

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 October 2014

Public Authority: Valuation Office Agency (an executive agency of HMRC)

Address: Wingate House
93-107 Shaftsbury Avenue
London
W1D 5BU

Decision (including any steps ordered)

1. The complainant has requested information on one bedroomed properties in a specific postcode area and valuations conducted by an individual named Listing Officer.
2. The Commissioner's decision is that the public authority has appropriately withheld the information in relying on section 44(1)(a) of the FOIA – Prohibitions on disclosure.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

4. On 10 March 2014, the complainant wrote to the Valuation Office Agency ('the VOA') and requested information in the following terms:

"I am making a 2-part request under the above Act for the following information as held by your agency:-

Part 1

A list of all 1 bedroom properties designated as Flat or Flats including purpose built and non-purpose built within the postcode area of LL29.

The list to show:-

Full address including postcode

Council Tax Band

Internal Square Footage of each property

Whether a garage or other external on-site parking was or is available for the property

Sale price including date of sale of all properties in this list that were transacted between 1 April 2002 and 31 March 2004.

The list can be categorised according to your property type designation. All properties at the same development to be listed together i.e. not dispersed among other addresses.

Part 2

In respect of the whole development known as Cwrt Bryn Coed, LL29 7BJ, precisely how many flats in total and which in particular were originally valued either under the 1993 or the 2005 (using April 2003 values) Council Tax Valuation Lists by [a named individual], Listing Officer. The information to show the individual number of the property, property type and number of bedrooms, Council Tax Band determined, date and outcome of any appeal against the Council Tax Banding."

5. The VOA responded on 27 March 2014 and refused to provide the requested information citing the section 44(1)(a) FOIA exemption.
6. Following an internal review the VOA wrote to the complainant on 14 April 2014. It upheld the original response that the disclosure of the information is barred by the Commissioners for Revenue and Customs Act 2005 and therefore exempt from disclosure under section 44(1)(a) of the FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 22 April 2014 to complain about the refusal of his request for information by the VOA. He explained that he wished to challenge his Council Tax banding and to determine whether a particular officer has adversely affected the valuation of his property for Council Tax purposes. He stated his opinion as follows:

"The implications, as far as Council Tax Banding appeals are concerned, is that VOA representatives can go to a Tribunal armed with all best data possible, having denied the challenger access to similar data. The chances of success are therefore heavily weighted in favour of the VOA.

I have little doubt that the Information Commissioners office will determine that the VOA have acted in accordance with the relevant legislation and are therefore entitled to withhold the information I have

requested. However, the essence of my concern is that the VOA are engaging in unfair practices - preventing access to information which they hold and which would allow a fair challenge to their decisions, whilst liberally citing similar information when it suits and supports their purpose. Their approach is therefore inconsistent and prejudicial to anyone wishing to mount a challenge to Council Tax Bandings determined by the VOA. On this basis I seek to have my concern upheld and for the Information Commissioner to take appropriate action."

8. The Commissioner has explained to the complainant that his role is only to consider whether the VOA has applied the FOIA appropriately to his request, and that he cannot comment on the complainant's views above. The Commissioner considers the scope of this case to be whether the VOA was correct in its application of section 44(1)(a) to the request.

Reasons for decision

Section 44(1)(a) – Prohibitions on disclosure

9. Section 44(1)(a) of the FOIA states that a public authority may refuse to disclose information if its disclosure by the public authority holding it is prohibited by or under any enactment.
10. According to the VOA it is prohibited from disclosing the disputed information by virtue of the provisions of sections 18(1) and 23 of the Commissioners for Revenue and Customs Act 2005 (CRCA). The VOA is an executive agency of HM Revenue and Customs (HMRC) with responsibility for compiling and maintaining the rating and council tax lists for England and Wales.
11. Section 18(1) CRCA provides:
'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,'
12. Sections 18(2) and (3) contain exceptions to the provision at section 18(1) above.
'18(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 Independent Police Complaints Commission, or a person acting on its behalf, for the purpose of the exercise of a function by virtue of section 28, or

(h) which is made with the consent of each person to whom the information relates.

18(3) Subsection (1) is subject to any other enactment permitting disclosure.'

13. Section 23(1) of CRCA provides:

'(1) Revenue and customs information relating to a person, the disclosure of which is prohibited 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.

14. Section 19(4) of the Borders, Citizenship and Immigration Act 2009 provides:

'In Section 23 of the Commissioners for Revenue and Customs Act 2005 (freedom of information), after subsection (1) insert –

(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.'

15. The Commissioner finds that the amendment above at section 19 of the Borders, Citizenship and Immigration Act 2009 precludes the consideration of the exceptions at sections 18(2) and (3) of CRCA when determining whether information is exempt from disclosure under section 44(1)(a) of the FOIA on the basis of the statutory prohibition at section 23(1) of the CRCA.
16. The Commissioner finds that the requested information is held by the VOA for the purposes of its functions; therefore section 18(1) of CRCA is engaged.
17. The Commissioner further considered whether the statutory prohibition at section 23(1) of CRCA applied in this case.
18. The Commissioner accepts that disclosure of the requested information would enable the identity of the person(s) to whom the information relates to be deduced using various publically available sources such as the electoral register or Land Registry online data.
19. The complainant has stressed to the Commissioner that the VOA is engaging in unfair practices as it has access to information that individuals appealing against a tax banding cannot access.
20. The VOA explained to the Commissioner that when an appellant makes a 'Proposal' against a council tax band in Wales, as opposed to England, it is automatically transmitted to the Valuation Tribunal Service for Wales approximately one month later and at that point becomes an 'Appeal'.
21. The VOA's guidance to its staff states that relevant, reasonable and proportionate comparable sales information may be disclosed to the Appellant at the appeal stage.
22. In Wales this means that 'key sales evidence' may be included in the 'considered decision letter' sent to the Appellant in support of the council tax valuation band determination from the VOA. The VOA explained that this decision letter may be provided to the Appellant as soon as possible in order that the VOA's view is clear and the Appellant is able to decide whether or not to pursue the matter. The decision letter forms part of the VOA's day to day handling of a case.
23. As set out in paragraph 12 above subsections 18(2) and (3) of the CRCA provide the circumstances in which the statutory duty of confidentiality does not apply. The VOA explained that disclosures made in relation to an ongoing case will generally fall under subsection 18(2)(a) and where the case has progressed to the Valuation Tribunal Service, the disclosure will also be allowed under section 18(2)(c).

24. Consequently the disclosures of property specific information made to the complainant outside of the FOIA are permitted by subsections 18(2)(a) & (c).
25. The complainant reiterated his concerns regarding the operation of the VOA on several occasions. In relation to these concerns the Commissioner's investigation determined that the VOA's legal authority under section 18(2)(a) CRCA to disclose relevant sales evidence whilst handling a case changes when it wishes to refer to actual documents at a Valuation Tribunal, such as details of sales provided by taxpayers to the Stamps Office relating to the purchase of a property. The VOA is then required to issue a Notice prescribed in legislation, known as a 'Reg 26' Notice coming from the Council Tax (Alteration of Lists & Appeals) Regulations 1993. This disclosure is made under section 18(3) CRCA – disclosure by another enactment. On receipt of the Reg 26 Notice the Appellant has the right to serve a counter notice specifying an equal number of other properties he considers comparable and relevant to the case.
26. In this case the complainant requested a greater number of properties' information than the VOA provided in the Reg 26 Notice. Consequently the VOA could not comply with the request under the statutory gateway.
27. The VOA explained to the Commissioner that the Local Government Finance Act 1992 is the overarching legislation that covers the provision of Council Tax. This council tax legislation works in conjunction with the permissive provisions at subsections 18(2) and (3) of CRCA. The VOA provides information on its website including its guidance to staff and specifically 'Disclosure of Information for Council tax work'. The VOA stated:

"This issue for the VOA is that whilst we may cite and disclose comparable information, it will relate to other individuals' personal data, and this can only be provided if it is reasonable and proportionate to the actual outstanding case in hand, unless it is stipulated in legislation."

The website notes:

"As a matter of policy we will, therefore, adopt a cautious approach, which is important, as it will help to maintain the confidence of taxpayers that the information we hold about them, or their properties, is handled securely."

28. Although the complainant appears to consider that he should be provided with the information he seeks he states:

"I would certainly not give them permission to cite my address if any other resident in this area were to challenge their Council tax Band".

29. The Commissioner, as Regulator of the FOIA, notes that there is a clear distinction between the information which may be provided by the VOA under the legislation explained above and the information which may be provided under the FOIA.
30. The Commissioner is satisfied that the statutory prohibition at section 23(1) CRCA applies in this case because the VOA holds the requested information in connection with the exercise of a function of HMRC and disclosure would enable the identity of a person to be deduced. Consequently the information is exempt from disclosure by virtue of section 44(1)(a) FOIA.

Other matters

31. The complainant stated that:

"I believe, as stated in previous correspondence, that the VOA should not be part of HMRC. As a stand-alone agency they would then be fully accountable for the actions of their officers; at present they run for cover behind the CRCA 2005 whilst its officers flagrantly flaunt the protection that the same Act is supposed to give to a person's identity. Essentially this allows the VOA's officers to exercise prejudice against an individual; this has certainly been the case in my experience."

32. The Commissioner would point out that he has no authority to consider whether the VOA should be an executive agency of HMRC. Similarly he has no role in judging the actions of the officers at the VOA. Notwithstanding this he has not seen any evidence of prejudice against the complainant in the application of section 44(1)(a) in respect of the requested information.

Right of appeal

33. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

34. 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.
35. 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

Alexander Ganotis
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