

Derek Bolton
Corporate Information Security Manager

Our Ref: FOI3635/DB/02
Please ask for: Derek Bolton
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[Name redacted]
Whatdotheyknow.com

22nd October 2015

Dear [Name Redacted]

Freedom of Information Act – Information withheld

Thank you for your email that we received on 21st October 2015 where you requested the following information:

A list of residential properties within the Tamworth Borough, where from the date of this request, the property is registered as exempt from council tax under the classifications listed below as per the councils website at the following link:

<http://www.tamworth.gov.uk/exemptions>

- a) Uninhabitable or properties undergoing major repair. From 1 April 2013 this has been superceded by a local discount which, subject to the conditions of this exemption, reduces the charge by 50% for up to twelve months.
- c) Empty and unfurnished properties. There is now a 100% discount for up to two months after which a full charge will be made.
- d) An unoccupied dwelling left empty by a person who has gone to prison.
- e) An unoccupied dwelling left empty by a person who is now resident in a hospital or nursing home.
- f) An unoccupied dwelling forming part of the estate of a deceased person and the personal representative is waiting for grant of probate or letters of administration or less than 6 months have elapsed since such a grant was made.
- l) An unoccupied dwelling which has been repossessed by a mortgagee.

I also wish to request information for properties registered as "Discounted" due to the classifications below according to the council website at the following link <http://www.tamworth.gov.uk/are-you-entitled-discount>:

- 1) "Second homes and unoccupied furnished property: If a property is not anyone's main home, the owner will be charged full Council Tax. This applies to unoccupied properties (which are substantially furnished) and second homes (furnished properties that are not used as main residences)."
- 2) "Long term unoccupied and unfurnished property: Homes vacant for more than two years are subject to an additional charge of 50% on top of the full Council Tax."

I require this information please columns in an excel spreadsheet containing the following:

- The Number/Name of each house
- The Street Name for each house
- The Postcode for each house
- The corresponding exemption/discount classification code for each property
- The date at which the exemption/discount classification was activated

I do not require the name of the owner or any personal details of any individuals connected with the properties in question, so as to not breach data protection.

We do not disclose details of empty or unoccupied properties under the Freedom of Information Act and we do not publish this information on our web sites. This is based on the Information Tribunal decision in the case of Mr P England and the London Borough of Bexley and the Information Commissioner Appeal no: EA/2006/0060 & 0066. In this particular case Mr England had requested statistics of empty residential properties including the addresses of the properties concerned and information as to why the property was empty, or details of ownership, from the London Borough of Bexley. Following a refusal by the London Borough of Bexley the case had been placed before the Information Commissioner and subsequently before the Information Tribunal for determination.

The Information Tribunal found that the address of the property and the address or other details of the owner, where the owner was an individual, were personal data as defined by the Data Protection Act 1998, and fell within the exemption in Section 40 (3) (a) (i) (Personal Information) of the Freedom of Information Act 2000. In addition after considering the presentations by the appellants and their expert witnesses the Tribunal also found that for properties owned by individuals the Section 31 (1) (a) (Law Enforcement) exemption was engaged and that the public interest in withholding the information outweighed the public interest in providing the information. The explanation of this decision can be found here:

<http://www.informationtribunal.gov.uk/DBFiles/Decision/i146/ENgland.pdf>

We are refusing this information based on the determination reached by the Information Tribunal and extend this to include properties owned by companies and not individuals due to the same risks posed. We have explained below the reasoning in this case, and the reason why we concur.

The Tribunal looked at the information held and what had been requested. Some empty properties were not owned by individuals. In these cases, the exemption for personal data did not apply. However for properties where the owner was an individual the Tribunal concluded that the information about ownership, and the information about the property (the address) from which ownership information might be obtained through Land Registry searches were both personal data.

The Section 40 (3) (a) (i) exemption in the Freedom of Information Act is engaged if the processing of personal data in response to a request would breach one or more of the data protection principles. In this case the Tribunal considered that the individuals concerned had supplied information about their empty properties to the council purely for the council's use, for Council Tax purposes, and with no expectation that the information would be published to the wider public domain. Guidance available from the Government also makes it clear that where empty properties are concerned the co-operation of the owners should be obtained. The Tribunal considered that to disclose the information without the consent of the owners and without their knowledge would not be a fair use of the data. The Tribunal also considered that to obtain information for one statutory process and then re-use it for another purpose without informing the owner of the data would be a breach of Data Protection law. Accordingly provision of this data would be a breach of the data protection principles, and the data was absolutely exempt.

In addition the Tribunal looked at the provisions of the exemption at Section 31 (1) (a). This was the exemption originally claimed by the council in its refusal notice. The argument put forward by the council was that if a list of empty properties were made publicly available then there was a higher likelihood of vandalism, squatting and criminal actions in respect of these properties. The Tribunal looked in particular at the impact of crime on individuals and found that for those properties owned by individuals the public interest lay with withholding the information to enable them to better protect and secure their properties. However they did rule that for those properties owned by organisations there was a much less significant impact – since such organisations would be expected to provide suitable security and oversight of properties. The council considers that despite this having less of an impact than privately owned properties, the public interest test of Section 31 is still met for companies and therefore we apply this exemption to this information.

We must abide by the provisions of the Data Protection Act and it would be neither fair nor lawful to supply a list of empty properties (and their owners for public use). Similarly we would consider that there is a significant degree of concern for individuals if the fact their property is empty comes into the public domain, and that there is a heightened possibility that such properties could be targeted by criminal activity to the detriment of the owner. Accordingly we are refusing this information.

The attached annex gives the two exemptions and explains the public interest test in the case of the Section 31 exemption.

Please see http://www.informationtribunal.gov.uk/DBFiles/Decision/i942/EA-2011-0007_2013-01-22.pdf for details of a dismissed appeal on this topic

However notwithstanding the above we find no reason not to provide you with the numbers of properties associated with your request as they are unable to be identified by location.

- a) 27
- c) 147
- d) 4
- e) 37
- f) 77
- l) 5
- 1) 15
- 2) 37

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original letter and should be addressed to:

The Corporate Information Security Manager,
Tamworth Borough Council,
Marmion House,
Lichfield Street,
Tamworth,
B79 7BZ

Yours Sincerely

Derek Bolton
Corporate Information Security Manager