release information that would be likely to prejudice the functions of law enforcement - namely the prevention and detection of crime.

We have historically made enquiries with Surrey Police which indicate the release of this type of information where buildings are situated, would increase the potential for:

- Buildings to be targeted by squatters;
- Buildings to be targeted by criminals or terrorists intent on hiding or depositing proceeds of crime or terrorist materials;
- Premises to be identified as short-term hiding places by criminals or terrorists;
- Premises to be targeted by vandals or street artists;
- Premises to be targeted for “stripping” (i.e. breaking in to remove key fixtures and fittings).

Relevant Case Law.

We have also taken into account the Upper Tribunal’s decision in relation to “The Camden Case” (ref: *The London Borough of Camden V Information Commissioner and YV*) in which the Tribunal was satisfied that disclosing full address information regarding vacant properties is bound to be of some value to those who may wish to engage in criminal activity, leading to a likely increase in instances of such activity.

For further information about the case of *The London Borough of Camden V Information Commissioner and YV* please see the following link to the Upper Tribunal’s decision on this matter:

<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fadministrativeappeals.decisions.tribunals.gov.uk%2Fjudgmentfiles%2Fj3496%2F%255B2013%255D%2520AACR%25202ws.doc&wdOrigin=BROWSELINK>

Please also find attached the full decision of the remitted First Tribunal hearing, dated 22nd January 2013.

Please note that squatting in residential property has itself become a criminal offence with effect from 1st September 2012, which demonstrates the destructive nature of squatting and the associated crimes. Information on empty commercial properties could also lead to crime associated with squatting, such as vandalism and the theft of fixtures and fittings.

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The Tribunal concluded that an increase in squatting would also lead to various categories of associated criminal activity. As a result, the Tribunal found disclosure of the addresses of vacant properties would have a negative impact on the prevention of crime.

The Information Commissioner's Office has also re-confirmed section 31 is applicable for information about empty properties in a more recent decision involving Hertsmere Borough Council (<https://ico.org.uk/action-weve-taken/decision-notices/2017/03/fs50623497/>) and also Stoke-on-Trent City Council (as per attached).

Public Interest Test.

Section 31 is a qualified exemption and we are obliged to consider the public interest test.

Factors in favour of disclosure.

There are general arguments in favour of disclosure, in relation to promoting transparency and accountability of public authorities, which we have noted in relation to this information.

There are also benefits in disclosure to the wider public, in relation to raising the profile of unused or vacant properties in order to encourage public debate or to make it easier to find potentially available accommodation.

Factors in favour of maintaining the Section 31(1)(a) (Law Enforcement) exemption.

In "*The Camden Case*" the Tribunal noted that there is an inherent public interest in crime prevention. It was also found that there were many costs associated with squatting, such as repair, security and eviction costs. The negative impact of squatting was not only directed towards to the property owners affected but also the surrounding community and public authorities involved. Ultimately the Tribunal found that the combined factors in favour of maintaining the exemption contributed very considerable weight to the public interest in withholding the information.

This decision is also consistent with more recent advice received from The Information Commissioner in respect of the Hertsmere Borough Council case, in which the Commissioner took the view that the positive public interest in the disclosure of the information was outweighed by the public interest in ensuring that criminals are not aided in identifying empty properties in the area.

Taking into account the above issues, we consider there to be no over-riding public interest in releasing this information. Any public interest would be best served by upholding the exemption under Section 31 of the FOI Act, as disclosure of the information would be likely to prejudice the prevention of crime by enabling or encouraging the commission of offences.

It is therefore our view that there are strong arguments that weigh in favour of maintaining this exemption.

Applicants should be aware that the decision to withhold this information and our reliance on exemption section 31 of the FOI Act has been upheld by an Internal Review.

Empty Property Scheme.

Unfortunately we cannot take motives into account when deciding what information to disclose under the FOI Act as disclosure under this legislation is disclosure to the general public.

We appreciate that some requesters will have honest motives for requesting this information and as such we would refer you to our <https://www.guildford.gov.uk/article/25811/Reductions-for-empty-homes> and also to our Housing Portal, which allows you to apply, search and bid for social housing in the borough <https://guildford.housingjigsaw.co.uk/>.