

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 September 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) requesting information relating to the valuation of certain properties in determining their Council tax band.
2. The Commissioner's decision is that VOA correctly applied section 44(1)(a) of FOIA to the request.
3. The Commissioner does not require any further steps to be taken.

Nomenclature

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

Request and response

5. On 31 March 2021, the complainant wrote to the VOA and requested information in the following terms:

"I'd like to know the valuation criteria that was used for the 2 bedroom maisonettes in [specified address and postcode]. As you know the valuation date used is 1st April 1991. The flats have gained a band C rating which would value then at over £52,000 on said date. Property sales data suggests this is erroneous. Perhaps you'd be good enough to clarify as to how this figure was achieved?

I appreciate you may say we will only accept a similar property with a lower banding as evidence of your error, but that is not much use if they are all wrong! Therefore, it is important to establish the initial method of evaluation. You presumably used a surveyor who formulated a report based on the House Price Index and current sales data from the time. Can we see it please?"

6. VOA responded on 29 April 2021. It stated that it was applying section 44(2) of FOIA to the request, as it could neither confirm nor deny whether it held the requested information. It provided the complainant with some information relating to the general principles adopted in the calculation of Council Tax.
7. The complainant requested an internal review of VOA's decision on 19 May 2021.
8. Following an internal review VOA wrote to the complainant on 16 June 2021. VOA had changed its approach in that it was no longer refusing to either confirm or deny whether it held information within the scope of the complainant's request. It stated that VOA did not hold any information in relation to the valuation criteria specifically for two bedroom maisonettes. It directed the complainant to the information available in the Council Tax manual on the website GOV.uk which is the valuation criteria applied to all domestic properties. VOA applied section 21 of FOIA to that part of the complainant's request.
9. In relation to the second part of the complainant's request VOA stated that it was now applying section 44(1)(a) of FOIA as it considered that disclosure was prohibited by the Commissioner for Revenue and Customs Act (CRCA) 2005.

Scope of the case

10. The complainant contacted the Commissioner on 27 June 2021 to complain about the way their request for information had been handled.
11. The Commissioner has considered VOA's handling of the complainant's request, in particular its application of the exemption as set out in section 44(1).
12. The complainant accepts that VOA does not hold specific valuation criteria for two bedroom maisonettes and that the banding for the properties at the particular address they refer to in their request would have been based on a number of sources such as sales data and other property level information.
13. The complainant does not accept VOA's application of section 44(1) of FOIA to the information used to calculate the council tax banding such as the sales data and the surveyor's report ("the withheld information"). They state that such information is publicly available and do not accept that disclosure could lead to the identification of a person.

Reasons for decision

Section 44 – prohibitions on disclosure

14. Section 44 of FOIA states that :

"(1) 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.

Is disclosure of the requested information prohibited by or under any enactment?

15. Information is exempt under section 44(1)(a) if its disclosure would breach any of the following:
 - i. primary legislation (an Act of Parliament); or
 - ii. secondary legislation (a Statutory Instrument).

16. The relevant legislation in this case is the Commissioners for Revenue and Customs Act 2005 (CRCA). Section 18(1) CRCA 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. Section 18(2)(a)(i) CRCA states:

"But subsection (1) does not apply to a disclosure which is made for the purposes of a function of the Revenue and Customs...."

18. Section 23 CRCA states amongst other things:

"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."

19. VOA is an executive agency of HMRC and collects and holds data relating to individual properties to undertake its functions.

20. 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 functions transferred to HMRC.

21. VOA staff are officers of HMRC and are prohibited from disclosing information relating to VOA functions under section 18(1) of the CRCA.

22. The withheld information, where held, is held for VOA functions which means that section 18(1) of the CRCA applies.

23. When section 18(1) of the CRCA applies, section 23(1) of the CRCA then specifies that under section 44(1)(a) of the FOIA VOA must not disclose information when it would:

(a) specify the identity of the 'person' to whom the information relates,

(b) enable the identity of such a person 'to be deduced'.

24. Section 23(1)(b) of the CRCA includes when a 'person' can be deduced from property data, such as an address. The term 'person' means legal entities such as a company as well as individuals.
25. Although the information held about the properties referenced in the complainant's request does not directly identify a person, it would enable a person's identity to be deduced. This is because the requested information is at address level and can be linked with other information from publicly available sources, (e.g. electoral register and on-line services), to identify any 'person' associated with the relevant address.
26. Section 23 of the CRCA was amended by section 19(4) of the Borders, Citizenship and Immigration Act 2009, to state that VOA must disregard any permissive rights set out in 1 Schedule 1 to the Interpretation Act 1978¹ and section 110 of the CRCA Explanatory Notes states 'The term "person" includes both natural and legal persons, and, for example, the tax affairs of a limited company are also protected by the provisions of the subsection.'
27. VOA set out to the complainant that in order to determine whether information is captured by section 23(1) there are two relevant questions:
 - Would the requested information be held in connection with a function of HMRC?; and
 - Would the information relate to a "person" who could be identified from the information requested?
28. VOA has set out in its response and internal review that the withheld information relates to a function of VOA, namely the assessment and collection of council tax; accordingly it is covered by section 18(1) of the CRCA. When section 18(1) CRCA applies, section 23 of the same Act sets out that the information will be exempt under section 44(1)(a) as set out above.
29. The Commissioner notes too that VOA has set out the definition of the term "person", explaining that it includes legal entities such as companies, trusts and charities, as well as living individuals. This is set out in Schedule 1 of the Interpretation Act 1978 as referenced above and the VOA provided a link to this legislation in its initial response.

¹ <http://www.legislation.gov.uk/ukpga/1978/30/schedule/1>

30. VOA's response sets out that it is possible to identify a 'person' (or their identity to be deduced) through linking address information already in the public domain and in these circumstances section 23(1) CRCA is engaged. This means that there is a prohibition on disclosure in accordance with section 23 CRCA and accordingly section 44(1)(a) is engaged.
31. The Commissioner considers that VOA's response adequately explains the interaction between the CRCA and FOIA and that it is clear that the VOA cannot, under FOIA, disclose any information which would identify a person or enable identification of a person.
32. The Commissioner's remit is to consider whether a request for information under FOIA has been handled in accordance with FOIA. Whilst he understands that the complainant may consider it paradoxical that the information which could be used in conjunction with requested information to identify a person, is available via public sources, the Commissioner considers that the CRCA prohibits the disclosure of the information and that this prohibition is not subject to the availability of any additional information which may enable identification.
33. The Commissioner understands that the complainant would like to obtain information in the form of comparable properties and sales information used by VOA to inform the Council Tax Band for the properties referenced in their request and that they are frustrated in that it appears that similar information is already available via other online and public sources.
34. Section 44(1)(a) of FOIA is an absolute exemption so there is no requirement to conduct a public interest test as set out in section 2 of FOIA. It should also be noted that section 19 of the CRCA makes it a criminal offence for any member of staff to disclose any person's identifying information under FOIA.
35. In conclusion, the Commissioner's decision is that VOA has correctly applied section 44(1)(a) as a basis for non-disclosure of the withheld information in this case.
36. It is the Commissioner's position that VOA has satisfactorily established that the criteria set out in in the CRCA at sections 18 and 23 are clearly met in this case and that accordingly section 44(1)(a) is engaged.

Right of appeal

37. 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

38. 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.
39. 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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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