

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 June 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 has requested information relating to the valuation history of a specified address for the period of 1985 to 1995. The Valuation Office Agency ("VOA") confirmed that it held some of the information within the scope of the request. However it refused to disclose it relying on section 44(1)(a) of FOIA.
2. It is the Commissioner's decision that VOA is entitled to rely on section 44(1)(a) of FOIA.
3. The VOA has failed to comply with its duty under section 1(1) of FOIA to issue a refusal notice "promptly and in any event not later than the twentieth working day following the date of receipt." In failing to issue a response to the request within 20 working days, the Commissioner's decision is that, VOA has breached section 10 of the FOIA.
4. The Commissioner does not require VOA to take any further steps.

Request and response

5. On 15 October and 8 November 2021, the complainant wrote to VOA and requested information in the following terms:

15 October 2021:

"Under the Freedom of Information and under the Disclosure of Information Acts we have given you signed official form by the owner of [specified address]. We are only requesting Valuation history of [specified address] for the period 1985 to 1995. Again under the Freedom of Information Act we are legally entitled to this information for the possible review of Council Tax Banding for [specified address]."

8 November 2021:

"Further to your reply of 20-10-21 and with your reference to LC/98802905/285. Under the FOIA I need further clarification and Valuation History for [specified address]."

The present owner has provided you with official authority and also agrees that she paid £55,000 around 1995. As there were two previous owners between 1987 to 1995, there should be Valuation Historical details available under the FOIA and it is solely for possible review of Council Tax Banding.

Please pass this email to the Listing Officer who has already reviewed my property [redacted] and I am not satisfied with his reply of 24-6-21. Once we get appropriate data we would like to take this matter further for formal review."

6. VOA issued its response on 22 November 2021. It confirmed that it held some of the information within the scope of the complainant's request. However it refused to comply with the request on the grounds that section 44(1)(a) of the FOIA states that, information cannot be provided if another Act prevents its disclosure. The VOA relied on section 23(1) of the Commissioners for Revenue and Customs Act (CRCA) 2005 as the Act that prevented the disclosure of the information requested by the complainant.
7. Following an internal review, the VOA wrote to the complainant on 14 December 2021 and upheld its original decision to withhold the information under section 44(1)(a) of FOIA.

Scope of the case

8. The VOA is an Executive Agency of HMRC and collects and holds data relating to individual properties to undertake its functions. 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 Inland Revenue functions transferred to HMRC.
9. The complainant originally contacted the Commissioner on 12 October 2021 to complain about the way his request for information had been handled. The Commissioner wrote to the complainant on 30 October 2021, requesting further information from them and also provided links to decisions he had issued, relating to valuation data.
10. On 22 November 2021, the complainant furnished the Commissioner with a copy of the VOA's initial decision refusing to disclose the information requested under section 44(1) of the FOIA.
11. The Commissioner wrote to the complainant on 23 November 2021 advising that, although he could accept the complainant's case for review, the information requested was exempt under the FOIA and invited the complainant to consider withdrawing their case based on the decision notices he had issued about valuation data.
12. The complainant wrote on 25 November 2021 and requested for a decision notice to be issued by the Commissioner. As the complainant had not raised an internal review request, the VOA informed the Commissioner on 26 November 2021, that it would conduct an internal review and respond to the complainant accordingly.
13. On 14 December 2021, the VOA provided its response to the internal review maintaining its original position that, the information requested is exempt under section 44(1)(a) of FOIA. As the complainant had provided the 'authority to act' form, it also considered the request under the General Data Protection Regulation (GDPR) and Data Protection Act 2018 (DPA).
14. A response which included disclosures was consequently issued to the complainant under GDPR and the DPA 2018 on 14 December 2021.
15. The complainant disagrees with the decision to rely on the exemption at section 44(1)(a). The scope of the Commissioner's investigation is to determine whether VOA is entitled to rely on the exemption at section 44(1)(a) of FOIA to withhold the information.

16. The Commissioner has not referred to any of the complainant's submissions in his analysis further below because he considers that they are not materially relevant to the application of the exemption at section 44(1)(a). The Commissioner will not consider matters relating to VOA's decision under GDPR and DPA 2018 provisions as this does not fall within the scope of the current investigation.

Reasons for decision

Section 44 – prohibitions on disclosure

17. Section 44 of the 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

(2) The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1)."

18. Section 44 of FOIA is an absolute exemption. This means that if information is covered by any of the subsections of section 44 it is exempt from disclosure. It is not subject to a public interest test.
19. 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".

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.”

20. 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, FS50563305 and FS50538771; these are broadly similar requests where the Commissioner has upheld the VOA’s position in respect of section 44(1)(a).
21. The VOA has set out its position with regard to section 44 of the FOIA. It has detailed that the relevant enactment is the CRCA and the relevant section of that Act is section 23(1).
22. The VOA has set out in its response and internal review that the requested information relates to a function of the VOA, namely, the provision of ‘Valuation Lists in relation to Council Tax’ and the valuation of property; 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.
23. The Commissioner notes too that the 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 and the VOA provided a link to this legislation in its initial response.
24. The VOA’s response set out that it is possible that a person’s identity can be deduced from the information when used in combination with publicly available information. The VOA has argued that disclosure of this information is prohibited under section 23(1) of the CRCA and accordingly, section 44(1)(a) of the FOIA is engaged.
25. Therefore, under section 23(1) of CRCA, information prohibited from disclosure by virtue of section 18(1) of 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.
26. In order to clarify further, the VOA has explained to the complainant that the CRCA was amended in 2009 by virtue of section 19(4) of the

Borders Citizenship and Immigration Act 2009 (BCIA). This created section 23(1)(a) and meant that the VOA must disregard any permissive legal rights to disclose any property or person identifying information which exists in considering any request under FOIA.

27. While there are some circumstances set out under section 18(2) and section 18(3) of CRCA, in which this prohibition does not apply, these are not relevant to FOIA as the scope of the prohibition is limited in relation to FOIA disclosures, by section 23 of CRCA.
28. Section 19 of the CRCA, also makes it a criminal offence for any VOA member of staff to disclose any 'person's' information under the FOIA.
29. The Commissioner accepts that disclosing the valuation history would enable the identity of the person(s) to whom they relate, to be deduced when combined with other information from publicly available sources.
30. The Commissioner therefore finds that VOA 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 requested information.

Right of appeal

31. 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

32. 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.
33. 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

Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF