

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 1 February 2018

**Public Authority:** Her Majesty's Land Registry  
**Address:** Trafalgar House  
1 Bedford Park  
Croydon  
CR0 2AQ

#### **Decision (including any steps ordered)**

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1. The complainant has requested information about the pattern and value of land ownership for individuals in England and Wales. Her Majesty's Land Registry (HMLR) has stated that the requested information is not held.
2. The Commissioner's decision is that HMLR has misinterpreted the complainant's request. The Commissioner further finds on the balance of probabilities that HMLR does hold information of the description set out in the request.
3. The Commissioner requires HMLR to issue a fresh response to the request, either by disclosing information of the description specified or by refusing the request in accordance with section 17 FOIA.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 FOIA and may be dealt with as a contempt of court.

#### **Request and response**

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5. By way of background, on 23 February 2015 the complainant requested information from HMLR in the following terms (the 2015 request):

*"1. The names of the top 50*

- *Public authorities*
  - i. local authorities*
  - ii. government departments*
  
- *UK companies*
  - i. limited companies*
  - ii. limited partnerships (LPs)*
  - iii. limited liability partnerships (LLPs)*
  - iv. industrial and provident societies*
  - v. charities*
  - vi. foundations*
  - vii. any other body corporate*
- *overseas companies*
- *universities and colleges*
- *trusts*
- *private individuals*
- *partnerships*
- *nobility*
  - i) Dukes*
  - ii) Marquesses*
  - iii) Earls*
  - iv) Viscounts*
  - v) Barons*
- *MPs (i.e. "Most Venerable", "Member of Parliament", "Member for" etc.)*
- *Royalty (i.e. "His/Her Most Excellent so and so" etc.)*

*Ordered by the*

- i) square footage of land owned*
- ii) value of land owned*

*For each item on the list provide a figure for*

- i) the value of land owned*
- ii) the square footage owned*

*2. The total value and square footage of*

- a) predominantly rural land*
- b) urban land*
  - owned by overseas companies*

6. On 16 April 2015 HMLR provided the complainant with a spreadsheet of some of the data (the 2015 dataset). This comprised the names of

landowners who were not private individuals, and the area of land owned by each landowner, albeit that the area owned was indicated in square metres rather than square feet as requested.

7. On 29 November 2016 the complainant wrote to HMLR and requested information in the following terms (the 2016 request):

*"Can you please disclose the same information disclosed to me on 16 April 2015 (see attached) including the information in respect of all private individuals?"*

*If and to the extent to which you deem the information in respect of private individuals personal information, it is not sensitive personal information and there exists a legitimate public interest in disclosure, i.e. knowing the approx area of land owned by private individual landowners. The public interest in disclosure outweighs any arguments in favour of withholding the requested information."*

8. On 21 December 2016 HMLR responded to the 2016 request. It refused to provide the requested information. It cited the following exemption as its basis for doing so: section 40(2) – personal information.
9. The complainant requested an internal review on 21 December 2016. HMLR sent the outcome of its internal review on 19 January 2017. It revised its position setting out that it understood the request to be for a list of individuals who own registered land with details of the area of land (in square metres) that each individual owns. HMLR stated that it did not hold the requested information. It went on to state that in any event, providing a list of individuals who own registered land with details of the area of land owned by each individual would be personal data within the meaning of the Data Protection Act 1998.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 15 March 2017 to complain about the way the 2016 request had been handled. Specifically he disputed HMLR's assertion that the requested information is not held and explained that he considered it to be fair and lawful to disclose the requested information as per the first data protection principle.
11. Following the Commissioner's intervention, HMLR wrote to the complainant further setting out its position that it does not hold the requested information. It also set out how it provided the 2015 dataset.
12. The complainant remained of the view that HMLR held the requested information and that it ought to be disclosed to him.

13. The Commissioner considers that HMLR's position is that it does not hold the information requested on 29 November 2016. However, during the course of the investigation it appeared to the Commissioner that there may be an issue around the interpretation of the request itself. The Commissioner has therefore considered this issue, before going on to determine whether, on the balance of probabilities, the requested information is held or not.

## Reasons for decision

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### Interpretation of the request

14. Section 1(1) of FOIA states that (Commissioner's emphasis):

*"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."*

15. The Commissioner considers that the description specified in the 2016 request is crucial in this case. The complainant described the requested information in the following terms:

*"Can you please disclose the same information disclosed to me on 16 April 2015 (see attached) including the information in respect of all private individuals?"*

16. The Commissioner notes that the 2016 request explicitly refers to the "information" previously disclosed, ie the names of landowners and the area of land owned in square metres, as set out in the 2015 dataset, rather than the repeating the wording of the 2015 request.
17. However, HMLR's response appears to have focused on the wording of the 2015 request, rather than the information actually provided. HMLR set out that it had produced the 2015 dataset in error, since it was in fact unable to produce the specific requested information relating to land ownership. For this reason HMLR concluded that it was not obliged to produce a similar dataset in respect of the 2016 request. HMLR therefore set out that it ought to have responded that it did not hold the requested information.
18. On consideration of the complaint, the Commissioner wrote to HMLR setting out her position that there appeared to have been a

misunderstanding over the interpretation of the request. She asked HMLR to reconsider its position on this basis.

19. HMLR wrote to the complainant again but maintained its original interpretation of the request. Accordingly, HMLR maintained its position that it did not hold the requested information.
20. Having considered the correspondence the Commissioner finds that HMLR has misinterpreted the 2016 request. The complainant has in fact requested a variation of the 2015 dataset.
21. In any event, the Commissioner understands that HMLR disclosed the 2015 dataset in an attempt to assist the complainant. HMLR subsequently clarified that the 2015 dataset contained "indicative" rather than authoritative information. The Commissioner is of the opinion that, if HMLR's position is that the 2015 dataset included indicative figures of the area of England and Wales registered (in terms of area in square metres), and the 2016 request was for a variation of that dataset, then the 2016 request is for similarly indicative figures in relation to property owned by private individuals.
22. In light of the above the Commissioner finds that HMLR's response to the 2016 request did not in fact address the information described in that request. The Commissioner does however consider that the wording of the 2016 request is unclear as to whether the complainant wanted information relating to the date of the 2015 request or whether his request was for information held at the time of the 2016 request. Therefore HMLR ought to have clarified this with the complainant at the time the request was received.

Is the requested information held by HMLR?

23. Subject to the clarification outlined above, the Commissioner has gone on to consider whether HMLR holds the information she considers to fall within the description of the 2016 request.
24. The Commissioner notes that HMLR's arguments in support of its position are drawn from those put forward relating to the 2015 request. However the Commissioner considers that the question of whether or not HMLR holds the information requested in the 2015 request is not relevant to the 2016 request. The Commissioner finds that the 2016 request was based on the 2015 dataset as provided, rather than the wording of the 2015 request.

25. HMLR has described to the Commissioner (and to the complainant) how it produced the 2015 dataset. In the Commissioner's view HMLR should be able to respond to the 2016 request by following similar steps.

## **Other Matters**

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26. Although the FOIA is applicant and purpose blind, the Commissioner considers it pertinent to this case to set out that the complainant and HMLR are well known to each other and the Commissioner has previously been involved in complaints brought to her office by this particular complainant about HMLR.
27. It is the Commissioner's experience that in cases she has seen, HMLR has attempted to assist the complainant as much as possible. Indeed, as a responsible regulator, the Commissioner is mindful that public authorities' willingness to be helpful and to seek to resolve cases can ultimately be unhelpful in terms of managing complainants' expectations under FOIA. She notes in this case that it is the wording of the 2016 request which has been the stumbling block and she considers that whilst HMLR has misinterpreted the request, this was not corrected or clarified by the complainant when HMLR set out its interpretation of the request. Clarification of the request by the complainant at an early stage may have meant that HMLR took a different approach and the Commissioner's involvement may not have been necessary.
28. The Commissioner observes that there is an inherent risk, when dealing with a requester who makes frequent requests and engages at length with a public authority, that the authority makes assumptions in respect of the request based on prior knowledge. However, she considers that each party has a duty to ensure that the request is interpreted correctly in order to ensure that a response is handled in accordance with the FOIA.

## Right of appeal

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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 7395836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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** .....

**Sarah O’Cathain**  
**Senior Case Officer**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**