

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 12 September 2011

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

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

Summary

The complainant requested certain information relating to the 2010 valuation rating list for non-domestic properties. The public authority withheld the disputed information on the basis of section 44(1)(a) of the Act (statutory prohibition on disclosure). The Commissioner found that section 44(1)(a) was correctly applied to withhold the disputed information.

The Commissioner however found that the public authority did not hold information relevant to parts of the request and should have made this clear to the complainant at the time of the request. He therefore found the public authority in procedural breach of the Act in relation to this.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The Commissioner notes that under the Act the Valuation Office Agency (VOA) is not a public authority itself, but is actually an executive agency of HM Revenue and Customs (HMRC) which is responsible for the VOA. Therefore, the public authority in this case is actually the HMRC not the VOA. However, for the sake of clarity, this decision notice refers to the VOA as if it were the public authority.

3. On 31 January 2011 the complainant requested the following information from the public authority:

 '[A] hard copy of your "Contested Valuations" [as provided over] the last 6 years for the 2005 Rating List.' (item i)

 '[A] hard copy of a Rental summary schedule.....as provided over the last 6 years for the 2005 Rating List.' (item ii)

 '[A] copy of the VOA Policy document detailing the agreement with Agents' (item iii)
4. On 11 February 2011 the public authority responded. It withheld information within the scope of item (i) of the request because it considered that the relevant information was reasonably accessible to the complainant within the meaning of section 21 of the Act. Information within the scope of item (ii) of the request was also withheld on the basis that its disclosure was statutorily prohibited on the basis of section 44(1)(a). The public authority did not address item (iii) of the request in its refusal notice.
5. The complainant requested a review of the above decision on 15 February 2011. Although he did not specify the reasons why he disagreed with the public authority's decision, it is clear from the letter that he was dissatisfied with the decision.
6. On 31 March 2011 the public authority wrote to the complainant with details of the outcome of the internal review. The public authority confirmed that it held additional information within the scope of item (i) which it however considered exempt on the basis of section 44(1)(a). The public authority also concluded that the information within the scope of item (ii) was additionally exempt on the basis of sections 40(2) (third party personal data exemption), 41 (confidential information exemption), and 43(2) (commercial interests exemption). It did not address item (iii) of the request.

The Investigation

Scope of the case

7. On 15 March 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complaint was however accepted as valid on 27 April 2011 following the completion of the internal review. He provided a detailed background to his request and strongly argued that the requested

information should be disclosed. The Commissioner identified the following salient points from the complaint.

8. According to the complainant, throughout the 2000 and 2005 rating revaluations, the public authority had freely issued watered down versions of its valuations (referred to as contested valuations) together with a rental summary schedule to non-domestic rate payers in order to provide full and proper information relating to their tax liability. According to him, this practice enabled the settlement of 'thousands of appeals' without the need for referral to a Valuation Tribunal, 'saving taxpayers a considerable amount of money.'
9. He pointed out that the rental summary schedule for one of his clients was disclosed to him by the public authority's office in Leeds as part of the 2010 revaluation process but was subsequently withdrawn by the public authority because the disclosure was no longer the practice for the 2010 rating list.
10. The Commissioner considers the above submissions as most relevant to items i and ii of the request. He understands that both items of the request were for the 2010 valuation rating list and 2010 rental summary schedule respectively.
11. The complainant also claimed that 'no meaningful explanation clarifying why the Valuation Office Agency has changed its operational practices adopted over the previous ten years, without agreement, has been provided.' The Commissioner considers this point as most relevant to item iii of the request.

Chronology

12. On 17 May 2011 the Commissioner wrote to the complainant. The Commissioner explained that he understood his request to be as outlined at paragraph 3 above and invited the complainant to comment if he disagreed with the Commissioner's interpretation of his request. The Commissioner also specifically asked the complainant to clarify whether he had received the information pertinent to item iii of his request from the public authority.
13. On 2 June 2011 the Commissioner wrote to the public authority requesting its submissions on the application of exemptions and copies of the withheld information. He also specifically asked the public authority to clarify whether it had addressed item iii of the request.
14. On 30 June 2011 the public authority responded to the Commissioner's queries. In addition to providing additional explanations on the application of the exemptions relied on, it stated that it had previously provided the complainant with information which in its view satisfied

- item iii of the request. The public authority also pointed out that it had provided additional information to the complainant on 15 April 2011 in respect of item iii. In terms of item ii of the request, the public authority explained that rental summary schedules had not been produced for the 2010 rating list.
15. The public authority further explained that due to the volume and sensitivity of the withheld information, it would not be providing copies to the Commissioner. Instead, it invited the Commissioner to review the withheld information at any of its offices.
 16. On 30 June 2011 the complainant also responded to the Commissioner's letter of 17 May. Although, he accepted that his request was limited to items i, ii, and iii as outlined in paragraph 3 above, he did not specifically respond to the query regarding item iii. He simply stated that 'the VOA [had] failed to provide an acceptable response or any response whatsoever to the....request...'
 17. On 20 July 2011 the Commissioner wrote to the public authority for further clarifications. He also enquired whether the public authority could provide him with a broadly representative sample of the withheld information.
 18. On 26 July 2011 the public authority provided the Commissioner with sample copies of the withheld information in respect of item i of the request and sample copies of publicly available valuations from the 2010 rating list.
 19. On 2 August 2011 the Commissioner wrote to the complainant and specifically asked him to clarify whether or not the disclosures made by the public authority in respect of item iii satisfied that part of his request. The Commissioner explained that if he was dissatisfied with the disclosure, he should, in response to the Commissioner's letter, specify or describe the document he expected the public authority should have provided.
 20. On 12 August 2011 the complainant responded.

Analysis

Exemptions

Item i – A hard copy of your “Contested Valuations” [as provided] over the last 6 years for the 2005 Rating List.

21. As noted above the public authority withheld information within the scope of item i (the disputed information) on the basis of the exemption at section 44(1)(a) of the Act. The complainant was directed to the relevant part of the public authority's website where he could find publicly available information relevant to the valuation for properties on the 2010 rating list.

The Disputed Information

22. As noted above the public authority provided the Commissioner with sample copies of the disputed information which the public authority confirmed are broadly representative of the remaining information.
23. The disputed information consists of information held on the public authority's central database in relation to the 2010 valuation (for tax purposes) of each non-domestic property in England, Wales and Northern Ireland. It includes, but is not limited to, the address of the property, its description and the relevant billing authority.

Application of Section 44(1)(a)

24. Information is exempt from disclosure on the basis of section 44(1)(a) if its disclosure by the public authority holding it is prohibited by or under any enactment.
25. According to the public authority, 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).
26. Section 18(1) 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.'
27. The Commissioner finds that the disputed information is held by the public authority in connection with its functions.
28. The Commissioner further finds that none of the exceptions at section 18(2) apply in this instance.

29. Section 23 provides:

'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.....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.

(2) Except as specified in subsection (1), information the disclosure of which is prohibited by section 18(1) is not exempt information for the purposes of section 44(1)(a) of the Freedom of Information Act 2000.'

30. The term 'person' includes both natural and legal persons, and, for example, the tax affairs of a limited company.¹

31. The Commissioner finds that the disputed information includes the identities of the relevant businesses/companies as well as information which would enable their identities to be deduced. Therefore, disclosure under the Act would have revealed their identities or would have enabled their identities to be deduced in contravention of section 23 of CRCA.

32. In view of the above reasons, the Commissioner finds that the disputed information was correctly withheld by the public authority on the basis of section 44(1)(a) of the Act.

33. Section 44(1)(a) is an absolute exemption and not subject to a public interest test.

Item ii - A hard copy of a rental summary schedule as provided over the last 6 years for the 2005 Rating List

34. As noted above public authority had relied on exemptions in respect of item ii of the request. However, in its submissions to the Commissioner, the public authority pointed out that due to a change in approach in dealing with appeals, it had not produced rental summary schedules for the 2010 rating lists.

35. The public authority explained that the schedules are a summarised version of the information contained in the Forms of Return (FOR). According to the public authority a FOR is a Notice requesting supply of

¹ Paragraph 110 of the explanatory notes to the CRCA

- information for non-domestic rate. It therefore submitted that the information in an FOR will necessarily relate to the ratepayer's financial or tax affairs.
36. The public authority helpfully provided the Commissioner with a copy of rental summary schedule from the 2005 rating list and a blank copy of a FOR. It explained that a rental summary (if one was produced for the 2010 valuations) would contain information relating to the ratepayer (i.e. the 'person').
 37. It was not entirely clear from the request whether the complainant was seeking the rental summary for a specific property from the 2010 rating list or for all of the rental summaries for the properties on that list. The public authority was not sure either.
 38. Nevertheless, it is clear that at the time of the request, the public authority had decided not to produce rental summaries from the 2010 rating list. The Commissioner therefore finds that the information requested in item ii was not held by the public authority. Even if the rental summaries had been produced, the Commissioner is satisfied that they would have been exempt from disclosure on the basis of section 44(1)(a) for the same reasons he found the disputed information was so exempt.
 39. The Commissioner appreciates the complainant's frustrations with the public authority's decision not to provide him with all of the 2010 'contested valuations' and rental summary schedules. However, as the Commissioner understands it, the 2005 rating list (including line adjustment factors) and rental summary schedules for the 2005 rating list have never been disclosed under the Act. It is clear that the disclosure of the disputed information is prohibited under the Act; as the effect of a disclosure in the normal course of business (and for certain purposes) differs from the effect of a disclosure under the Act (which is applicant and purpose blind and for which there can be no restrictions regarding onward disclosure), the Commissioner does not consider the disclosures comparable.

Item iii - '[A] copy of the VOA Policy document detailing the agreement with Agents'

40. In order to provide some context to item iii of the request, the public authority helpfully provided the Commissioner with the copies of letters dated 7 March and 8 April 2011 between itself and the complainant.
41. The Commissioner understands from the public authority's explanation and the contents of the letters of March and April referred to above that the complainant was seeking a copy of 'the policy document'

which he assumed the public authority had relied on to deny him information pertinent to items i and ii of his request.

42. The complainant incorrectly assumed that the public authority had refused to disclose to him under the Act, copies of the 2010 valuations showing 'line adjustment factors' and rental summary schedules on the basis of a change in its operational policy.
43. However, the public authority explained that valuations including 'line adjustment factors' are not publicly available. As previously noted above at paragraph 39, whilst information relevant to valuations could have been, and most likely still are, available to individual business or their agents (in so far as it relates to their own individual tax liability), they are not disclosable under the Act.
44. Nevertheless, the public authority explained that it had provided the complainant with its guidance policy on the handling of appeals relating to the 2010 valuations.
45. In view of the above, the Commissioner asked the complainant to either provide him with the title of the document he was referring to in item iii of his request or a detailed description of the document in question.
46. In response the complainant stated:

'I am at loss to understand how to describe a document produced by a third party which I have not seen. I can only suggest the said document refers to minutes of a meeting with Agents representing ratepayers and representatives of the Royal Institution of Chartered Surveyors which confirms section 11.4 of the RICS rating Standards, Rating Appeals, 3rd Edition, Guidance Notes and the RICS Maintaining Professional and Ethical Standards – 1st April 2010 Edition paragraphs 2, 3, 4 and 7 do not apply to RICS members employed by the Valuation Office Agency who have their professional fees paid for by the Taxpayers of this Country.'

47. The relevant section 11.4 above states:

'At the start date for discussion, the VO [Valuation Office] will write and invite the appellant to make contact in order to progress the appeal. The VO will provide information regarding the basis of the valuation and also details of evidence that may be considered relevant to support the assessment.'

48. The relevant paragraphs 2, 3, 4, and 7 above state:

'Act with integrity – Be trustworthy in all that you do – Never deliberately mislead, whether by withholding or distorting information.'
(paragraph 2)

'Be open and transparent in your dealings – Share the full facts with your clients, making things as plain and intelligible as possible.'
(paragraph 3)

'Be accountable for all your actions – Take full responsibility for your actions and don't blame others if things go wrong.'
(paragraph 4)

'Always treat others with respect – Never discriminate against others.'
(paragraph 7)

49. In response the public authority submitted that there was no logical reason for it to hold the document referred to by the complainant above at paragraph 46.
50. The Commissioner agrees with the public authority and he therefore finds that on a balance of probabilities² the public authority did not hold information relevant item iii of the request. As already noted, there had been no change in policy in terms of disclosing the requested information under the Act. Furthermore, there is no evidence to suggest that the public authority no longer considered its employees subject to the professional and ethical standards of chartered surveyors referred to above.

Procedural Requirements

51. Section 1(1)(a) provides that a public authority must inform an applicant whether or not it holds the information requested.
52. Section 10(1) requires a public authority to respond a request for information under section 1 of the Act within 20 working days.
53. The Commissioner finds the public authority in breach of section 1(1)(a) and section 10(1) for incorrectly stating at the time of the request that it held information pertinent to item ii.
54. The Commissioner finds the public authority in breach of section 10(1) for failing to respond to item iii of the request in accordance with the provisions of the Act.

² In deciding whether a public authority holds requested information, the Commissioner applies the civil standard of proof which is based on a balance of probabilities.

The Decision

55. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- The public authority correctly withheld the disputed information on the basis of section 44(1)(a) of the Act.

56. However, in respect of certain elements of the public authority's handling of the request, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- The public authority breached section 1(1)(a).
- The public authority breached section 10(1).

Steps Required

57. The Commissioner requires no steps to be taken.

Right of Appeal

58. 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,
Arnhem House,
31, Waterloo Way,
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

59. 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.
60. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 12th day of September 2011

Signed

**Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

Time for Compliance

Section 10(1) provides that –

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

Prohibitions on disclosure.

Section 44(1) provides 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,
- (b) is incompatible with any Community obligation, or
- (c) would constitute or be punishable as a contempt of court."