

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 March 2015

Public Authority: Valuation Office Agency

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

Decision (including any steps ordered)

1. The complainant has requested information about 'key properties' that the Valuation Office Agency used to define the council tax banding of an area of Swanage approximately twenty five years ago. The Valuation Office Agency refuses to release the requested information, which it says is exempt under section 44(1)(a) of the FOIA (prohibitions on disclosure).
2. The Commissioner's decision is that Valuation Office Agency has correctly applied this exemption and he does not require it to take any further steps.

Request and response

3. On 26 September 2014, the complainant wrote to the Valuation Office Agency (VOA) and requested information in the following terms:

"After reading the manual to which you gave me a link, I am interested to see the information relating to the "key properties" that were used to define the original Council Tax banding in this part of Swanage.

How can I obtain this information please?"

4. The VOA responded on 23 October. It refused to release the requested information, citing the exemption under section 44(1)(a) of the FOIA as its basis for doing so. The VOA cited section 23 of the Commissioners for Revenue and Customs Act 2005 as the enactment that prevented it from disclosing the information. Section 23 says that information is exempt if it is held in connection with a function of HM Revenue and Customs (HMRC) and if it relates to a 'person' who is identified or could

be identified from the information. (The VOA explained it is an executive agency of HMRC.) The effect of section 23 is to remove property identifying information from the right of access under FOIA.

5. Following an internal review the VOA wrote to the complainant on 27 November. It upheld its original response; that disclosing the information is barred by the Commissioners for Revenue and Customs Act 2005. The VOA confirmed it considered the information exempt from disclosure under section 44(1)(a) of the FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 27 November to complain about the way their request for information had been handled. They are not satisfied with the VOA's explanation that how a property has been valued for taxation is 'personal data' which therefore prohibits it from being disclosed under the Commissioners for Revenue and Customers Act 2005.
7. It is not clear to the complainant why the VOA can publish every individual address and its current council tax charge on its website, but that it would violate confidentiality to publish the data of certain of those properties as it existed +/- 25 years ago. The complainant has argued:

"Why has the VOA categorised this historical information as more 'sensitive' and therefore subject to the exemption at section 44 of the FOIA?"
8. The Commissioner has focussed his investigation on the VOA's application of section 44(1)(a) to the withheld information.

Reasons for decision

9. Section 44(1)(a) of the FOIA says 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. It is an absolute exemption; that is, it is not subject to any public interest test.
10. According to the VOA, it is prohibited from disclosing the disputed information by virtue of the provisions of sections 18(1) and 23(1) of the Commissioners for Revenue and Customs Act 2005 (CRCA05). Section 23(1) of the CRCA05 says:

'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 (c. 36)(prohibitions on disclosure) 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.'*

11. Section 18 of the CRCA05 concerns confidentiality. Section 18(1) says that Revenue and Customs officials may not disclose information held by HMRC in connection with a function of HMRC.
12. Section 18(2) allows information to be disclosed in specific circumstances, one of which is where providing information is necessary to perform a function of HMRC. Section 18(3) says information can be provided if it is subject to another enactment that permits disclosure.
13. The VOA has told the Commissioner that it holds the requested information in twenty one Council Tax Key Property forms (VO7400). These forms relate to sales evidence provided by taxpayers, or their representatives, to the Stamp Office at the Inland Revenue. Each of these forms gives the taxpayer's actual address, a photograph of the property and data about the property including the price paid for it and the date the sale of the property completed.
14. The VOA argues that if it were to release this information, the identity of the purchaser or seller could easily be established by cross referencing this information with information available through HM Land Registry online (Land Registry also holds information about property transactions). It says the identity of a person could also be deduced by cross referencing the withheld information with information held in telephone directories, electoral registers, local library resources and other online resources.
15. When questioned further by the Commissioner about this, the VOA explained that anyone can request a search for property information from Land Registry, about a property in England or Wales, even if they don't own it. For example, for a fee someone could request from Land Registry a copy of the change of ownership details which resulted from the sale of a property identified on one of the VO7400 forms in question. Furthermore, it would be possible to pin point which transfer (deeds) relate to a 'person' (ie the buyer and/or seller) from the recorded date of sale.
16. This is an example of the 'motivated intruder' test. This involves considering whether someone without any prior knowledge would be able to achieve re-identification if motivated to attempt this. Such an individual might, for example, carry out a web search, search archives

or use social networking in order to identify an individual from whose personal data, anonymised data has been derived. In this case, identification could be achieved by cross referencing the information held in the VO7400 forms with information available through Land Registry and elsewhere.

17. In response to the complainant's specific concern at §7, the VOA says that when considering whether section 18(1) and 23 of the CRCA05 apply to any information request, it does not make a judgement on the 'sensitivity' of personal data, take into account the age of the information or consider whether any of the information sought is already in the public domain. This is because it cannot provide any information that enables a tax payer to be identified under the general duty of confidentiality set out in section 18(1), and the prohibition under section 23 of the CRCA05.
18. In its comprehensive internal review to the complainant, the VOA explained that the test it undertakes to confirm whether section 23(1) applies is to ask two questions:
 - Is the information held in connection with the exercise of a function of HMRC?
 - Would disclosure enable the identity of a person (both individuals and legal entities) to be deduced?
19. If the answer to both these questions is 'Yes', which the VOA considers to be the case here, then the information is exempt under section 44(1)(a) of the FOIA.
20. The council tax lists for each local authority were first published in 1993 and have therefore been in the public domain for more than 20 years and available online since 2004. The council tax lists for England and Wales give taxpayers access to the banding of both their property and of other properties nearby, for comparison.
21. The VOA has explained that it is an executive agency of HM Revenue and Customs. Amongst its other functions, set out at section 7 and 10 of the CRCA05, the VOA is responsible for compiling and maintaining the rating and council tax lists for England and Wales, above. The VOA therefore holds the information the complainant has requested for one of its functions.
22. Second, the VOA explained to the complainant in its internal review and to the Commissioner during his investigation, exactly how the identity of a person might be established through the means it highlighted at §14 and §15. The Commissioner has had sight of a selection of the VO7400 forms in question and, having had further explanation from the VOA,

accepts that it would be possible to do this if the withheld information were to be disclosed.

23. Having considered the VOA's submission, the Commissioner is satisfied that the VOA holds the requested information for the purposes of its functions; therefore section 18(1) of the CRCA is engaged. He is also satisfied that the statutory prohibition at section 23(1) of the CRCA applies in this case. This section attracts the absolute exemption at section 44 (1)(a) of the FOIA.
24. At §7, the complainant had queried the VOA's publication of council tax lists on its website. As referenced at §12, under subsections 18(2) and 18(3) of the CRCA there is provision for information to be disclosed under specific circumstances. The VOA has cited 18(2)(a)(i) which says information can be provided if it is necessary to perform a function of HMRC.
25. As explained above, the council tax lists give taxpayers access to the council tax banding of their property and others nearby for comparison. The VOA compiles and maintains the council tax lists under the Local Government Finance Act 1992 (LGFA) which also requires the VOA to make information about these lists available to the public. Section 28 of the LGFA empowers the VOA to choose a suitable format in which to make the lists available. The VOA's web application is designed to allow self-service access in line with the government's commitment to make information available where possible.
26. The VOA accepts this information held in the council tax lists can be linked to a person or persons but has explained how its collection of this information is one of VOA's functions. It makes this information available under a different statutory regime (the LGFA) and consequently, it is not a factor it took into account when it considered the disclosure of the information sought in this request (the VO7400 forms).
27. The VOA argues that disclosing any further information, such as that held in the VO 7400 forms would not satisfy the requirements of section 28 of the LGFA, or the VOA's functions. As mentioned at §13, these forms relate to sales evidence provided by taxpayers, or their representatives, to the Stamp Office at the Inland Revenue. The Inland Revenue then shared this information with the VOA on the basis that it was confidential information.
28. From its submission to him, and its correspondence with the complainant, the Commissioner is satisfied that the requested information is prohibited from disclosure under section 23(1) of the CRCA. This is because the VOA holds the information in order to fulfil

one of its functions and because disclosing it would enable the identity of a person or persons to be deduced. His decision is therefore that the information is consequently exempt from disclosure under section 44(1)(a) of the FOIA. In reaching this conclusion, he has also noted his decisions in similar cases, such as FS50538771, FS50427243 and FS50404281 – to which the VOA also drew the complainant's attention.

Right of appeal

29. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

30. 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.
31. 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

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