

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 5 December 2006

**Public Authority:** Valuation Office Agency  
(an executive agency of the Inland Revenue)

**Address:** New Court, Carey Street, London, WC2A 2JE

### Summary

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The complainant requested the public authority under the Freedom of Information Act ('the Act') to provide information regarding the Council Tax banding of his property. Although it provided certain information the Commissioner finds that it did not do so in accordance with its obligations under the Act and in particular is in breach of sections 1 and 10.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Act. This Notice sets out his decision.

### The Request

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2. The complainant by undated correspondence (received by the public authority on 1 June 2005) requested that the public authority provide him with "*all the information and documentation that you used to determine the banding level*" for his (named) property.

The public authority provided certain information on 22 July 2005.

The complainant thereafter requested an internal review of the public authority's application of the Act. This was not undertaken.

## The Investigation

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### Scope of the case

3. On 31 May 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He has specifically asked for two aspects to be considered.

The public authority's respective failures to treat his request as an application under the Act, to act upon the request within the statutory timescales and to issue a refusal notice.

The "claiming" of incorrect exemptions under sections 21 and 44 of the Act and in particular whether the public authority deliberately tried to mislead the complainant in this respect.

### Chronology

4. The Commissioner entered into correspondence with both parties requiring the complainant to provide further information in relation to his complaint which he did on 15 June and 12 September 2006.

The public authority was required to provide a detailed explanation of its actions which it initially did on 24 August 2006. Thereafter the Commissioner had cause to raise further queries which it dealt with accordingly.

### Findings of fact

5. The Commissioner notes the background circumstances at the time the complainants request for information was made.
6. Council tax which was introduced in 1993 is based on a system of bands which relate to the capital value of residential property on a certain valuation date. In Wales until last year that valuation date had been 1 April 1991. However with a view to bringing valuations up to date a new list came into force on 1 April 2005 based on revaluations as at a new valuation date of 1 April 2003.

The public authority anticipating a large number of enquiries regarding the new banding levels took the view that to assist the public and thereby possibly reduce the number of appeals requested in relation to the banding levels ("valuation appeals") it would as part of its normal council tax procedure provide taxpayers on request with certain sales information which it was felt would provide sufficient information for the taxpayer to make an informed decision about whether or not to take individual cases to valuation appeal.

The information in each case was to be a simple list of comparable properties detailing the sale dates and prices ("the comparison list").

## Correspondence History

7. The Commissioner feels that it is both necessary and appropriate in this case to now set out in some detail the history of the correspondence between the parties.
8. The complainant's initial request for information was acknowledged by the public authority on 3 June 2005 as having been received on 1 June 2005. The complainant was advised that the matter was being dealt with and that he would be contacted again shortly.
9. Having heard nothing further the complainant wrote again on 4 July 2005 indicating that the response to his request was outstanding. He reminded the public authority that there were time limits to respond under the Act.
10. The public authority responded on 22 July 2005 apologising for the delay. It provided the complainant with the comparison list containing the details of four similar properties in addition to a copy of the property survey for the type of house in question.

The complainant was advised that the information had been released under the Act. The public authority also provided him with application papers for a valuation appeal and the necessary contact details to process that appeal.

11. On 3 August 2005 the complainant wrote expressing his dissatisfaction with the nature and content of the information provided. Unless the issue could be resolved by the public authority he requested that the papers be processed so that a full internal review could take place immediately.
12. On 20 September 2005 the public authority wrote to the complainant indicating that it was pleased that a particular aspect of the case which had been discussed on the telephone had been clarified (regarding his property's floor space) as a result of which it would not send the papers for internal review unless the complainant specifically directed it to.
13. The complainant wrote to the public authority on 24 September 2005 again expressing his dissatisfaction. In particular he indicated

*I had asked you to resolve the issue of the failure to provide information under the relevant Act. Additionally I asked you to forward all paperwork for internal review if you were not prepared to resolve the issue. You have done neither.....Please confirm by return that all papers including your responses and this letter have now been sent for review.*

14. On 6 October 2005 the public authority confirmed that the papers had been sent for internal review thereafter confirming on 10 October 2005 that the review would be undertaken in accordance with its code of practice on complaints.
15. On 20 October 2005 the public authority wrote to the complainant at some length regarding the council tax banding of his property. Whilst dealing with issues relating to how the valuation had been reached it did not deal with the matter of review under the Act.

16. On 21 October 2005 the complainant wrote to the public authority again expressing his dissatisfaction. Thereafter on 30 November 2005 he requested that he be provided by return of post with details of the appropriate authority to complain to regarding the public authority's failings under the Act.
17. On 14 December 2005 the public authority wrote to the complainant referring back to its letter of 10 October 2005 and apologising for the delay in responding further.

It indicated that there had been an initial delay in dealing with the complainant's initial request for information in that that letter had been mislaid. It was upon receipt of the complainant's subsequent letter of 4 July 2005 that the public authority had been alerted to the problem as a result of which the complainant had been telephoned and apologised to prior to receiving a full response on 22 July 2005.

The complainant was advised that it was the public authority's aim to provide responses within 20 days irrespective of whether the request had been made under the Act (the only reference made in the letter to the Act). It accepted it had taken 35 days to respond which it accepted was clearly poor service.

In reviewing the facts of the case the public authority accepted that there had been failures in normal procedure that may have contributed to the delays in handling the complainant's request. He was advised that these would be addressed to make such cases less likely in the future.

18. The complainant responded on 15 December 2005 pointing out that the internal review was to have been in relation to the application of the Act. This had not been done so he again requested to be provided by return with the details of the organisation to which a formal complaint could be made.
19. The public authority wrote again to the complainant on 16 December 2005 referring to his letter of 30 November 2005 which it indicated had only been received that day. It was suggested that the complainant's letter might have crossed with the public authority's letter of 14 December 2005.

It pointed out that there appeared to have been a misunderstanding about the nature of the complaint. The public authority had understood that sufficient information had been provided to the complainant in its letter of 22 July 2005 and that the only aspect the complainant had issue with was with the matter of delay.

It pointed out that the request for information had not been dealt with under the Act. Rather the policy that the public authority had adopted in anticipation of the revaluation was explained to the complainant. It indicated that exemptions under sections 21 (information reasonably accessible by other means) and 44 (prohibited disclosure) of the Act would have applied but as the Act had not in fact been used the statutory deadlines were not relevant.

The letter concluded with the public authority expressing the hope that all matters had now been fully addressed. A leaflet entitled "Putting things right for you" was enclosed explaining how to take matters further if the complainant remained dissatisfied.

20. On 20 January 2006 the public authority in correspondence referring to earlier missing communications indicated that it accepted that it could have explained why it was not dealing with the matter under the Act sooner and that it could learn from that.
21. On 21 January 2006 the complainant again wrote to the public authority expressing his dissatisfaction.
22. The public authority responded on 14 February 2006 indicating that as far as it was concerned the requested information had been provided albeit not under the Act but rather as part of its normal procedures.

In reiterating that exemptions under sections 21 and 44 would have applied it continued that in its view the important issue was not whether the information was or was not supplied under the Act but whether the requested details had actually been provided. It was felt that the information had been provided. The Act became significant when requested information had been refused and questions subsequently followed as to whether the correct decision had been reached. That it concluded was not the position in this case.

23. In response to a telephone call made by the complainant, the public authority on 20 February 2006 provided him with the Commissioner's details (these had previously been supplied in the public authority's letter of 22 July 2005).

In addition the complainant was advised that complaint could also be made to the Adjudicator's Office (the Adjudicator being an independent referee part of whose function is to investigate complaints made against the public authority with a view where necessary to making appropriate recommendations).

24. On 24 February the complainant referred the matter to the Adjudicator's Office raising a number of issues in respect of which a recommendation was made on 9 June 2006.

The Commissioner notes that in relation to that part of the referral which is relevant to the Commissioner's investigation the Adjudicator found that the request had been a simple request for information that should have been provided within 20 working days. There had been a breakdown in the public authority's procedures that caused some delays and caused the complainant to chase responses. It was noted that the public authority had apologised a number of times for the poor service the complainant had received.

Although substantially less than the figure sought by the complainant the Adjudicator invited the public authority to pay to him an amount comprising £10 in

respect of the direct cost of reminder letters sent by the complainant together with £25 by way of an acknowledgement that the experience had been a particularly frustrating one that had caused him worry and distress.

Whilst the Adjudicator indicated that she would not deal with whether the public authority had applied the Act correctly (as that was outside her remit) she did in fact invite it to apologise to the complainant for the confusion it had caused. By the time of her investigation the public authority acknowledged that its reference to the section 21 exemption was not a relevant consideration as it accepted that the complainant would not have been able to identify the necessary information from other information generally available.

In the circumstances the public authority was further invited to pay the complainant £25 in acknowledgement of its poor handling of the matter of the reference to the section 21 exemption.

25. On 22 June 2006 the public authority wrote to the complainant in part in the following terms:

*As part of her review Dame Barbara (the Adjudicator) asked me to reconsider my opinion that the information you had requested would have been exempt under section 21 of the Freedom of Information Act had we considered it. Having done so I have to acknowledge that I was incorrect in my view – you could not obtain details of the listing officer's evidence of banding from any other source than the public authority. I apologise if you found my take on this confusing, in retrospect, I can see that it was not helpful to explain this point as it was not relevant. Since the evidence of banding was actually supplied to you (albeit late) and section 21 was never invoked and there was, in fact, no obligation on me to provide any explanation at all. In view of this, I have to say that I was surprised that the Adjudicator has found this misjudgement serious enough to warrant consolatory payments. It did not, after all, adversely affect your council tax affairs in any way. The case has, however, served to clarify some matters for which I am grateful.*

The public authority enclosed a cheque for £60 in accordance with the Adjudicator's decision.

## Analysis

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26. The Commissioner will now deal with the individual elements of the complaint. A full text of the sections of the Act referred to is contained in the legal annex.
27. The complainant's initial letter of request albeit undated received by the public authority on 1 June 2005 was a request under the Act. The letter complied with the requirements of section 8 of the Act in that it was in writing, it stated the complainant's name and address for correspondence and it described the information requested. Although not a requirement of section 8 the letter also specifically referred to the Act.



As a result subject to the withdrawal of the request or other agreement of the complainant the public authority was required to deal with the request in accordance with the Act.

28. In this particular case section 1 of the Act required the public authority to advise the complainant that the requested information was held and to make it available to him in accordance with section 10 not later than 29 June 2005 unless and to the extent that it was relying on a claim that an exemption or exemptions against disclosure applied. In that event the public authority was required under section 17 of the Act to issue a refusal notice in the prescribed form within the same timescale.
29. To deal with the first part of the complaint which requires consideration of the public authority's duties under these sections it is necessary in the first instance to consider exactly what information the public authority held at the time of the request.
30. The public authority in its correspondence with the complainant dated 24 February 2006 indicated that *we have actually provided the information you have requested and therefore a refusal notice is not necessary in this instance.*

In its correspondence with the Commissioner dated 24 August 2006 it indicated that at the time of the request the only information *held that related to the banding decision was actually the hard copy survey for the Flemingston type property.* It was this that had been used to set the banding level and it had been provided to the complainant on 22 July 2005. The comparison list that had been provided at the same time had been made available in accordance with its policy of assistance only.

31. The Commissioner was not satisfied with the public authority's comments regarding the nature of the information held as a result of which further clarification was sought on 20 September 2006. The following day the public authority confirmed that the property along with some others on the same housing development had been banded using the property details judged against the pattern already established. This it indicated would have been done using the estate file on the development. The estate file contained details on the house type (the property survey), a plan of the development showing property types and a banding schedule.
32. On 22 September 2006 the public authority confirmed that it had no objection to copies of the plan of the development and the banding schedule being provided to the complainant. Referring to those documents it indicated as follows

*For banding, the sequence would have been to look at the address on the report, find out what type it was from the estate file, what others of the type were banded as and band accordingly – therefore strictly speaking all those documents would have been used to band the complainant's (sic) house. I am sorry if my report was misleading.*

33. It is clear in the circumstances that the public authority did not release to the complainant all of the information it held. It is accordingly in breach of section 1 of the Act.
34. The public authority was required to fulfil its obligations under section 1 as already pointed out not later than 29 June 2005. It did not provide a substantive response until 22 July 2005 some 37 working days after the initial request. It is accordingly in breach of section 10 of the Act.
35. In the final aspect of the first part of the complaint the Commissioner has been asked to consider whether the public authority should have issued a refusal notice.

Although it referred to the availability of exemptions under the Act the public authority did so by way of example only. Confusing as this was as there was no attempt to rely upon the exemptions there was no requirement to issue such a notice.

36. However it is fair to say that in referring to the exemptions as exemptions that would have applied had it employed the Act the public authority implied and in deed at one point indicated that the complainant was being provided with more information outside of the provisions of the Act then he would have been entitled to had the Act been applied.

This leads the Commissioner to the second aspect of the complaint in which he has been invited to consider the question of the “claiming” of incorrect exemptions and in particular whether the public authority deliberately tried to mislead the complainant.

37. The Commissioner has little difficulty in finding that the references to the two possible exemptions were misleading. The public authority itself accepts that it was wrong to refer to the section 21 exemption. In addition the exemption under section 44 of the Act would also appear to have been irrelevant. Any application it might have had would have related to information regarding comparison lists and other details in connection with a valuation appeal. It has no application in relation to the information the actual subject of the complainants request as is evidenced by the public authority’s subsequent agreement to release the information.
38. It is clear to the Commissioner that the public authority had decided on a procedure to deal with what it anticipated would be a large influx of enquiries regarding the revaluation and banding of properties throughout Wales. A policy was formulated which would assist individual taxpayers in deciding whether to embark upon valuation appeals which in itself was seen as a way to potentially save the public authority’s involvement in a large number of such appeals.

The adopted procedure had little relevance to the request for information under the Act and yet the public authority appeared to be unable to move away from its policy line. This is more than amply evidenced by its comments in correspondence regarding its application of the Act.



Initially in its letter of 22 July 2005 the public authority indicated that the information it was supplying was being released under the Act.

However in its letters of 16 December 2005 and 14 February 2006 it indicated that the information had not been disclosed under the Act.

Finally in its letter to the Commissioner dated 24 August 2006 it indicated that in accepting that the 22 July 2005 letter referred to the information having been provided under the Act *on review we believe that this is probably not entirely the case adding thereafter without further relevant explanation that I can see that this is inconsistent and confusing.*

39. The public authority has indicated that the complainant has now accepted the banding level applied to his property was correct. This is irrelevant. The reality of the situation is that a simple request made at the end of June 2005 took until September 2006 and the intervention of two independent bodies before the information was released.
40. Whilst the Commissioner has found no evidence to suggest that there was a deliberate plan to mislead the complainant the Commissioner does find that the public authority has at various times provided the complainant with wrongful, conflicting and misleading information.

## The Decision

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41. The Commissioner's decision is that the public authority is in breach of sections 1 and 10 of the Act.

## Steps Required

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42. As the requested information has now been released there are no steps the Commissioner requires to be taken.

## Other matters

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43. Although it does not form part of this Decision Notice the Commissioner wishes to highlight the following matter of concern:

There would appear to have been considerable confusion at the public authority in relation to whether this was indeed a request for information, how it should consequently be handled and what complaints procedure, if any, should be followed. The Commissioner believes that this has contributed to the breaches of sections 1 and 10 of the Act. He is however confident that the VOA is well aware of its obligations under the Act and the associated Codes of Practice. That said

the fact remains that the public authority failed to undertake an internal review of the case under the Act despite numerous requests to carry one out.

The Commissioner regards this as significant non-conformity with the section 45 (Access) Code of Practice and consequently advises that should similar failures occur in future he will give serious consideration to the issuing of a Practice Recommendation.

## Right of Appeal

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44. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 5<sup>th</sup> day of December 2006**

**Signed .....**

**Richard Thomas  
Information Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### Relevant Statutory Obligations and Provisions under the Act

**Section 1(1)** provides that -

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

**Section 8(1)** provides that -

“Any reference to a ‘request for information’ is a reference to such a request which -

- (a) is in writing,
- (b) states the name of the applicant and an address for correspondence, and
- (c) describes the information requested”.

**Section 10** provides that -

(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

(6) In this section -

“the date of receipt” means -

- (a) the day on which the public authority receives the request for information, or
- (b) if later the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

**Section 17(1)** provides that -

“A public authority which ... is to any extent relying:

- on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request, or
- on a claim that information is exempt information

must, within the time for complying with section 1(1), give the applicant a notice which –

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”