

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 September 2016

Public Authority: HM Land Registry

Address: Trafalgar House
1 Bedford Park
Croydon
CR0 2AQ

Decision (including any steps ordered)

1. The complainant has requested information regarding any meetings or correspondence between senior Land Registry officials (both internally and externally with the Cabinet Office) which mention or relate to the data which the Land Registry collects on which foreign companies own which land and property titles in England and Wales. The Land Registry withheld the requested information on the basis of section 35(1)(a) (formulation or development of government policy) of FOIA. The Commissioner's decision is that the Land Registry correctly withheld the requested information under section 35(1)(a) and that the balance of the public interest favours maintaining the exemption.

Request and response

2. On 3 August 2015, the complainant wrote to the Land Registry and requested information regarding any meetings or correspondence between senior Land Registry officials (both internally and externally with the Cabinet Office) which mentioned or related to the data which Land Registry collects on which foreign companies own which land and property titles in England and Wales. He gave a date range for his request from September 2014 and requested that the range be reduced if necessary to come within the cost limit.
3. The Land Registry responded to the request on 2 September 2015 and confirmed that the date range had been reduced to commence from 1 April 2015 so as to come within the costs limit. Land Registry advised that it held the following information within scope of the request:

4.
 - 1) Two emails dated 22 July 2015 and three emails dated 25 July 2015
 - 2) Paper to the Executive Board dated 7 July 2015
 - 3) Information Management Committee minutes dated 12 May and 1 July 2015
5. The complainant was informed that all of the held information was exempt from disclosure under section 35(1)(a) of FOIA as it related to the formulation or development of government policy. The Land Registry acknowledged that the exemption was subject to a public interest test but failed to acknowledge or identify any public interest factors in favour of disclosure of the information requested.
6. The Land Registry stated that it considered that the public interest in maintaining the exemption outweighed the public interest in disclosure *'because the information is recent and in particular the emails are barely more than a month old. If they are disclosed at this point, this could prejudice frank and transparent discussion by senior civil servants, not only relating to this issue but for future issues'*.
7. The Land Registry noted that the only information in the public domain with regard to the complainant's request, *'is the wish expressed by the Prime Minister for Land Registry to publish information this Autumn relating to what land overseas companies own in England and Wales'*. The Land Registry advised that, *'it is too early in the process for this information to be disclosed' and that, 'the individuals concerned need the space to consider all the policy issues away from public scrutiny'*.
8. The complainant requested an internal review on 2 September 2015. He contended that, *'given the keen public anger and debate surrounding the use of overseas companies by crime lords to launder money into the UK property market, I maintain that the public interest favours release of this information, or at the very least the release of further non-exempt information about these four items of correspondence'*.
9. The complainant also requested clarification as to in what sense the information he had requested related to government policy, noting that, *'there has only been one speech in which the Prime Minister mentions the topic'*.
10. The Land Registry provided the complainant with its internal review on 14 September 2015. The review upheld the application of section 35(1)(a) and stated that whilst the complainant was correct in saying that there had only been one speech in which the Prime Minister had raised the topic, *'no policy decision has yet been made and as stated previously it is considered that the individuals concerned need the space to consider all the policy issues away from public scrutiny'*.

Scope of the case

11. The complainant contacted the Commissioner on 15 September 2015 to complain about the way his request for information had been handled.
12. The Commissioner considers that the scope of her investigation is to determine whether the Land Registry correctly withheld the requested information under section 35(1)(a) of FOIA.
13. The Commissioner had sight of the withheld information during her investigation and notes that with regard to the Information Management Committee minutes (which are 3 and 4 pages each) only around 15 lines of the information contained in the minutes contain information within scope of the complainant's request. The vast majority of the information in both sets of minutes falls outside the scope of the request.

Reasons for decision

Section 35(1)(a) – formulation and development of government policy

14. Section 35(1)(a) of FOIA states that:

'Information held by a government department or by the National Assembly for Wales is exempt information if it relates to –

(a) the formulation or development of government policy'

15. Section 35(1)(a) is a class based exemption, which means if information falls within the description of a particular sub-section of 35(1) then the information will be exempt. There is no need for the public authority to demonstrate prejudice to these purposes.
16. The Commissioner takes the view that the 'formulation' of policy comprises the early stages of the policy process, where options are generated and considered, risks are identified, consultation occurs, and recommendations/submissions are put to a Minister or decision makers. 'Development' may go beyond this stage to the processes involved in improving or altering existing policy such as piloting, monitoring, reviewing, analysing or recording the effects of existing policy.
17. Whether information relates to the formulation or development of government policy is a matter which must be considered on the facts of

each individual case, focusing on the context and timing of the information in question.

18. The Commissioner considers that the following factors will be key indicators of the formulation or development of government policy:
 - the final decision will be made either by the Cabinet or the relevant Minister;
 - the government intends to achieve a particular outcome or change in the real world; and
 - the consequences of the decision will be wide-ranging.
19. In submissions to the Commissioner the Land Registry explained that the relevant policy to which the withheld information relates is the Government's policy of creating a central public land registry of foreign companies setting out which land they own. This policy was referred to by the former Prime Minister, David Cameron, in a speech in Singapore on 28 July 2015 in which he announced that, *'Britain will become the first major country to establish a publicly accessible central registry showing who really owns and controls all British companies'*.
20. The Land Registry explained that many aspects of this policy, such as who will be responsible for the registry, its impact upon both the conveyancing process generally and anti-corruption issues, the Land Registry's role and the data it is able to provide, were still being considered and the policy remains at the formulation stage. The Land Registry confirmed that once there is clarity as to how the various factors and issues are to be taken forward then the policy will be developed and implementation will follow. The Land Registry advised the Commissioner that it was unable to provide any clarity as to when the central public land registry of foreign companies will be introduced.
21. The Land Registry explained that it had been envisaged that the first step would be for the Land Registry to publish the additional data it holds which contains a list of all registered titles for both residential and commercial land and property owned by commercial or corporate organisations incorporated overseas. Due to ongoing discussions the autumn 2015 timetable indicated by the former Prime Minister had not been met.¹

¹ The Commissioner notes that the publication of this Overseas Companies data subsequently took place on 17 March 2016.

22. Having had sight of the withheld information, the Commissioner is satisfied that it is clear, both from the wording and content of the same, that the information relates to the formulation of the identified policy. The Commissioner therefore accepts that the withheld information falls within the scope of section 35(1)(a).

Public interest test

23. Section 35 is a qualified exemption and therefore the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption contained at section 35(1)(a) outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosing the withheld information

24. In submissions to the Commissioner the Land Registry acknowledged and accepted that there is a strong public interest in any information which would show what efforts are being made by the Land Registry (and government more widely) to tackle the serious problem of corruption in the UK property market from some foreign/overseas companies (so called 'shell companies')².
25. In his submissions to the Commissioner the complainant advanced a number of public interest arguments in favour of disclosure of the information requested, including greater transparency in regards to the daily activities of the Land Registry and greater public accountability of senior decision makers *'whose salaries are paid for from the public purse'*. The complainant contended that disclosure of the requested information would provide greater public insight into the issue of open data and plans to publish datasets and would increase public confidence in the decisions and discussions of senior civil servants. The complainant also contended that the information would provide, *'greater public understanding of government attitudes to releasing data which carries with it huge potential to expose vice and wrongdoing'*.
26. The complainant highlighted the fact that in 2015 Private Eye magazine created an easily searchable online map of British properties owned by offshore companies, *'generally for tax avoidance and often to conceal dubious wealth'*. The complainant argued that the work of the magazine tipped the balance of the public interest in favour of disclosure of the requested information.

² A non-trading company used as a vehicle for various financial manoeuvres or kept dormant for future use in some other capacity.

27. The complainant contended that it was, *'no longer the case'* that it was too early on in the policy making process for the information to be disclosed. He noted that in March 2016 the Department for Business, Innovation and Skills (BIS) launched a public consultation regarding extending the planned register of beneficial owners to the Land Registry, in particular to properties acquired using overseas companies. He noted that that same month the Land Registry released the overseas company dataset to the public. The complainant was of the view that these developments tipped the public interest balance in favour of disclosure. He stated that, *'In short, the process of policy formulation is nearing completion. What harm can result from disclosing documents relating to a policy which will shortly be implemented?'*

Public interest arguments in favour of maintaining the exemption

28. In submissions to the Commissioner the Land Registry noted that the mere publication of data would not in itself increase public understanding of government attitudes to exposing and dealing with vice and wrong doing unless it was supported by clear government policy indicating how the data will be used to combat the problems identified, and what other steps the Government proposes to take to combat such problems. At the present time the Government was still considering how departments should interact with each other to create the most effective mechanism to provide relevant data and information to enable the problem to be tackled.
29. The Land Registry stated that it considered the timing of the request to be of paramount importance as disclosure of policy discussions during the ongoing process of policy formulation would not be in the public interest. The Land Registry noted that as is clear from the press and broadcast media, there are extremely sensitive and challenging issues to consider.
30. The Land Registry contended, as it had in its original response to the complainant, that the balance of the public interest favoured *'the legitimate and compelling public interest in protecting the safe space for policy formulation that enables government departments to exchange views on available options; fully consider who is best able to deliver what government requires and to identify and understand the possible implications without the threat of premature disclosure of those discussions'*.

Balance of the public interest test

31. In considering the balance of the public interest factors in this case, the Commissioner has been mindful of the comments made in a key Information Tribunal decision involving the application of the section

35(1)(a) exemption. In that case the Tribunal confirmed that there were two key principles that had to be taken into account when considering the balance of the public interest test; these being the timing of the request and the content of the requested information itself.³

32. At the time of this request in August 2015, the government was in the early stages of formulating a policy of creating a central public land registry of foreign companies setting out which land they own. Effectively, the only information in the public domain about this planned policy was the announcement made by the former Prime Minister during his Singapore speech on 28 July 2015.
33. In his submissions to the Commissioner the complainant recognised that the policy remained at the formulation stage, but argued that it was nearing completion (i.e. implementation) and questioned what harm could result from disclosing the withheld information. He noted that BIS had launched the public consultation in March 2016 and that same month the Land Registry had published the Overseas Companies data (which had originally been envisaged for autumn 2015). However, both of these developments post-dated the complainant's request by several months and the Commissioner must consider the circumstances as they existed at the time of the request in August 2015.
34. The Commissioner would acknowledge and agree that there is clearly a strong public interest in any information which would show what efforts are being made by government to tackle the serious problem of corruption in the UK property market from some foreign/overseas companies ('shell companies'). The week prior to the former Prime Minister's Singapore speech in July 2015, it was reported by the BBC that foreign criminals were pushing up house prices in the UK by laundering billions of pounds through the purchase of expensive properties⁴. The problem of spiralling property prices in London in particular is widely known and one which carries a strong public interest, given the numbers of people who can no longer afford to live in the capital.
35. However, the Commissioner notes that at the time of the request the policy of creating a central public land registry of foreign companies setting out which land they own was at the early formulation stage. The

³ DFES v Information Commissioner and Evening Standard (EA/2006/0006)

⁴ <http://www.bbc.co.uk/news/uk-33662174>

content of the actual withheld information, most of which was just over a month old at the time of the request, makes clear that the policy remained very much at the formulation stage.

36. The Commissioner recognises and accepts that significant and important weight should be given to the safe space needed by government to develop ideas, debate live issues, and reach decisions away from external interference and distraction, where the policy making process is live and the requested information relates to that policy making. Consequently, in the circumstances of this case the Commissioner believes that strong weight should be attributed to the safe space arguments advanced by the Land Registry. At the time of the request government was still considering how departments should interact with each other to create the most effective mechanism to provide relevant data and information to combat the serious problem of corruption in the UK property market from so called 'shell companies'.
37. The Commissioner considers that at the time of the request, the disclosure of this recent information which shows free and frank discussions by the senior civil servants and officials involved, could, given that the policy making remained live, have had a chilling effect on the ongoing discussions and would certainly have distracted focus and attention from efforts to formulate and devise the most effective policy to address the serious problem of corruption. Such premature disclosure would not have been in the public interest as it would have hindered and inhibited the formulation and development of this particular policy.
38. The Commissioner notes that the searchable online map published by Private Eye magazine was accessible at the time of the complainant's request. However, she does not consider that this information has any bearing on the public interest balance since such information does not provide any insight or public understanding into the factors taken into account by government in formulating a policy of creating a central public land registry of foreign companies. The Commissioner considers that the public interest in ensuring that government has sufficient and appropriate safe space to formulate this policy outweighs the public interest in transparency and accountability which would be served by disclosure of the withheld information.
39. Therefore, in light of the above, the Commissioner has concluded that the public interest favours maintaining the exemption. In reaching this view she has given particular weight to the timing of the request, in the context of the ongoing policy formulation process.

Other matters

40. As noted, in its response to the complainant's request, the Land Registry failed to acknowledge or identify any public interest factors favouring disclosure of the information requested. As the Upper Tribunal made clear in *Department of Health v IC and Lewis* [2015] UKUT 0159 (AAC), in advancing public interest arguments both parties should try to identify the specific harms that would occur if the information was released, and the specific benefits of the information being released, rather than making generic arguments. The Land Registry should ensure that in applying the public interest test to any request, it identifies the factors both for and against disclosure of the particular information concerned.
41. In his complaint to the Commissioner, the complainant stated that, *'it is fair to assume that these papers (Information Management Committee minutes) will also contain information which does not relate to the information requested and which should be made publicly available as a matter of course'*. Whilst the complainant was correct in his assumption that some of the information contained in the papers did not relate to the information which he had requested, it does not necessarily follow that such out of scope information should be published proactively by The Land Registry. Whether such information should be placed in the public domain, and at what point in time, would depend upon the particular sensitivity or confidentiality of the information concerned.

Right of appeal

42. 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

43. 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.
44. 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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