



Wigan
Council

Request

Please can you provide me with the following information under the Freedom of Information Act 2000:

1. A list of all properties that have any credit balance on their business rates account
2. The account number
3. The account holder
4. The property address including postcode
5. Billing authority reference number
6. The current balance
7. Account start date
8. Account end date

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 Billing Authority reference number and 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.

We can confirm that we hold the information for the name of the rate payer, however, are refusing to provide you with the information as we consider an exemption under section 31 of the Act applies.

Section 31(1)(a) of the Freedom of Information Act 2000 (FoIA) states that the information is exempt from disclosure if disclosure would, or would be likely to, prejudice the prevention or detection of crime.

As disclosure under the FoIA is deemed to be to the world at large, we believe that the exemption is engaged in respect of the list of businesses including name and address.

Publishing a list of names alongside property addresses could reduce the effectiveness of the security checks used when discussing accounts with the public and could result in fraudulent claims or request for information.

One of the security questions used is 'the name on the bill' (the liable business party name). This could allow for someone to seek to impersonate the true ratepayer or assist them to falsely claim monies.

While this information by itself will not necessarily result in a breach of the council's security systems, it gives one answer to one of the security questions for all ratepayers and therefore weakens the system to some extent.

Publishing a list of credits would be an invitation for someone to seek to impersonate the true ratepayer, or assist them, to falsely claim monies.

The information could be used to assist fraudsters to claim monies not rightfully theirs and likely to prejudice the Council's attempts to prevent fraudulent activity. It is known to the Council the extent fraudsters go to, in order to submit fraudulent claims, such as impersonating a business or Council officers seeking to obtain funds. As confirmed by multiple NFI alerts, I would consider that there is a real and significant risk of prejudice by releasing this list.

The greater the potential for a disclosure to result in crime, the greater the public interest in maintaining the exemption. The victims of crime can be both organisations and individuals and there is public interest in protecting both from the impact of crime.

The businesses eligible for any refunds can be sole traders, partnerships, and companies, all of which are susceptible to fraud and the impact of the crime.

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 HIGH.

Reasons against disclosure:

There is strong public interest in ensuring the integrity of our security checks are maintained to prevent fraud. There is a real and evident risk of crime if information is released (confirmation of many fraudulent activities ongoing at present via NFI).

Disclosure would be likely to prejudice the Council's ability to identify, limit or prevent fraudulent attempts to access records and sensitive data. There is an inherent duty to protect individuals and organisations from the effects of crime and thus a strong public interest in avoiding the likely prejudice to the prevention of crime. We conclude that the public interest in withholding the list of businesses including names and addresses, outweighs the public interest in disclosure at this present time and therefore the information is being withheld from disclosure.

The remaining information requested is considered exempt under section 41 of the Act. Section 41 applies to information provided in confidence.

This applies to the billing address, the account start date, 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 taxpayer 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.