

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 February 2016

Public Authority: Manchester City Council
Address: Town Hall
Albert Square
Manchester
M60 2LA

Decision (including any steps ordered)

1. The complainant has requested details of rating list update schedules which were provided to the council by the Valuation Office Agency (the VOA) for specific properties. The council applied section 21 (accessible by other means) and told the complainant that the information was available from the VOA. The complainant then requested the information from the VOA. Its response was that it did not hold the information. The complainant then requested the information from the council again. It confirmed with the VOA that it does hold the information but with minor differences, at which point the council confirmed the application of section 21 to the information to the complainant.
2. The Commissioner's decision is that the council was not correct to apply section 21 to the information as it was not reasonably accessible to him from the VOA on this occasion.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To disclose the requested information to the complainant.
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 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 21 July 2015 the complainant wrote to the council and requested information in the following terms:

"Please provide a copy of the parts of the rating list update schedules which were issued to your Authority by the Valuation Office for the hereditaments listed below.

| ADDRESS | BA REF | EFFECTIVE DATE | ALTERATION DATE | VO CASE REF |
|------------------|---------|----------------|-----------------|-------------|
| Address redacted | 3014000 | 08/05/09 | 22/05/09 | 15364441113 |
| Address redacted | 3014000 | 08/05/09 | 31/05/11 | 16962666113 |
| Address redacted | 3007521 | 25/03/08 | 13/05/08 | 14041157113 |
| Address redacted | 3007521 | 08/05/09 | 22/05/09 | 15364441113 |
| Address redacted | 3007521 | 25/03/08 | 08/03/11 | 18093858113 |

We have previously requested part of this information from your Authority but this was refused under Section 21 of the Act stating the information was available from the Valuation Office. We have contacted the Valuation Office to obtain this information, however they have confirmed that they do not hold copies of these schedules, confirmation of this is attached. As your Council is the only body to hold this information, then we would be obliged if you would satisfy our request."

6. The council had previously responded to an earlier request for the same (or similar information) from the complainant on 25 July 2014. At that time it had applied section 21 and informed the complainant that the information was available from the VOA.
7. The complainant had remade the request to the council on the basis that the VOA had confirmed to him that the information was not held.
8. The council therefore treated the request of 21 July 2015 as a request for an internal review. It responded on 15 September 2015. It said that

it had been assured by the VOA that the information was available to purchase from it. It therefore maintained its application of section 21.

Scope of the case

9. The complainant contacted the Commissioner on 29 September 2015 to complain about the way his request for information had been handled. He said that the information which the council had said was available from the VOA was not held. He therefore considered that the council was therefore incorrect when it reiterated that the information was accessible elsewhere and applied section 21.
10. The Commissioner considers that the complaint is that the council was not correct to apply section 21 to the information.

Reasons for decision

11. Section 21 of FOIA states that

"Information accessible to applicant by other means

(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

(2) For the purposes of subsection (1)—

(a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and..."

12. The council has claimed section 21 on the basis that the requested information is available directly from the VOA, albeit at a price. The complainant states however that he has asked the VOA for this information and that it responded stating that it was no longer available for the dates requested. It provided this response to the council to demonstrate that that was the case.
13. For its part the council has also contacted the VOA, and asked it if the information would be available if requested. The VOA stated to the council that the requested would be available, however it would be at a cost to the requestor, and the information would not be in the same format. It clarified the differences between the information which the council holds and the information which would be available from it as:

- *Certain internal VOA case references or BA case references (used for administration purposes).*
 - *The reason for the change is explicit rather than implicit*
 - *The coding in column 9.*
 - *The fact that the information is presented in a different format.*
14. It further clarified the obligations of the VOA and billing agencies (i.e. in this case, the council). It said that the VOA was responsible for providing valuations on properties to billing agencies through an electronic data system called BATrans. It said that legally, the onward disclosure of information to a third party is a matter for a Billing Authority, subject to statutory obligations such as the Data Protection Act and any contractual obligations that may apply. It highlighted that the information passed to BATrans does however have a message at the bottom of the screen stating: *The information in these files is intended only for authorised and bona fide employees of the Billing Authority to whom the data relates. Any review, transmission, copying or other use of the data, for which the VOA holds the copyright."*
15. The VOA said that in its view, the requested information was available from it from its website, or purchased directly from the VOA and provided the council with a price list (the VOA Data Offer Schedule), which the council considers further evidence demonstrating the fact that the information was available from the VOA for download or on DVD disc, at a price.

Is the information available by other means?

16. The Commissioner notes the VOA's response to the councils question whether the information was available from it. It said that the information was available, but that it is different to that held by the council (in minimal respects). The information held by the VOA would not therefore be exactly the same information as would be held by the council. The VOA clarified in what respects that would be the case.
17. The differences are minimal however. The important area of the request for information (i.e. the actual list of updates) would be the same information.
18. The Commissioner therefore considers that the VOA does make this information available but for an unknown reason the complainant's request was refused on this occasion.

Is the information reasonably accessible to the applicant?

19. The complainant has provided the Commissioner with a copy of the VOA's response to his request where it states:

"We do make these change schedules available but I am afraid that we only do this as part of a suite of data products covering the national non domestic rating lists and related summary valuations.

However, these are only available for a limited period to subscribers who are able to download them from our Internet File Transfer Site and those published in March 2011 are no longer available."

20. The complainant has therefore provided evidence to the Commissioner that the information he requested from the council initially, was refused under the exemption in section 21. Following the council's instructions to request the information from the VOA he was told that the information was no longer held for the relevant dates. It was at this point that he made the request (for the same information) under consideration in this case.
21. It is therefore difficult for the council to argue that the information is readily accessible when it has taken the complainant 3 requests to get to this point, he still has not received the information which the council argues is available, and he followed the guidance of the council in response to his first request for the information.
22. In spite of the VOA assurances that the information is available it is clear that the complainant has followed the councils guidance but still failed to receive the information from the alternative source provided by the council.
23. The Commissioner therefore considers that, with the evidence of the VOA's letter stating that the information was not held, the complainant has demonstrated that the information is not reasonably accessible to him by other means. The VOA's assurances of the contrary were made to the council, not the complainant, and do not change the fact that he was unable to obtain the information from it when he requested it.
24. The Commissioner therefore considers that in this case the complainant has demonstrated that the information was not *reasonably accessible to him* on this occasion.

Copyright issues

25. The VOA and the council raised the issue of copyright in the use of the information by the council and other third parties. For the absence of doubt, copyright issues do not prevent information from being disclosed

under the FOI Act. This is because section 50 of the Copyright Design and Patents Act 1988 provides that where the copying or publishing of information is specifically authorised by an Act of Parliament copyright will not be infringed. Providing information in response to a request made under FOIA constitutes an act specifically authorised under an Act of Parliament. Consequently disclosing information under FOIA will not infringe copyright.

26. Copyright protection does however still apply to information which is disclosed under FOI and so the recipient will be legally bound to act with accordance with the protection offered the information under copyright. He will therefore potentially be liable for any breach of copyright should he use the information outside of the terms and conditions provided by the copyright.

Conclusions

27. Having considered the above the Commissioner's decision is that the council was not correct to apply section 21 to this information.

Right of appeal

28. 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@hmcts.gsi.gov.uk

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

29. 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.
30. 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

Andrew White
Group Manager
Information Commissioner's Office
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