

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 October 2022

Public Authority: Valuation Office Agency
(Executive Agency of HM Revenue & Customs)

Address: 10 South Colonnade
Canary Wharf
London
E14 4PU

Decision (including any steps ordered)

1. The complainant submitted a request to the Valuation Office Agency (VOA) seeking the council tax valuation bands for each property in the area of Castle Point Borough Council. The VOA withheld the information on the basis of section 44(1)(a) (prohibition on disclosure) of FOIA. The complainant disputed the VOA's reliance on this exemption and argued that it failed to comply with its duties under section 16 (advice and assistance) in handling his request.
2. The Commissioner's decision is that the requested information is exempt from disclosure on the basis of section 44(1)(a) and that the VOA were not under any duty to provide the complainant with any advice and assistance in response to his request.
3. No steps are required.

Nomenclature

4. The VOA is not listed as a separate public authority in Schedule 1 of FOIA because it is an Executive Agency of HM Revenue & Customs (HMRC). However, as it has its own FOI unit and the complainant has corresponded with the VOA during the course of the request and complaint, the Commissioner will refer to the VOA as the public authority for the purposes of this notice – although the public authority is ultimately HMRC.

Request and response

5. The complainant submitted the following request to the VOA on 8 February 2021:

'Valuation List (Domestic). Eight Valuation Bands. Castle Point Borough Council.

Good afternoon,

could I please be provided with the Valuation List data, for each of the eight Valuation Bands (A to H), used in the Castle Point Borough Council area of responsibility.

These data requests are for the Financial Year 2020 2021.

Could I preferably have the response in an electronic format such as Excel please, although a PDF document would be welcome as well, if that is all that could be provided.

I have been able to obtain the Non Domestic Valuation List from the Council's own web site, but I now require the Domestic Valuation List.'

6. The VOA responded on 3 March 2021 and confirmed that it held the requested information but considered this to be exempt from disclosure on the basis of section 44(1)(a) (prohibition on disclosure) of FOIA. The VOA explained that the prohibition in question was contained at section 23(1) of the Commissioners for Revenue and Customs Act (CRCA) 2005.
7. The complainant contacted the VOA on 9 March 2021 and challenged its reliance on section 44(1)(a) of FOIA to withhold the requested information.
8. The VOA informed him of the outcome of the internal review on 7 April 2021. The review upheld the decision to withhold the information on the basis of section 44(1)(a) of FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 18 June 2021 in order to complain about the VOA's refusal to provide him with the information he requested on the basis of section 44(1)(a). The complainant's submissions to support his complaint are set out below. The complainant also argued that the VOA had not complied with the spirit of section 16 (advice and assistance) of FOIA as it had applied a blanket refusal to his request.

Reasons for decision

Section 44 – prohibitions on disclosure

10. Section 44(1)(a) of FOIA states that:

'Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it—

(a) is prohibited by or under any enactment'

11. It is an absolute exemption and not subject to the public interest test.

The VOA's position

12. The VOA's position is that section 23(1) of the CRCA, aligned with section 18(1) of that legislation, prohibits the disclosure of the requested information under FOIA.
13. In support of this position, the VOA set out the statutory framework within which it operates.
14. It explained that it was an Executive Agency of HMRC and collects and holds data relating to individual properties to undertake its functions, including the addresses and property information sought by the complainant.
15. The VOA explained that section 10 of the CRCA sets out the functions of the 'Valuation Office'. Schedule 1 identifies the provision of 'Valuation Lists in relation to Council Tax' and the 'valuation of property' as former Inland Revenue functions transferred to HMRC.
16. The VOA staff are officers of HMRC and are prohibited from disclosing information relating to VOA functions under section 18(1) of the CRCA. This states:

'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.'

17. The VOA explained that the information sought by the complainant is held for VOA functions and this meant that section 18(1) of the CRCA applied.
18. The VOA explained that when section 18(1) of the CRCA applied then section 23(1) of the CRCA specifies that the information is exempt from disclosure by section 44(1)(a) of FOIA and must not be disclosed in response to an FOI request.
19. Section 23(1) of CRCA states that:

'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.'
20. The VOA noted that 'person' in this context means both individuals and legal entities. What this meant practice is that the definition of individuals is much wider in practice than in the Data Protection Act 2018 which refers to 'living individuals'.
21. The VOA explained that although the information sought by the complainant did not directly identify a person, it would enable a person's identity to be deduced from the addresses provided. The address could be used in combination with other publicly available sources of information such as the electoral register, the Land Registry and Local Authority planning portals. The VOA argued that the removal or redaction of a name or legal entity still enables a 'person' to be deduced from the address. Therefore, the VOA considered the requested information to be caught by section 23(1)(b) of the CRCA.
22. The VOA explained that section 23 of the CRCA was amended by section 19(4) of the Borders, Citizenship and Immigration Act 2009, to state that the VOA must disregard any permissive rights set out in sections 18(2) or (3) of the CRCA when considering an FOIA request. The VOA explained that this meant that although it can disclose information during the course of its work, when permitted by another Act, it cannot do so under FOIA.

23. With regard to the particular requested information in this case, the VOA explained that whilst other legislation permits the publication of sufficient information to allow people to establish the Council Tax band of a property via its 'Check your Council Tax band' service¹, the same information cannot not be provided under FOIA.

The complainant's position

24. In his submissions to the Commissioner the complainant argued that the position adopted by the VOA was inconsistent and made the following points in support of this position: Firstly, the information he sought about domestic council tax rates could be redacted to remove any personal identifying information within it. (He noted that other information sources publicly available enable the personal information of an occupant of a residential address to be fully or partially identifiable.)
25. Secondly, he argued that the VOA has no need not to disclose this information, as it was not sensitive or commercially exploitable.
26. Thirdly, he suggested that information regarding non-domestic business rates was 'readily supplied by the VOA to the wider public domain. There is no stated position on being able to identify, or not identify personal information deducible from the information they proactively provide. But use of the data they provide does allow the details of business occupants and their personal details to be identified by cross referencing other publicly available data sets. The VOA's position between Domestic and Non Domestic Data is not tenable.'
27. Finally, the complainant suggested that the VOA were relying on the exemption, in conjunction with the provisions of the CRCA, as a 'blanket reason' to withhold the information. He also noted that if a public body such as Castle Point Borough Council, saw fit to release this information under FOIA, in his view VOA's position was not tenable in the long term.

The Commissioner's position

28. In the Commissioner's view the VOA's position provides a clear explanation of the interaction between the CRCA and FOIA. Furthermore, it is clear from this that under section 44(1)(a) of FOIA the VOA cannot disclose information which it uses for its functions and which would identify a person or enable identification of a person.

¹ <https://www.gov.uk/council-tax-bands>

29. With regard to the requested information, the Commissioner is satisfied that the requested information is clearly information which the VOA holds for its functions.
30. Furthermore, the Commissioner accepts that although the requested information does not directly identify a person, such information could still be used to allow individuals to be identified from the residential addresses provided. The Commissioner agrees with the VOA that such address could be used in combination with other publicly available sources of information such as the electoral register, the Land Registry and Local Authority planning portals to identify individuals.
31. On this basis the Commissioner is therefore satisfied that the requested information falls within the prohibition provided by section 23(1) of the CRCA and is therefore exempt from disclosure on the basis of section 44(1)(a) of FOIA.
32. In reaching this finding the Commissioner has considered the complainant's grounds of complaint but in his view they do not alter this conclusion for the following reasons:
33. In the Commissioner's view the requested information cannot be redacted to remove any personal identifying information. This is precisely because, as the complainant suggested in his own submissions to the Commissioner, there are other sources of information in the public domain which allow an occupant of an address to be fully or partially identified.
34. The Commissioner notes the complainant's point that the information may not be commercially sensitive. However, determining whether section 44(1)(a) of FOIA applies does not require a public authority (or the Commissioner) to determine whether the disclosure of the information would cause an identifiable harm or prejudice. Rather, if the information is prohibited from disclosure by any other piece of legislation, then such information will be exempt from disclosure on under section 44(1)(a) of FOIA.
35. The Commissioner notes the complainant's comments about the apparent availability of information regarding business rates. However, in the Commissioner's view this does not undermine the rationale of VOA's position that the requested information in this case is exempt from disclosure on the basis of section 44(1)(a) of FOIA.
36. Nor, in the Commissioner's view does the apparent disclosure of this information under FOIA by the local council in question, Castle Point Borough Council. The provisions of the CRCA provide a statutory bar to disclosure of certain information under FOIA by the VOA. The fact that such provisions within the legislation do not extend or cover information held by local authorities in no way alters how the CRCA and FOIA create

a statutory bar to disclosure the information sought by this request when held by the VOA.

37. Finally, the Commissioner notes that the complainant has raised concerns that the VOA applied the information in 'blanket' way. In the Commissioner's view, whilst all of the information was withheld by the VOA and on the basis of section 44(1)(a), this is because, for the reasons set out above that exemption provided a legitimate basis to withhold all such information. In the Commissioner's view that does not equate to an exemption being applied for a blanket reason.

Section 16 – advice and assistance

38. Section 16 of FOIA states that:

'(1) it shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.'

39. The complainant argued that the VOA's blanket refusal' of his request was not helpful to him as a requester, ie the decision not to release any information falling within the scope of his request.
40. In the Commissioner's view, in line with requirements of the Code of Practice², there are three main circumstances where a duty to provide advice and assistance may arise. Firstly, if the applicant does not appear to have given their real name. Secondly if the request is ambiguous and needs to be clarified. Thirdly, if the request exceeds the cost limit then a public authority should help the requester to refine their request.
41. Clearly none of these circumstances apply here. Furthermore, the Commissioner is firmly of the view that section 16 does not require public authorities to provide requesters with a partial disclosure of information if all of that information is covered by a valid exemption. Clearly, such an approach would undermine the rationale for such an exemption in the first place. The Commissioner is therefore satisfied that the VOA were not under a duty to provide any advice and assistance in

² <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

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respect of this request, and certainly not in the manner suggested by the complainant.

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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.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

Jonathan Slee
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