

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 May 2019

Public Authority: Department of Finance
Address: Information Management Unit
Room20, Dundonald House
Upper Newtownards Road
Belfast
BT4 3SB

Decision (including any steps ordered)

1. The complainant has requested details used in arriving at a figure for the valuations of the hereditaments in two car park locations. The Department of Finance ("DoF") provided some information but refused to provide the remainder citing section 41 (information provided in confidence) as its basis for doing so. It upheld this at internal review.
2. The Commissioner's decision is that the DoF is entitled to rely on section 41 as its basis for withholding the remainder of the information it holds within the scope of this request.
3. No steps are required.

Request and response

4. On 7 August 2018 the complainant requested information of the following description:
5. "Under the Freedom of Information Act 2000 would you please supply me with a copy of the details used in arriving at the Zone A figure for the valuations of the hereditaments in the Newtowne Square carpark."

and

"Under the Freedom of Information Act 2000 would you please supply me with a copy of the details used in arriving at the Zone A figure for the valuations of the hereditaments in the Connell Street carpark."

6. On 31 August 2018, DoF responded. It refused to provide the requested information. It provided some general range information for the two locations. It cited the exemption at section 41 as its basis for doing so.
7. The complainant requested an internal review on 6 September 2018. DOF sent him the outcome of its internal review on 3 October 2018. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 26 October 2018 to complain about the way his request for information had been handled.
9. The Commissioner has considered whether the information is exempt from disclosure under section 41 of the FOIA.

Background

10. A hereditament is defined in section 2(2) of Rates (Northern Ireland) Order 1977 as "property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in a valuation list." ¹ This is a statutory instrument.

Reasons for decision

11. Section 41(1) of the FOIA says that information is exempt information if (a) it was obtained by the public authority from any other person and (b) disclosing the information to the public (otherwise than under the FOIA) would constitute a breach of confidence actionable by that or any other person (ie the aggrieved party would have the right to take the authority to court as a result of the disclosure and the court action would be likely to succeed).
12. Although section 41 is an absolute exemption and is therefore not subject to a public interest test under the FOIA, the common law duty of confidence contains an inherent public interest test.

Was the information obtained from another person?

13. DoF explained that the information was provided to it by individual ratepayers and leaseholders. Having seen the withheld information, the
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¹ <http://www.legislation.gov.uk/nisi/1977/2157/article/2>

Commissioner is satisfied that this is the case. The Commissioner is therefore satisfied that this information was obtained from another person and that the condition under section 41(1)(a) has been met with regard to the request.

Would disclosure constitute an 'actionable' breach of confidence?

14. When determining if disclosure would constitute a breach of confidence, a public authority will usually need to consider:

- whether the information has the quality of confidence
- whether it was imparted in circumstances importing an obligation of confidence; and
- whether disclosure would be an unauthorised use of the information to the detriment of the confider.

Does the information have the necessary quality of confidence and was the information imparted in circumstances importing an obligation of confidence?

15. Information will have the necessary quality of confidence if it is more than trivial and is not otherwise accessible.

16. DoF supplied the Commissioner with a copy of the Form of Return ("FoR") used to submit the relevant information to it on this matter. It clearly states that: "The information you provide will be treated in confidence". The FoR goes on to explain "This request for information is a notice sent to you pursuant to powers granted under Articles 26, 59 and 60 of The Rates (Northern Ireland) Order 1977. You are required as the owner or occupier, to provide information regarding the property. You can be prosecuted if you make false statements." It added that the quoted Articles refer to its right to require information as to ownership etc of hereditaments; its power to require information for valuation list purposes; and to applicable offences.

17. The Commissioner is satisfied that the requested information which is obtained from the FoR submitted from rate payers has the necessary quality of confidence. Rate payers are under a legal obligation to provide it; failure to do so may result in criminal prosecution which indicates it is more than trivial. The Commissioner is satisfied that it is not otherwise accessible. She is also satisfied that it was imparted in circumstances importing an obligation of confidence.

Would disclosing the information be an unauthorised use of the information to the detriment of the confider?

18. The Commissioner's published guidance on section 41(1) establishes that case law now suggests that "any invasion of privacy resulting from

a disclosure of private and personal information can be viewed as a form of detriment in its own right".

19. DoF explained "The main detriment is considered to be the impact on tenants and landlords of having their private commercial deals disclosed to third parties, in particular others in the same market sectors. Other specific detriments that might occur are unpredictable other than unforeseen consequences as a result of a failure to maintain confidentiality as a general principle. Furthermore, establishing a precedent of releasing the information sought in this case could have more far-reaching implications and unintended consequences in other, perhaps more sensitive, instances".
20. The complainant argued that in his professional capacity he had spoken to a number of persons who would be content to "give this information to agents in order to be able to properly challenge their valuation and in turn the valuations in the areas to which they operate".
21. The Commissioner notes that disclosure under FOIA means disclosure to the world and not just to specific interested parties who may wish to use the information to assist in lobbying for cheaper rates. The Commissioner is consequently more persuaded by the DoF on this point. The Commissioner has therefore found that the condition under section 41(1)(b) has also been met: the information in question has the necessary quality of confidence; it was imparted in circumstances importing an obligation confidence and disclosing it would be an unauthorised use of the information to the detriment of the confider.
22. Section 41 of the FOIA is an absolute exemption and therefore not subject to the public interest test contained at section 2 of FOIA. However, the common law duty of confidence contains an inherent public interest test. This test assumes that information should be withheld unless the public interest in disclosure outweighs the public interest in maintaining the duty of confidence (and is the reverse of that normally applied under the FOIA).

Public interest in disclosing the information

23. The Commissioner recognises that there is a strong public interest in understanding more about business rates incurred in town centres. Widespread concern has been raised about the costs incurred by businesses operating in local high streets. If businesses incur high rates on their properties in town centres they may need to relocate or even close their businesses which, in turn, has a knock-on negative effect on the local economy. A town centre without an active retail sector is uninviting for potential investors and local consumers. Similarly if the cost of parking in a town centre becomes prohibitive for consumers, they may be more likely to take their business either out of town or

online with the same negative effect. Greater transparency about costs incurred due to business rates puts ratepayers in a stronger position to negotiate for the benefit of their business and for the local retail economy. Greater transparency may also dispel any misunderstanding about which factors are having a negative effect on the local retail sector. If rates are, in fact, not the chief reason for the decline of the local retail sector, focus can then be put on tackling other issues which present a more significant obstacle but which had hitherto been unappreciated.

Public interest in withholding the information

24. The complainant recognised the need to be circumspect about the disclosure of personal data (information about or relating to living, identifiable individuals) but was not convinced that this would apply to the extent that no further information could be disclosed.
25. DoF identified five points in support of the public interest in withholding the information which the Commissioner summarises as follows:
 - There is a public interest in avoiding damage to its reputation for confidentiality. Such damage could make it more difficult to collect the information it needed for current and future Revaluations.
 - There is a public interest in avoiding damage to its working relationship with ratepayers because disclosure would undermine confidence and trust and would “inhibit a safe space for professional rating valuation”.
 - There is a public interest in ensuring that the DoF is reliable in maintaining commercial confidentiality in accordance with its statutory obligations when collecting information and that it is consistent in doing so.
 - There is a public interest in allowing it to maintain ratepayer confidentiality.
 - There is a public interest in allowing it to follow the legal advice it has received that it has an obligation of confidence in respect of this information.

Balance of the public interest

26. The Commissioner recognises the public interest in informing the debate on how best to revive local economies with particular reference to town centre shopping and parking. Disclosure in this case would provide some further detail about costs incurred for local businesses and inform debate about this.

27. However, the Commissioner is satisfied that there is a much stronger public interest in allowing DoF to maintain rate payer confidentiality and confidentiality in the valuation process. If individual businesses or other persons want to make their rate costs public that is a matter for them. Disclosure, in this case, would undermine the confidentiality of that taxation process. Maintaining trust between rate payer and rate collector is strongly in the public interest. The Commissioner notes that DoF went some way to satisfying the public interest in disclosure by making range information public. She recognises that the complainant did not consider this sufficient but agrees that a proper balance between transparency and confidentiality was struck in this case.
28. The Commissioner is satisfied that both 41(1)(a) and 41(1)(b) have been met and that the requested information is exempt information under section 41(1) of the FOIA as it is information provided in confidence. She finds that the balance of the public interest favours maintaining this exemption.
29. In light of her decision on this point for all the information that has been withheld, the Commissioner has not gone on to consider DoF's arguments as to section 40 where the requested information also includes personal data.

Right of appeal

30. 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

31. 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.
32. 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

Elizabeth Hogan
Senior Case Officer
Information Commissioner's Office
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