



Case Reference: EA-2023-0237

Neutral Citation Number: [2023] UKFTT 887 (GRC)

First-tier Tribunal  
General Regulatory Chamber  
Information Rights

Heard: By CVP

Heard on: 2 October 2023

Decision given on: 25 October 2023

Before

TRIBUNAL JUDGE SOPHIE BUCKLEY  
TRIBUNAL MEMBER PHEBE MANN  
TRIBUNAL MEMBER PAUL TAYLOR

Between

KEIR STITT

Appellant

and

(1) THE INFORMATION COMMISSIONER  
(2) VALUATION OFFICE AGENCY

Respondents

**Representation:**

For the Appellant: In person

For the First Respondent: Did not appear

For the Second Respondent: Horatio Waller, Counsel

**Decision:** The appeal is Dismissed.

**REASONS**

**Introduction**

1. This is an appeal against the Commissioner's decision notice IC-212134-G5G6 of 19 April 2023 which held that the Valuation Office Agency (the VOA) was entitled to

rely on section 44(1)(a) of the Freedom of Information Act 2000 (FOIA) to withhold the requested information. The Commissioner did not require the public authority to take any steps.

### **Factual and legislative background to the appeal**

2. Council Tax was established under the provisions of the Local Government Finance Act 1992 (LGFA). The LGFA requires HMRC to carry out valuations of dwellings for the purposes of compiling and maintaining valuation lists (the valuation lists).
3. Section 20 LGFA requires HMRC to appoint listing officers responsible for compiling and maintaining the valuation lists.
4. HMRC have delegated the duty to compile and maintain valuation lists to the VOA. The VOA is an Executive Agency of HMRC, and its staff are officers of HMRC. It is responsible for the valuation of properties and land across England and Wales, and for some statutory and public sector valuation work in Scotland. It describes itself as follows:

“We are the public sector’s property valuation experts and advisers, helping people and businesses to pay the right property taxes and to receive the right financial support.” (p C81 OB)

5. There are 8 valuation bands in England, lettered A-H. The valuation lists allocate a valuation band to each dwelling, depending on the dwelling’s value on the relevant date which, for England, is 1 April 1991.
6. VOA collects and holds data relating to individual dwellings to undertake its functions, including the function of compiling and maintaining valuations lists.
7. The Local Council (the ‘billing authority’) is responsible for the setting and collection of Council Tax, based on the valuation band ascribed to each dwelling in the valuation list.
8. The material parts of section 18 of the Commissioners for Revenue and Customs Act 2005 (‘CRCA’) provides:

(1) Revenue and Customs officials may not disclose information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs.

(2) But subsection (1) does not apply to a disclosure –

(a) which –

(i) is made for the purposes of a function of the Revenue and Customs, and

(ii) does not contravene any restriction imposed by the Commissioners,

(b) which is made in accordance with section 20 or 21,

- (c) which is made for the purposes of civil proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Revenue and Customs have functions,
- (d) which is made for the purposes of a criminal investigation or criminal proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Revenue and Customs have functions,
- (e) which is made in pursuance of an order of a court,
- (f) which is made to Her Majesty's Inspectors of Constabulary, the Scottish inspectors or the Northern Ireland inspectors for the purpose of an inspection by virtue of section 27,
- (g) which is made to the Director General of the Independent Office for Police Conduct, or a person acting on the Director General's behalf, for the purpose of the exercise of a function by virtue of section 28,
- (h) which is made with the consent of each person to whom the information relates,
- (i) which is made to Revenue Scotland in connection with the collection and management of a devolved tax within the meaning of the Scotland Act 1998,
- (j) which is made to the Welsh Revenue Authority in connection with the collection and management of a devolved tax within the meaning of the Government of Wales Act 2006, or
- (k) which is made in connection with (or with anything done with a view to) the making or implementation of an agreement referred to in section 64A(1) or (2) of the Scotland Act 1998 (assignment of VAT).

(2A) Information disclosed in reliance on subsection (2)(k) may not be further disclosed without the consent of the Commissioners (which may be general or specific).

(3) Subsection (1) is subject to any other enactment permitting disclosure.

(4) In this section-

...

(c) a reference to a function of the Revenue and Customs is a reference to a function of-

- (i) The Commissioners, or
- (ii) An officer of Revenue and Customs, ...

9. Section 23(1) CRCA provides: -

'(1) Revenue and customs information relating to a person, the disclosure of which is prohibited by section 18(1), is exempt information by virtue of section 44(1)(a) of the Freedom of Information Act 2000...if its disclosure

(a) Would specify the identity of the person to whom the information relates, or

(b) Would enable the identity of such a person to be deduced.

(1A) Subsections (2) and (3) of section 18 are to be disregarded in determining for the purposes of subsection (1) of this section whether the disclosure of revenue and customs information relating to a person is prohibited by subsection (1) of that section.

(2) Except as specified in subsection (1), information, the disclosure of which is prohibited by section 18(1), is not exempt information for the purposes of section 44(1)(a) FOIA of the Freedom of Information Act 2000'

(3) In subsection (1) 'revenue and customs information relating to a person' has the same meaning as in section 19.'

10. Section 19 CRCA provides (so far as is relevant to this appeal): -

“(1) A person commits an offence if he contravenes section 18(1) ... by disclosing revenue and customs information relating to a person whose identity -

(a) Is specified in the disclosure, or

(b) Can be deduced from it.

(2) In subsection (1) “revenue and customs information relating to a person” means information about, acquired as a result of, or held in connection with the exercise of a function of the Revenue and Customs (within the meaning given by section 18(4)(c)) in respect of the person; but it does not include information about administrative arrangements of her Majesty’s Revenue and Customs (whether relating to Commissioners, officers or others).

(3) It is a defence for a person charged with an offence under this section of disclosing information to prove that he reasonably believed -

(a) that the disclosure was lawful, or

(b) that the information had already and lawfully been made available to the public.”

11. Section 5(1)(a) CRCA provides:

“The Commissioners shall be responsible ...for the collection and management of revenue”.

12. Section 9 CRCA provides:

“(1) The Commissioners may do anything which they think –  
(a) necessary or expedient in connection with the exercise of their functions, or  
(b) incidental or conducive to the exercise of their functions”.

13. Section 10 CRCA sets out the functions of the ‘Valuation Office’. Schedule 1 identifies the provision of ‘Valuation Lists in relation to Council Tax’ and the valuation of property’ as former Inland Revenue functions transferred to HMRC.

14. Section 19 CRCA makes it a criminal offence for any VOA member of staff to disclose any ‘person’s’ information under the FOIA.

15. Section 51(2) CRCA provides:

“(2) In this Act –

(a) “function” means any power or duty (including a power or duty that is ancillary to another power or duty)’

(b) A reference to the functions of the Commissioners or of officers of Revenue and Customs is a reference to the functions conferred ...

(iii) By or by virtue of any enactment passed or made after the commencement of this Act”.

16. Section 28 LGFA contains provisions governing the right of access by the public to copies of valuations lists and the facility to take extracts and request copies of the information. The Listing Officer and the Billing Authority are both required to allow such access. The VOA provides the public with access to the valuation lists via the GOV.UK website.

17. Under section 28(8) LGFA:

“(8) If without reasonable excuse a person having custody of a document containing, or having control of access to, information access to which is sought under this section –

(a) intentionally obstructs a person in exercising a right under subsection (1), (2), (3), (5)(a) or (6)(a) above; or

(b) refuses to comply with a requirement under subsection (5)(b) or (6)(b) above,

he shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.”

## **Requests, Decision Notice and appeal**

### *The Request*

18. This appeal concerns the following request made on 25 August 2022:

“I would like to obtain access to the VOA Council Tax database – in particular the Address, Local Authority and Council Tax band for each property in England and Wales.”

### *The Response*

19. The VOA replied on 12 September 2022 refusing to disclose the requested information under section 44(1)(a) FOIA on the basis that section 23(1) CRCA prevented disclosure.

20. Mr Stitt requested an internal review on 4 October 2022. The VOA responded to the internal review on 28 October 2022. The review upheld the original decision.

21. Mr Stitt referred the matter to the Commissioner on 20 January 2023.

### *The Decision Notice*

22. In a decision notice dated 19 April 2023 the Commissioner decided that the information held was exempt information under section 44(1)(a).

23. The Commissioner considered that it was clear that the VOA cannot, under FOIA, disclose any information which would identify a person or enable identification of a person.

24. The Commissioner stated that she had ‘not been presented with evidence that the LGFA does, as a matter of fact, override the CRCA, in regards to this case. It is not for the Commissioner to make this determination on other legislation’ (para 32 p A8 OB).

25. The Commissioner accepted that disclosing the withheld information, in particular the property addresses, would enable the identity of the persons to whom they relate to be deduced when combined with other information from publicly available sources, such as the electoral register and other online sources.

### *Notice of Appeal*

26. The tribunal has read and taken account of the grounds of appeal in full. In outline, the grounds are:

26.1. The Commissioner was wrong to conclude that he could not make a determination on how the LGFA and CRCA interact (**OFCOM v Morrissey and the Information Commissioner** [2011] UKUT 116 (AAC)).

- 26.2. The Commissioner failed to consider the meaning of person in section 19(2) CRCA. The information has to be about a person but also held in connection with the exercise of a function of HMRC in respect of the person.
27. Mr Stitt also provided a document entitled 'Mr Stitt's detailed argument in respect of his FOI complaint to the Commissioner'. In that document he argues:
- 27.1. The requested information does not relate to persons within the meaning of section 23 CRCA and therefore is not exempt.
- 27.2. In any event section 28 LGFA requires VOA to disclose the requested information irrespective of the provisions of CRCA.
28. In essence Mr Stitt argues that the information not only has to relate to a person but also has to be held in connection with the exercise of a function in respect of the person (section 19(2) CRCA). The administration of valuation lists is a function of the VOA, but it is a function carried out in relation to dwellings, not in relation to a person.
29. Further he argues that section 28 LGFA is too broad to be considered a 'gateway' and therefore is not covered by section 23(1A) CRCA, because it provides for disclosure without conditions relating to the purpose of the dissemination. The introduction of section 23A has the effect that the VOA/the Commissioner are no longer directed to have regard to other enactments when considering what is confidential – but it does not direct that they must not have regard to other enactments if it would have been proper to do so in the circumstances had section 18(3) never been written.
30. Because section 28 LGFA makes the valuation lists publicly available without any conditions or onward restriction on their use, the information cannot be exempt from FOIA on the grounds of prohibitions on disclosure (via section 23 CRCA or otherwise) unless it can be shown that the unconditional right of access in LGFA is either directly or by implication attenuated or repealed. Because given the general nature of CRCA and the specific nature of LGFA it would be contrary to the principles of statutory interpretation (Seward v The Vera Cruz (Owners) HL [1884]) to argue that the LGFA is attenuated by the CRCA with or without the amendment that inserted section 23A.

## **Responses and submissions**

### *The ICO's response*

31. The Commissioner submits that the argument that section 28 LGFA takes precedence over section 23 CRCA is misguided. If the information falls under the scope of section 23(1) CRCA, disclosure of that information would be prohibited under section 18(1) CRCA and thereby exempt under section.44(1)(a) FOIA

(notwithstanding that disclosure otherwise than under FOIA may be permitted by another enactment).

32. The Commissioner argues that section 23 CRCA does not interfere with any right of access under the LGFA, it simply exempts the information prohibited under section 18(1) CRCA from disclosure under FOIA pursuant to section 44 FOIA. The CRCA does not preclude the appellant separately exercising his rights under section 28(1) LGFA. Furthermore, section 78 FOIA provides that “nothing in this act is to be taken to limit the powers of a public authority to disclose information held by it”. Neither the Commissioner nor the tribunal have jurisdiction over a request pursuant to section 28(1) LGFA.
33. The Commissioner submits that the Upper Tribunal in **Gordon v Information Commissioner & HMRC** [2020] UKUT 92 (AAC) (“Gordon”) concluded that the phrase ‘in respect of the person’ in section 19(2) CRCA qualifies the ‘exercise of a function’ and not ‘information’. The information itself did not need to be information about a person. The information only had to relate to a function which was being exercised in respect of a person for the prohibition under section 18(1) FOIA to apply.
34. The Commissioner accepts that providing a property valuation (to support government and local authorities with taxation and benefits decisions) is a power or duty conferred on the VOA by the CRCA (section 10 CRCA). Applying the definition of “functions” in section 51(2)(b) CRCA, providing a valuation of property is therefore a “function” of VOA for the purposes of section 19(2) CRCA.
35. The compiling and maintaining of lists of council tax bands for domestic properties is either part of the above function, or, applying section 9(1) CRCA, an ancillary power, necessary or expedient in connection with the exercise of that function, or incidental to it. Therefore, applying section 51(2)(a) CRCA, the compiling and maintaining of the lists also falls within the definition of a “function” for the purposes of section 19(2) CRCA.
36. The Commissioner considers that the appellant’s interpretation of “in respect of the person” is too narrow. The appellant’s arguments overlook section 9 CRCA, which includes the power to do anything that is necessary or expedient in connection with the exercise of functions or that is incidental or conducive to their exercise. Incidental to the exercise of the function to provide a valuation of property (for which compiling and maintenance of a list of council tax bands for domestic properties would be necessary and expedient) would be VOA’s role in providing valuations and property advice to support taxation and benefits to the government and local authorities to assist them with setting taxation and benefits with respect to individual homeowners (to comply with the overarching function of Commissioners under section 5(1)(a) CRCA to be responsible for the collection and management of revenue).



37. As such, the Commissioner maintains that the withheld information relates to a function which was being exercised in respect of a person, namely the homeowner of each individual property listed.
38. The Commissioner is satisfied that the requested information is “about, acquired as a result of, or held in connection with” the exercise of the function of providing a valuation of individual homeowner’s properties.

### *Reply of the appellant*

#### *The tribunal’s jurisdiction in relation to section 28 LGFA*

39. The appellant submits that if the jurisdictional limits of the tribunal constrain them to take a position that permits a public authority to act in a way that may amount to an offence then this may undermine the Rule of Law. The Tribunal Procedure Rules (First-Tier Tribunal) (General Regulatory Chamber) Rules 2009 [‘The Tribunal Rules’] provide at Rule 5 and 19 for the transfer of a case to a different Court or tribunal or the Upper Tribunal.
40. The appellant notes the Commissioner’s suggestion at para. 33 that this is a matter for the VOA complaints procedure. The appellant states that he cannot accept that suggestion because on a procedural level he has already begun a judicial process which would be prejudicial to such a process. If a question of public law remains, then it might be procedurally barred from being raised if the appellant followed the Commissioner’s suggestion.

#### *LGFA*

41. VOA do not have a *discretion* to disclose information under section 28 LGFA. It is an obligation and it a criminal offence to obstruct inspection of the list.
42. The appellant submits that it is clearly absurd that information is under one Act placed into the public domain with a right of inspection by any person with no limits on purpose or further disclosure, when a separate enactment appears to prohibit the same information from disclosure.

#### *Person under section 19(2) CRCA*

43. The appellant submits that the suggestion that Council Tax relates to homeowners is erroneous. Council Tax is charged on residents – it is not a tax on property ownership but on residence. Any disclosure cannot enable the identity of the person to be deduced because from the VOA’s perspective there is no person, only a class of persons unknown to the VOA.
44. The Commissioner points out that the information would also disclose individual addresses which combined with other information would enable the identity of the individual owners to be deduced from e.g. land registry and electoral roll

information. This is correct, but as these datasets already have the list embedded in them there is no practical advantage of having an address list. For the purposes of FOIA a jigsaw piece available by other means is already exempt from disclosure by way of s21 FOIA.

*The VOA's response to the appeal*

45. When applying s44(1)(a), the tribunal in **OFCOM v Morrissey and the Information Commissioner** [2011] UKUT 116 (AAC) held that it had no jurisdiction to consider whether OFCOM had a duty to disclose information under a separate statutory regime. The VOA submits that the question for the Commissioner and for this tribunal is whether the disclosure of the withheld information is prohibited under the CRCA.
46. It is submitted by the VOA that there is no question when considering s44(1)(a) of disapplying an enactment that prohibits the disclosure of information on the basis that there is a duty or discretion to disclose the information pursuant to a different enactment. If there is any "conflict" between the LGFA and CRCA, that conflict is not one that the tribunal has jurisdiction to consider.
47. The VOA submits that it is irrelevant whether some of the withheld information is already within the public domain. This cannot be relevant to determining the applicability of a particular statutory enactment to the request for the withheld information.

*Information that is held, about, acquired as a result of, or held in connection with the exercise of a function of the Revenue and Customs in respect of a person*

48. The VOA submits that the information is 'about, acquired as a result of, or held in connection with the exercise of a function of the Revenue and Customs in respect of the person':
  - 48.1. Under the CRCA, preparing and maintaining valuation lists in relation to council tax is a particular function of the Commissioners, delegated to the VOA as an Executive Agency of HMRC (see sections 5(2), 7, 18(4)(c) and schedule 1, para 29).
  - 48.2. The address, local authority and council tax band for each property in England and Wales is about, acquired as a result of and is held by the VOA in connection with its function of preparing and maintaining the Council tax valuation list.
  - 48.3. This is a function in respect of persons because it is concerned with the collection of a tax, and tax is levied upon persons, and because it involves collating addresses, and each address relates to the person/s who occupy and/or own the property in question.

49. The function of preparing and maintaining the council tax lists relates to persons, because a tax is payable by persons, and because a person's address is, self-evidently, information about that person.

*Disclosure would enable the identity of such a person to be deduced*

50. By cross-referencing the addresses against other publicly available datasets (the Land Register, the Electoral Roll or telephone directories) it would be easy to identify the persons to whom the information relates, namely the residents and/or titleholders of each council tax property.

### **Mr Stitt's reply**

51. It is impossible to apply section 44 FOIA without first determining whether the statutory bar on FOIA disclosures in CRCA applies in this case. This involves construing not merely the enactment that the public authority relies on but also all relevant enactments that may interfere with it. Mr Stitt submits that section 23(1A) removes the express requirement to have regard to other enactments but does not expressly require the tribunal to disregard other enactments. The information is required to be provided by primary legislation.

52. The list of addresses held by VOA does not relate to a person, because from the VOA's perspective there is not a person and their function to maintain valuation lists is not in respect of any person. It is the billing authority and not the VOA who has functions in respect of persons.

53. The VOA in carrying out their functions will communicate with persons liable for council tax to assist them in establishing the value of a property. But the function remains in respect of the property, and the resulting banding decision that is requested in this case is an attribute of the property not the persons with an interest in it.

### **Evidence**

54. We have read and taken account of an open bundle of documents.

### **Legal framework**

#### ***SECTION 44 - Disclosure prohibited by statute***

55. Section 44(1)(a) provides that information is exempt information if its disclosure is prohibited by or under any enactment. It is an absolute exemption so the public interest balance does not apply.

### ***The role of the tribunal***

56. The tribunal's remit is governed by section 58 FOIA. This requires the tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner's decision involved exercising discretion, whether he should have exercised it differently. The tribunal may receive evidence that was not before the Commissioner and may make different findings of fact from the Commissioner.

## **Issues**

57. The issues for the tribunal to determine are:

57.1. Was disclosure of the information prohibited under the CRCA (sections 18, 19 and 23)?

## **Submissions**

### *Oral submissions/Skeleton argument from Mr. Stitt*

58. Mr. Stitt submits in his skeleton argument:

58.1. The Upper Tribunal in Morrissey found that it may be necessary to the proper application of section 44(1)(a) FOIA to resolve questions on the construction of a potentially relevant statutory bar.

58.2. FOIA made specific provision by way of the section 21 exemption for information that a public authority is obliged under another enactment to disclose on request to members of the public.

58.3. Conflicts between different enactments should be resolved by applying the ordinary principles of statutory construction. When such a conflict relates to the construction of a statutory bar on FOIA disclosure then it must be resolved before section 44 can be properly applied.

58.4. When a revenue and customs function is not carried out in relation to a person then irrespective of that function being of consequence to a person it is not necessarily a function in respect of that person

58.5. The absence of any legal person that the second respondent carries out a function in respect of, means that section 23 CRCA does not apply and neither therefore does section 44 FOIA.

58.6. The function in question is in respect of dwellings as defined by section 3 Local Government Finance Act 1992.

59. In oral submissions Mr. Stitt focussed largely on his argument that the information was not about, acquired as a result of, or held in connection with the exercise of a function of the Revenue and Customs in respect of the person.

### *Oral submissions/skeleton argument from the VOA*

60. The VOA submits that the jurisdiction of the tribunal in this appeal is to determine whether there is a duty to disclose the withheld information under the FOIA, not under the LGFA.

61. The VOA submits that Mr Stitt's argument that the tribunal may still have regard to other enactments such as the LGFA despite section 23(1A) is wrong. The question under section 44(1)(a) is whether disclosure of the withheld information is "prohibited by or under any enactment". That is a question necessarily directed at a particular enactment. There is no question when considering section 44(1)(a) of disapplying an enactment that prohibits the disclosure of information on the basis that there is a duty or discretion to disclose the information pursuant to a different enactment.
62. The VOA submits that the argument that the tribunal may still have regard to other enactments, such as the LGFA, is unsustainable as it turns section 23(1A) entirely on its head.
63. There are essentially three concepts within section 23:
  - 63.1. Revenue and customs information,
  - 63.2. relating to a person, and
  - 63.3. disclosure has one of the stated effects.
64. The function of preparing and maintain the valuation list is a function of "an officer of Revenue and Customs" for the purposes of s18(4)(c)(ii) of the CRCA.
65. This function relates to a person because council tax is a tax, and taxes are levied on individuals. The contents of a valuation list relate to people. The information does not need to be about people.
66. The disclosure of the information would enable the identity of persons to be deduced, by cross-referencing the addresses against other publicly available datasets.

## Discussion and conclusions

### *Arguments relating to the jurisdiction of the tribunal*

67. The tribunal's jurisdiction mirrors the Commissioner's. In an appeal under FOIA, our functions are limited by reference to the functions of the Commissioner. The task for the Commissioner, and therefore the tribunal, is to decide whether, in any specified respect, a request for information made by a complainant to a public authority has been dealt with in accordance with the requirements of Part I of FOIA.
68. If a public authority relies on the exemption in section 44 FOIA, it will sometimes be necessary to take a view on the construction of a potentially relevant statutory bar in other legislation (para 63 of **OFCOM v Morrissey and the Information Commissioner** [2011] UKUT 116 AC):

“63. In short, the task of the Commissioner is to make a decision whether, in any specified respect, a request for information made by a complainant to a public authority has been dealt with in accordance with the requirements of Part I of FOIA. That may well require a view to be taken on the construction of a potentially relevant statutory bar on disclosure in other legislation. In the circumstances of the present case it did not extend to asking the questions which might be asked on the subject of reasonableness by a court of supervisory jurisdiction examining a challenge to OFCOM's failure to exercise powers available to it under the 2003 Act.”

69. In this appeal, the public authority relies on section 44 and therefore the question for the Commissioner and for the tribunal is whether disclosure is prohibited under an enactment – specifically whether disclosure of the information is prohibited under section 18 CRCA, read in conjunction with sections 19 and 23 CRCA.
70. Mr Stitt argues that it is necessary for the tribunal to resolve a perceived conflict between the statutory prohibition in the CRCA and the duties of listing officers under section 28 LGFA. The short answer is that, in the tribunal’s view, section 28 LGFA has no impact on the question of whether the request was dealt with in accordance with FOIA. The long answer is as follows.
71. Section 18(1) CRCA is a statutory prohibition on disclosure of information held by HMRC in connection with a function of the Revenue and Customs. Sections 18(2) and 18(3) contain a number of exemptions to that statutory prohibition.
72. For example, under subsection (2)(a), subsection (1) does not apply to a disclosure which is made for the purposes of a function of the Revenue and Customs and does not contravene any restriction imposed by the Commissioners. Under subsection (3), subsection (1) is subject to any other enactment permitting disclosure.
73. The list of exemptions is reasonably extensive, but unless the proposed disclosure falls within one of those subsections, disclosure of information held by HMRC in connection with a function of the Revenue and Customs will be prohibited under section 18(1).
74. Section 28 LGFA requires a Listing Officer to allow access to copies of valuation lists. The parties have a different view on the extent of any duty to disclose under section 28 LGFA, but that does not matter for the purposes of this appeal for the reasons set out below.
75. Any duty to disclose under section 28 LGFA can be accommodated by the exemptions to section 18(1). For example, section 18(2)(a) permits disclosure which is made for the purposes of a function of the Revenue and Customs and does not contravene any restriction imposed by the Commissioner. Section 18(3) provides that subsection (1) is subject to any other enactment permitting disclosure.

76. Accordingly, there would be no need to resort to the interpretative rule explained in Seward v The Vera Cruz [1884] 10 App.Cas 59. To the extent that information held by HMRC in connection with a function of the Revenue and Customs is required to be disclosed under section 28 LGFA, outside the FOIA regime, this would be permitted under section 18(2) or (3).
77. Not all information which is subject to the statutory prohibition in section 18(1) is exempt under section 44(1)(a) FOIA. Section 23(1) provides that information, the disclosure of which is prohibited by section 18(1) is only exempt under FOIA – where it relates to a person and would specify the identity of the person to whom the information relates or would enable the identity of such a person to be deduced.
78. Section 23(1A) also provides that subsections (2) and (3) of section 18 are to be disregarded for the purposes of section 23(1). Section 23 (1A) relates to disclosure of information under FOIA. It has no impact whatsoever on the scope of any separate requirement under section 28 LGFA to disclose or make public information. There is no need to consider any ‘conflict’ or interpret the provision in accordance with the principle in Seward v The Vera Cruz, because it simply has no impact on any pre-existing obligation to disclose under section 28 LGFA.
79. The effect of section 23(1A) is that the tribunal is not required for the purposes of section 44(1)(a) to consider whether information falls within an exemption to section 18(1) provided by sections 18(2) or (3). Therefore, for the purposes of FOIA we do not need to consider if disclosure is allowed or required under section 28 LGFA.
80. In conclusion, Mr. Stitt is right that a tribunal may need to construe other statutes to determine whether a statutory prohibition applies, but it is not necessary in this case to construe section 28 LGFA or resolve any perceived conflict with the CRCA.
81. For those reasons we do not accept that the Commissioner erred in failing to consider how CRCA and LGFA interact.
82. Mr. Stitt raises the tribunal’s powers to transfer a case to a different Court or tribunal or the Upper Tribunal. The tribunal does not understand Mr. Stitt to be attempting to bring a freestanding complaint, outside of FOIA, of a failure by VOA to comply with any duty under section 28 LGFA. The arguments about jurisdiction are more nuanced in this appeal and relate to the extent to which section 28 can be considered within a FOIA claim. Given the nuanced nature of the arguments about jurisdiction and the conclusions we have reached above, it is not an appeal in which it would be appropriate to consider transfer.

### *Section 21*

83. Mr. Stitt is right that under section 21 information is exempt if it is information which the public authority is obliged by or under any enactment to communicate

to members of the public on request. As there is no obligation on a public authority to rely on a particular exemption and as the public authority has not relied on section 21 in this case, we do not need to consider it.

84. Mr. Stitt submits that, in the light of section 21, 'there can be no substance to the suggestion that different regimes are outside the scope of FOIA. On the contrary, section 21 suggests that where a separate obligation to disclose isn't being met then FOIA may be used to obtain the information'.

85. Section 21 takes us no further in this appeal. Individuals are entitled to request under FOIA any information held by a public authority whether it is also available in another regime. That request must be dealt with in accordance with part 1 of FOIA. There are a number of exemptions which may be available to a public authority in those circumstances, including section 21. If section 21 is in issue, a tribunal may need to determine whether information is reasonably accessible by other means, which may include deciding whether the public authority is obliged under another enactment to communicate the information to members of the public.

86. What the appellant cannot do is ask the tribunal in this appeal, where section 21 is not in issue, to decide if he would be entitled to this information under section 28 LGFA. That is not a matter that arises for determination.

*Is the information exempt under section 44?*

87. The issue for us to determine is whether the requested information falls within section 23 CRCA. To determine this issue, we need to answer the following questions:

87.1. Is the requested information 'revenue and customs information relating to a person'?

87.2. Does the requested information allow the person's identity to be deduced?

*Is the information 'revenue and customs information relating to a person'?*

88. S 19(2) CRCA defines "revenue and customs information relating to a person" as:

information about, acquired as a result of, or held in connection with the exercise of a function of the Revenue and Customs ... in respect of the person; but it does not include information about internal administrative arrangements of Her Majesty's Revenue and Customs ...

89. The Upper Tribunal in **Gordon v Information Commissioner and HMRC** [2020] UKUT 92 (AAC), accepted at para 14 that the phrase 'in respect of a person' qualified 'the exercise of a function' rather than information'. There is no suggestion in this case that the information is about internal administrative arrangements, so the correct approach is to ask: Does the information requested consist of or include information that is about, acquired as a result of, or held in connection with the



exercise of a function of the Revenue and Customs in respect of a person, but not about internal administrative arrangements?

90. The relevant function under the CRCA is the preparing and maintaining valuation lists in relation to council tax (see sections 5(2), 7, 18(4)(c) and schedule 1, para 29).
91. The address, local authority and council tax band for each property in England and Wales is about, acquired as a result of and is held by the VOA in connection with its function of preparing and maintaining the council tax valuation list.
92. The council tax valuation lists allocate a valuation band to each individual dwelling, depending on the dwelling's value on the relevant date. The purpose of that list is so that the billing authority can set and collect Council Tax, which they base on the valuation band ascribed to each dwelling in the valuation list. That tax is paid, in relation to each dwelling, by the person who owns or occupies the dwelling.
93. By allocating a particular dwelling, which an individual either owns or occupies, to a particular valuation band using that individual's address, the VOA takes the first step in determining that particular individual's personal tax liability. In those circumstances, we accept that the VOA is exercising a function in respect of each person who will be responsible for paying Council Tax in relation to a dwelling on the list.

*Does the information allow the person's identity to be deduced?*

94. Mr. Stitt accepted that disclosure of individual addresses, combined with other publicly available information such as land registry and electoral roll information, would enable the identity of the individual owners to be deduced.
95. Mr. Stitt argued that as those other datasets already have the list embedded in them, there is no practical advantage to having an address list. He submits that for the purposes of FOIA a jigsaw piece available by other means is already exempt from disclosure by way of section 21 FOIA.
96. The question of whether there is a practical advantage is not the test that we must apply, and section 21 is not raised in this appeal.
97. We find that the information does allow the person's identity to be deduced. The requested information includes addresses, which, combined with other publicly available information, would allow the individual to be identified.
98. In those circumstances we find that disclosure of the information is prohibited under an enactment and section 44 is engaged. This is an absolute exemption. Accordingly, we find that VOA was entitled to withhold the information under section 44 and the appeal is dismissed.

Signed Sophie Buckley

Judge of the First-tier Tribunal

Date: 20 October 2023