

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 April 2023

Public Authority: Valuation Office Agency
Address: Wycliffe House
Green Land
Durham
DH1 3UW

Decision (including any steps ordered)

1. The complainant has requested information with regards to the Valuation Office Agency (the VOA) council tax database. The VOA refused the request under section 44(1)(a) of the FOIA.
2. The Commissioner's decision is that the VOA is correct to refuse the information under section 44(1)(a) of the FOIA.
3. The Commissioner does not require any steps.

Request and response

4. On 25 August 2022 the complainant made the following information request to the VOA:

"I would like to obtain access to the VOA Council Tax database – in particular the Address, Local Authority and Council Tax band for each property in England and Wales."
5. The VOA responded on 12 September 2022 refusing to provide the information under section 44(1)(a) of the FOIA – Information exempt as it is prohibited by or under any enactment.

6. The complainant requested an internal review on 4 October 2022 and the VOA provided its internal review on 28 October 2022 upholding its initial response.

Scope of the case

7. The complainant contacted the Commissioner disputing the VOA's refusal of the request.
8. The scope of the case is for the Commissioner to determine whether the section 44(1)(a) of the FOIA is engaged to the request.

Reasons for decision

Section 44 – prohibitions on disclosure

9. 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

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

11. The relevant legislation in this case is the Commissioners for Revenue and Customs Act 2005 (CRCA)¹.

12. Section 18(1) of the 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."

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."

13. The Commissioner's position on the interaction of the FOIA at section 44 and the CRCA is well established via published decision notices. The VOA has referenced two particular decision notices in its internal review response, FS50809990² and IC-166841-C9M4³.

14. In both these two decision notices the Commissioner accepted that disclosing the property addresses would enable the identity of the persons to whom they relate to be deduced when combined with other information from publicly available sources such as online services.

15. The Commissioner upheld the VOA's position in both cases in respect of section 44(1)(a) of the FOIA.

¹ <https://www.legislation.gov.uk/ukpga/2005/11/contents>

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615096/fs50809990.pdf>

³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022314/ic-166841-c9m4.pdf>

The VOA's position

16. The VOA set out its position with regard to section 44 of FOIA. It detailed that the relevant enactment is the CRCA and the relevant section of that Act is section 23(1)(b).
17. The VOA said that it is aware that the complainant believes that there is a legitimate interest in gaining access to the council tax database, as it is already publicly available to view online⁴, although not published in a format that is reasonably accessible as you can only search one postcode at a time.
18. The VOA has told the Commissioner it disagrees with the relevance of this statement as the information is subject to a statutory bar.
19. It says it is required under section 22(1) and section 27(7) of the Local Government Finance Act (LGFA) 1992 to maintain fair and accurate Valuation Lists. The LGFA 1992 also requires the VOA to make information about these Lists available to the public, to satisfy the right to establish the state of a list. Section 28(4) of the LGFA 1992 empowers the VOA to choose a suitable format, and the VOA web application is designed to allow self-service access.
20. Sub sections 18(2) and (3) of the Commissioners for Revenue and Customs Act (CRCA) 2005 permits the VOA to publish and disclose information where this is needed to fulfil a function and/or when required by another enactment.
21. The VOA argues that the need for disclosure is fully satisfied by the web application. Therefore bulk disclosure is not necessary to satisfy the requirements of section 28 of the LGFA, nor for the purposes of VOA's functions. Any such disclosure would breach both.
22. The VOA explains that this is because the information requested relates to a VOA function of compiling and maintaining the council tax list and that:

"The wording of the request specifically asks for the address for each property in England and Wales. Address level information provides a connection to a legal 'person(s)'. It may directly identify 'persons' associated with the address, and/or enable their identities to be deduced. As previous ICO Decision Notices relating to VOA have

⁴ <https://www.gov.uk/council-tax-bands>

outlined, there are many ways of linking addresses to people by cross referencing with other information available to the public. For example, HM Land Registry, electoral registers, local library resources and other online information. This is in breach of section 23 of the CRCA."

23. The VOA has stated to the Commissioner that neither section 23 nor the definition of revenue and customs information relating to a person, requires VOA to make any allowances for information which may already be in the public domain.
24. It adds that section 23 CRCA is expressed in such a way as to be certain that under the FOIA, no-one is entitled to information HMRC holds relating to a person. This may on occasion have the effect of catching information that is in the public domain, but that is a proportionate incident to the certainty of taxpayer protection under FOIA that the prohibition seeks to achieve.
25. The VOA has also told the Commissioner that where other Government Departments have required bulk access to VOA Rating or Council Tax information (as has been requested by the complainant), Parliament has introduced specific legal gateways to provide for such disclosures, such as section 69 of the Water Act 2014, and section 97 of the Environment Act 2021. Clearly, Parliament would not have seen fit to legislate if the bulk information at address level could already have been made available to any person for any purpose.
26. It further stated, in September 2021, the Government announced that legislation would be introduced to make some VOA property data available to the public and private sector. The fact that a legal gateway is being sought to introduce that policy further demonstrates that VOA is prohibited from such wide bulk disclosures at present.
27. The VOA maintains that the information falling within the scope of the request, which it has confirmed is held, is held in connection with VOA functions and that it can not consider the reason the information is sought or that some information is publicly available. It reiterated that the information was withheld from disclosure under section 44(1)(a) of FOIA as section 23(1)(b) of the CRCA applies to "person" identifying information.

The complainant's position

28. The complainant has set out to the Commissioner, two reasons why he does not consider the information can be withheld. The first is that he does not agree the information he seeks relates to 'persons' within the meaning of section 23 of the CRCA.

29. The second is that, even if it does relate to persons, then he is of the opinion that section 28 of the Local Government Finance Act 1992 (LGFA) requires the VOA to disclose the requested information, essentially arguing that because section 28 of the LGFA makes the valuation lists publicly available without any conditions or onward restriction of their use, the information can not be exempt from the FOIA.

The Commissioner's position

30. The Commissioner's remit is to consider whether a request for information under FOIA has been handled in accordance with the FOIA.
31. Whilst he has considered the points raised by the complainant, which were set out in some detail in their submissions, 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.
32. The Commissioner has also not been presented with evidence that the LGFA does, as a matter of fact, override the CRCA, in regards to this case. It is not for the Commissioner to make this determination on other legislation.
33. The Commissioner considers the VOA has adequately explained the interaction between the CRCA and the FOIA, and it is clear that the VOA cannot, under FOIA, disclose any information which would identify a person or enable identification of a person.
34. The Commissioner accepts that disclosing the withheld information, the property addresses in particular, would enable the identity of the persons to whom they relate to be deduced when combined with other information from publicly available sources, such as the electoral register and other online sources. He therefore does not accept the complainant's position that the information does not relate to identifiable individuals.
35. The Commissioner understands that some of the requested information is already publicly available, however, the Commissioner notes that the VOA said this cannot be taken into account when considering disclosure under the FOIA. It also said, the information in scope of each request must be considered solely against the requirement of the Act. The Commissioner acknowledges the statutory framework which the VOA operates and its application to the request.
36. Section 44(1)(a) FOIA is an absolute exemption, this means that there is no requirement to consider whether the public interest in maintaining

the exemption outweighs the public interest in disclosing the requested information.

37. It is the Commissioner's position that the VOA had satisfactorily established the criteria set out in the CRCA at sections 18 and 23 are clearly met in this case. In conclusion, the Commissioner's decision is that the VOA was entitled to rely on section 44(1)(a) of FOIA to withhold the requested information

Right of appeal

38. 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 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

39. 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.
40. 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

Daniel Perry
Senior Case Officer
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