

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 September 2019

Public Authority: Valuation Office Agency

Address: 10 South Colonnade
Canary Wharf
London
E14 4PU

Decision (including any steps ordered)

1. The complainant requested information in relation to the value of comparable properties used to inform the assessment of the Council Tax Band for a property. The public authority withheld the information held within the scope of the request relying on the exemption at section 44(1)(a) FOIA.
2. The Commissioner's decision is that the public authority was entitled to rely on section 44(1)(a).
3. No steps are required.

Request and response

4. On 29 August 2018 the complainant submitted a request for information to the public authority in the following terms:

"Re: [Property address redacted]

As email below I requested some information under the Freedom of Information Act 2000. I feel the information I received was not complete.

Please find extract from the Valuation Office Agency's (VOA) technical manual for assessing domestic property for Council Tax. Please refer to 2.5 Valuation banding "bible" which is in bold in the attachment above.

To put forward my case I will need the above information."

5. The information referred to by the complainant (ie in section 2.5 of the technical manual for assessing domestic property for Council Tax) is reproduced below.

"All information and material which it was considered could be used to effectively defend the initial bandings were filed in a series of binders appropriate to each location. The contents should include:-

- i. description of the location
- ii. plans and maps depicting the valuation location(s)
- iii. list of the main key property types (with addresses)
- iv. key property forms (VO 7400) unless filed separately (see paragraph 2.3)
- v. sales information obtained from Particulars Delivered, either in the form of a printout from the ITSD MILO Application or a series of Council Tax transaction forms
- vi. any press or professional reports on the state of the market in the location generally at the AVD and any commentary reporting movements (if any) in prices between the date of the evidence and the AVD
- vii. an index

Valuation Banding "bibles" must not be destroyed whilst the current Council Tax Valuation List remains in force."

6. The public authority responded on 18 September 2018. It refused to comply with the request on the grounds that it would exceed the appropriate limit to confirm or deny whether it held the requested information – section 12(2) FOIA.
7. On 22 September 2018 the complainant requested an internal review of the decision to rely on section 12(2) FOIA.
8. On 15 October 2018 the public authority wrote to the complainant with details of the outcome of the review. The review upheld the original decision to rely on section 12(2) FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 17 December 2018 to complain about the public authority's decision to rely on section 12(2) FOIA.
10. However, during the course of the Commissioner's investigation pursuant to the application of section 12(2), the public authority established that it held information within the scope of the request which it considered exempt on the basis of section 44(1)(a) FOIA. The public authority informed the complainant accordingly on 19 August 2019.
11. In that same letter the public authority set out the scope of the request in the following terms:

"You are seeking information outlined in the Agency's technical manual for assessing domestic property for Council Tax. Specifically section 2.5 which refers to a valuation banding "bible". It is my understanding that you want to obtain information in the form of comparable properties and sales information which could be used to evidence the correct Council Tax Band for your own property. I believe you have made an appeal against your own Band and would like this information in advance of your appeal being heard by the Valuation Tribunal."
12. By way of background the public authority explained to the Commissioner that the complainant has appealed his Council Tax Band to the Independent Valuation Tribunal. Further to Regulation 17 of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and Section 48 of The Finance (NO2) Act 2005, the public authority has provided the complainant with the evidence the authority would rely on at the appeal hearing. This includes details of sales and attribute information within the scope of the complainant's FOIA request of 29 August 2018.

13. Therefore, the scope of the Commissioner's investigation was to determine whether the public authority was entitled to rely on the exemption at section 44(1)(a) FOIA to withhold the information the authority holds within the scope of the complainant's request of 29 August 2018 (the withheld information).
14. The fact that the public authority originally refused to comply with the request relying on the cost provision in section 12(2) FOIA does not undermine the application of section 44(1)(a) FOIA. The provision in section 12 FOIA relates to the appropriate limit (or cost) for complying with a request for information. The provision in section 44(1)(a) is an exemption from the duty to disclose information. Further to its reliance on section 12(2), the public authority explained to the complainant that even if it was able to establish within the appropriate limit that it held information within the scope of his request of 29 August 2018, it considered that the information would in any event be exempt from disclosure on the basis of section 44(1)(a).

Reasons for decision

Section 44(1)(a)

15. Information is exempt from disclosure on the basis of section 44(1)(a) if its disclosure is prohibited by or under any enactment.¹

Public authority's submissions

16. The public authority's position is summarised below.
17. The public authority is an executive agency of HM Revenue and Customs and section 10 of the Commissioners for Revenue & Customs Act 2005 (CRCA)² sets out the functions of the 'Valuation Office' (ie the public authority). Furthermore, section 7 of Schedule 1 CRCA identifies the provision of valuation lists in relation to Council Tax and valuation of property as HMRC functions. The public authority's staff are officers of HMRC and are prohibited from disclosing information relating to the public authority's functions under section 18(1) CRCA.

¹ For a full text of the exemption, visit <http://www.legislation.gov.uk/ukpga/2000/36/section/44>

² CRCA: <http://www.legislation.gov.uk/ukpga/2005/11/contents>

18. The withheld information is held in connection with specific property valuations, a function of the public authority.
19. The requested information is therefore prohibited from disclosure under section 18(1) CRCA by virtue of being held in connection with a function of the public authority.
20. Furthermore, the public authority is specifically prohibited from disclosing the withheld information under the FOIA by virtue of section 23(1) CRCA because its disclosure would enable a person's identity to be deduced when linked with other information from publicly available sources (e.g. electoral register and online services) to identify the 'person' associated with the address. Although the withheld information does not directly identify a person, it would enable a person's identity to be deduced when linked with other publicly available information.
21. Section 44(1)(a) FOIA is an absolute exemption so there is no requirement to conduct a public interest test as set out in section 2 FOIA. It should also be noted that section 19 CRCA makes it a criminal offence for any member of staff to disclose any person's identifying information under the FOIA.

The Commissioner's considerations

22. 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.'

23. The Commissioner accepts that the withheld information is held in connection with property valuations, a function of the public authority. The public authority has clarified that the information is held in the form of "Key Property forms (V07400)" referred to in section 2.5 of the technical manual for assessing domestic property for Council Tax.
24. Although there are exceptions to section 18(1) contained in sections 18(2) and (3) CRCA, section 23 CRCA was amended by section 19(4) of the Borders, Citizenship and Immigration Act 2009 to make clear that sections 18(2) and (3) are to be disregarded when considering disclosure of revenue and customs information relating to a person under FOIA.
25. Notwithstanding the above, section 23(1) CRCA states:

'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.'

26. Therefore, under section 23(1) CRCA information prohibited from disclosure by virtue of section 18(1) CRCA is specifically designated as exempt from disclosure under section 44(1)(a) FOIA if its disclosure would identify the person to whom it relates or would enable the identity of such a person to be deduced.
27. The term "person" includes both natural and legal persons.
28. 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 services.
29. The complainant argues that he has not asked for property addresses or any individual names. In his own words: "The information I requested was in relation to price in general." He also argues that "personal information" can be redacted.
30. The Commissioner understands that the complainant would like to obtain information in the form of comparable properties and sales information used by the public authority to inform the Council Tax Band for his property. Clearly the information in question would include the addresses of comparable properties otherwise that would defeat the purpose of his request.
31. Furthermore, the question with respect to the application of section 23(1) CRCA in this case is not whether personal data³ can be released. It is whether disclosing the information requested by the complainant would enable the identity of a person to be deduced. Although that

³ "personal data" is defined in section 3(2) of the Data Protection Act 2018 - <http://www.legislation.gov.uk/ukpga/2018/12/section/3>

factor is linked to the definition of personal data, additional factors have to been considered further to the processing of personal data which have no bearing on the application of section 23(1) CRCA.

32. The Commissioner therefore finds that the public authority was entitled to rely on section 44(1)(a) FOIA as the basis for not disclosing the withheld information. The exemption is absolute. This means that there is no requirement to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.

Right of appeal

33. 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

34. 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.
35. 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.....

Terna Waya
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