

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 February 2012

Public Authority: The Valuation Office Agency
Address: 3rd Floor
Wingate House
93-107 Shaftesbury Avenue
London
W1D 5BU

Decision (including any steps ordered)

1. The complainant requested a copy of survey notes relating to a specific building. The Valuation Office Agency (the VOA) stated that the information, if held, would be exempt under section 44(1)(a) of the FOIA and explained that the duty to confirm or deny whether the information is held does not arise under section 44(2).
2. The Commissioner's decision is that the VOA was correct to refuse to confirm or deny that it holds the requested information under section 44(2) of the FOIA.

Request and response

3. The Commissioner notes that under the FOIA the VOA is not a public authority itself, but is in fact an executive agency of Her Majesty's Revenue and Customs (HMRC) which is responsible for the VOA. Therefore, the public authority in this case is in fact HMRC not the VOA. However, for the sake of clarity, this decision notice refers to the VOA as if it were the public authority.
4. On 27 April 2011, the complainant wrote to the VOA and requested information in the following terms:

'a copy of your survey notes relating to the 2008 TOR on – John's Radio (O) Scandinavia Mills, Hunsworth Lane, Cleckheaton, West Yorkshire, BD19 3UJ: TOR w.e.f. 7/7/2008.'

5. The VOA responded on 23 May 2011. It stated that the information, if held, would be exempt under section 44(1)(a) of the FOIA and explained that the duty to confirm or deny whether the information is held does not arise under section 44(2).
6. Following an internal review the VOA wrote to the complainant on 4 July 2011. It upheld the application of section 44(1)(a) to this request and explained that the information, if held, would be exempt under section 40 and 44.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. During the investigation, the Commissioner asked the VOA to clarify its response. The VOA had applied section 44(1)(a) to the request; however it was apparent that it had not explicitly confirmed or denied whether it held the requested information.
9. The VOA confirmed that it wished to apply section 44(2) to the request. The scope of this case is therefore concerned with the VOA's application of section 44(2) of the FOIA to this information request. The Commissioner has not considered the VOA's application of section 40(2)(a) and 40(3)(a) of the FOIA.

Reasons for decision

10. Section 44(1)(a) of the FOIA states that information is exempt from disclosure if it is prohibited by any enactment. Section 44(2) of the FOIA states that the duty to confirm or deny does not arise if the confirmation or denial is likewise prohibited by enactment.
11. The VOA has explained that section 19 of the Commissioners of Revenue and Customs Act 2005 (the CRCA) makes it a criminal offence for any member of staff to disclose such information.
12. Section 18(1) of the CRCA states that HMRC officials may not disclose information which is held by HMRC in connection with one of its functions. As the VOA is an executive arm of HMRC, the CRCA applies to such information held by the VOA.
13. The VOA has explained that the information, if held, would be held in connection with its function to maintain the 2005 non domestic Rating

List for Kirklees Billing Authority. The Commissioner is satisfied that the information, if held, would be held in connection with a function of the VOA.

14. Section 23 of the CRCA states that information prohibited from disclosure by section 18(1), is exempt by virtue of section 44(1)(a) of the FOIA if its disclosure would specify the identity of the person to whom it relates or would enable the identity of such a person to be deduced.
15. The VOA has explained that confirmation or denial that it held any survey notes relating to the address in question would itself reveal information about an identifiable person. Because the address of the property can be linked to a person, it would be possible to link the identity of an individual to the requested information.
16. There are other similar cases where the VOA has refused to provide requested information regarding rateable values of property or information relating to a specific property under section 18(1) and section 23 of the CRCA and has applied section 44(1)(a) of the FOIA in its refusal. The circumstances of those cases have been considered in the following decision notices: FS50324045, FS50373598 and FS50264926.
17. In each of the above cases the Commissioner upheld the application of section 44(1)(a) of the FOIA.
18. The Commissioner is satisfied that if the VOA holds the requested information, it would be possible to identify the person to whom it relates. The Commissioner is therefore satisfied that on the basis of the interaction of section 18(1) and 23 of the CRCA, the requested information, if held, would be exempt by virtue of section 44(1)(a).
19. Section 44(2) of the FOIA provides that the duty to confirm or deny that information is held does not apply if the confirmation or denial itself would be prohibited by enactment.
20. In this case confirming or denying the requested information is held would reveal to the public something about the affairs of a person who is related to that information. The complainant is seeking specific information relating to a precise property 'Taken out of Rating' (TOR) in 2008. One of the VOA's functions is to maintain ratings lists which it is legally obliged to make publically available; however to confirm or deny the requested information is held would reveal something about the nature of the information held behind a rating assessment. This information would not be disclosed by the VOA unless section 18(2) or section 18(3) of the CRCA applies and in this case they do not. Section

18(2) specifies the circumstances for disclosure and section 18(3) allows for any other enactment to permit disclosure. Neither is relevant to this case.

21. Confirming or denying that information is held would therefore fall within sections 18(1) and 23 of the CRCA and thus by virtue of sections 44(1)(a) and 44(2) of the FOIA the duty to confirm or deny contained at section 1(1)(a) of the FOIA does not apply.
22. The Commissioner is therefore satisfied that the VOA is correct to refuse to confirm or deny whether it holds the requested information under section 44(2) of the FOIA.

Right of appeal

23. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

24. If you wish to appeal against a Decision Notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Signed

Faye Spencer
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