

Request:

I am writing to you to make a Freedom of Information (FOI) request for information about empty commercial and residential properties including vacant land in the Wigan Council area that my organisation can bring back to use. A spreadsheet with the data will suffice.

Specifically, I would like to know the following:

1. A list of long-term empty commercial/residential/landed property lists within the council's area. I require no personal information of Private individuals (simply the property address and postcode of the commercial/residential/landed property), but you can list the information of properties that are owned by parties with their relevant contact details. For properties that are owned by private individuals, please simply list the address and postcode, so that the Data Protection Act is not broken (Data Protection Act 1998; section 40(2) of the Freedom of Information Act 2000 (FOIA)).
2. A list of commercial/residential/landed properties where a council tax has been reduced and has been applied to the dwelling. I require no personal information of Private individuals (simply the property address and postcode of the commercial/residential/landed property), but you can list the information of properties that are owned by parties with their relevant contact details. For properties that are owned by private individuals, please simply list the address and postcode, so that the Data Protection Act is not broken (Data Protection Act 1998; section 40(2) of the Freedom of Information Act 2000 (FOIA)).
3. A list of commercial/residential/landed properties where the long-term empty council tax premium/empty homes surcharge, has been applied to the dwelling. I require no personal information of Private individuals (simply the property address and postcode of the commercial/residential property), but you can list the information of properties that are owned by parties with their relevant contact details. For properties that are owned by private individuals, please simply list the address and postcode, so that the Data Protection Act is not broken (Data Protection Act 1998; section 40(2) of the Freedom of Information Act 2000 (FOIA)).
4. A list of commercial/residential/landed properties where the property is exempt from council tax payments. I require no personal information of Private individuals (simply the property address and postcode of the commercial/ residential property), but you can list the information of properties that are owned by parties with their relevant contact details. For properties that are owned by private individuals, please simply list the address and postcode, so that the Data Protection Act is not broken (Data Protection Act 1998; section 40(2) of the Freedom of Information Act 2000 (FOIA)).
5. A list of all vacant properties owned by Wigan Council or known to the Council, derelict, or abandoned under the Empty Private Sector Homes Scheme. I require no personal information of Private individuals (simply the property address and postcode of the empty property and vacant lands), but you can list the information of properties that are owned by parties with their relevant contact details.

Response:

We can confirm that we hold the information you requested however are refusing to provide you with the information as we consider exemptions under sections 21, 31 and 41 apply.

Some of the information you have requested is considered exempt under Section 21 of the Act, which applies to information which is available to you by other means. This exemption applies to the property address. This information can be obtained from the Valuation Office Agency's website - www.voa.gov.uk

As this information is reasonably accessible to you by other means, we are not obliged to provide this information to you under the Freedom of Information Act.

Some of the information you have is considered exempt under section 41 of the Act. Section 41 applies to information provided in confidence. This applies to details of if the property is currently subject to rate reliefs, the date from which any reliefs have been applied and their values including if the property has an occupied/empty status. This information is exempt under section 41 because we consider that the common law principle of tax payer confidentiality applies.

Section 41, relates to information provided in confidence and states:

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.

Section 41(1)(a) requires that the information in question was obtained from any other person. The information in question has been obtained by us from owners, ratepayers and third-party companies/agents, therefore we consider this part of the exemption satisfied.

Section 41(1)(b) requires the disclosure by us to constitute an actionable breach of confidence. So, the information must have the necessary quality of confidence, and in our opinion it does. It is recognised in English law that an important duty of confidentiality is owed to tax and rate payers.

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. I am satisfied that the requested information is not trivial, nor is it available by any other means and if we were to disclose the requested information business ratepayers/their representatives could issue legal proceedings against us.

The public interest test reasons for disclosure:

Openness and transparency in relation to procedures and decision making of public authorities and collection of taxes and management of finances.

Reasons against disclosure:

Remain compliant with necessary regulations - the common law principle of tax-payer confidentiality applies to this data.

Protect the public purse from legal claims against it, in relation to providing confidential information. The public interest defence (in any future legal proceedings) in providing the list of business rates information you have requested would likely fail thus it is determined, any prospective court action against the council may succeed

(opening it up to claims for costs), this is in accordance with "Westminster City Council v ICO and Gavin Chait, EA/2018/0033, 2nd December and Sheffield City Council v ICO and Gavin Chait, EA/2018/0055, 16th December

Commercial impact on the business rates account holder, release of this data would likely constitute a breach of confidence as it could damage the individual's/organisation's competitive position, or ability to compete, as disclosure would reveal information that would assist competitors and negatively impact on the confider's relationship with the authority, potentially hindering future investment in the borough.

We conclude that for the reasons stated above, the public interest test for withholding this data outweighs the interest for its release therefore this information is being withheld from disclosure.

The Council maintains that the remaining information is exempt from disclosure for under Section 31 of the Freedom of Information Act 2000.

The information you have requested is exempt from disclosure under section 31(1)(a) of the Freedom of Information Act 2000 on the grounds that disclosure of this information would prejudice the prevention and detection of crime. Disclosure of this information would involve releasing the addresses of empty, exempt or discounted properties which could make the properties more vulnerable to criminal and anti-social activities. In particular, the Council believes that disclosure of the information could have the following effects:

- Disclosure would provide a ready-made list of empty properties which could be used by criminals who could target empty properties to commit property crimes and fraud.
- Release of information which is not easily available at present would better enable a fraudster to persuade the council that they were the ratepayer. It would entail significant time and expense for the Council to alter its security system to protect against any potential fraud.
- Disclosure of the information would make it easier for criminals to target empty properties in which waste could be dumped.
- Release of information could be used to locate potential venues for illegal raves, construction of cannabis farms or other associated crimes such as criminal damage in accessing the property, further drug offences and public order offences.
- A list of empty properties could be used by urban explorers to locate new properties to explore and could lead to an increase in crimes associated with urban exploring such as criminal damage to gain entry.
- Disclosure of a list of empty properties may lead to an increase in crimes such as criminal damage, arson and anti-social behaviour, which are often associated with squatting.

There is a real and significant risk that fraud would be made easier by the release of this information and that the provision of a readymade list of empty properties makes it easier for criminals to identify targets for the crimes listed above. Therefore, disclosure would be likely to prejudice the prevention of crime.

This is a qualified exemption and requires a public interest test to consider whether the public interest in maintaining the exemption outweighs the public interest in the disclosure of the information.

Public interest arguments in favour of disclosing the information

Openness and transparency in relation to procedures and decision making of public authorities and collection of taxes and management of finances.

Public interest arguments in favour of maintaining the exemption

The release of this information would make it much easier for a fraudster to pose as an account holder and bypass the Council's security systems.

Disclosure would also facilitate a fraudster posing as the Council to obtain confidential information from a ratepayer. Fraud is a real and current problem and the consequences to the Council of a loss of a significant sum of public money are serious. Urban exploring and illegal raves are a current problem in Greater Manchester and disclosure could contribute to this problem. Disclosure may lead to an increase in other property crimes such as criminal damage, arson and anti-social behaviour. Tackling issues like these would involve significant public expense and it is in the public interest to protect property and to ensure that public resources are used efficiently. There is also a compelling public interest in avoiding personal distress to the direct victims of the crime and to those in the wider neighbourhood who may be affected.

On balance, the Council believes that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.