



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 19 October 2006

Public Authority: HM Revenue and Customs

**Address: 100 Parliament Street
London
SW1A 2BQ**

Summary Decision and Action Required

The Commissioner's decision in this matter is that HM Revenue and Customs' Valuation Office Agency (VOA) have dealt with the complainant's request in accordance with Part I of the Act, and there is no action that he requires VOA to take.

- 1. Freedom of Information Act 2000 (the 'Act') – Applications for a Decision and the Duty of the Commissioner**
 - 1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the complainant's request for information made to the public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').
 - 1.2 Where a complainant has made an application for a decision, unless:
 - a complainant has failed to exhaust a local complaints procedure, or
 - the application is frivolous or vexatious, or
 - the application has been subject to undue delay, or
 - the application has been withdrawn or abandoned,the Commissioner is under a duty to make a decision.
 - 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.



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2. The Complaint

2.1 The complainant told the Commissioner that, following an earlier exchange of emails with the Land Registry, he asked the Valuation Office Agency (VOA), on 13 May 2005, to provide information about both the sale price of two London properties (properties A and B) and the dates on which they had been sold, in 1990 and 1992 respectively.

2.2 On 16 May 2005 VOA refused his request and, on 17 May, the complainant asked for an internal review of their decision; he said that there would not be a major security issue in getting a few house prices going back to 1990 and 1992. On 20 May VOA said that they did not hold any record of the sale price for property B in 1992 and apologised for not making that clear earlier.

2.3 On 27 May 2005 VOA reported to the complainant the outcome of their internal review. VOA referred to the Commissioners for the Revenue and Customs Act 2005 (CRCA), the relevant sections of which had replaced parts of the Finance Act 1989. VOA said that CRCA made it an offence for their officials to disclose information about someone's tax affairs without the taxpayer's authority. The prices paid for properties were publicly available from the Land Registry for sales made after 1 April 2000 but not for sales made before that date. Accordingly, VOA had concluded that the exemption at section 44 of the Act applied and that disclosure was prohibited under the Taxes Management Act 1970.

2.4 VOA offered to try and contact the taxpayer for property A to see if they would agree to VOA releasing the information. The complainant agreed to this. There was subsequent correspondence between him and VOA, as well as between VOA and representatives of the taxpayer, between 15 June and 28 September 2005.

2.5 VOA told the complainant, on 29 September 2005, that the taxpayer of property A was unable to confirm or deny a sale in 1992. The taxpayer had also said that, even if they could confirm a sale, they were not in a position to say immediately if they would give authority for its disclosure. VOA said that, without that authority, there was nothing more they could do. On 3 October the complainant appealed to the Commissioner.

3. Relevant Statutory Obligations

Freedom of Information Act 2000

Section 1(1) provides that –

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and



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(b) if that is the case, to have that information communicated to him.”

Section 40 (Personal information) provides that -

“(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.

(3) The first condition is-

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

- (i) any of the data protection principles, or
- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and ... “

Section 44. (Prohibitions on disclosure) provides 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).”

Commissioners for the Revenue and Customs Act 2005 (CRCA)

Section 18 (Confidentiality) provides that -

“(1) 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 22 (Data protection, &c) provides that -



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“(1) A person commits an offence if he contravenes section 18(1) ... by disclosing revenue and customs information relating to a person whose identity-
(a) is specified in the disclosure, or
(b) can be deduced from it.”

Section 23 (Freedom of information) provides that -

“(1) 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 (c. 36) (prohibitions on disclosure) 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.”

4. Review of the case

4.1 On 28 February 2006 the Commissioner's staff asked VOA for their comments on the matter. On 6 March VOA responded, providing background papers and the information they were withholding. VOA provided further commentary and legal argument on 31 March and 28 April. Further exchanges of correspondence continued on legal issues until 9 August.

5. The Commissioner's decision

5.1 The Commissioner's decision in this matter is that the public authority have dealt with the complainant's request in accordance with the requirements of Part I of the Act.

The public authority's view

5.2 VOA relied on CRCA section 18(1). This provides that officials may not disclose information held in connection with a function of the Revenue and Customs (which includes the property sales data that VOA collect). CRCA section 23 expressly disappplies section 44 of the Act save for information the disclosure of which would either specify the identity of the person to whom the information relates or enable their identity to be deduced.

5.3 VOA said that the complainant had requested information about the price paid for property A. VOA believed that 'how much was paid' was not exempt information but that 'who paid that much' was exempt. VOA added that many people already knew, or could ascertain with a little research, who had bought a particular property, and when. Thus, in VOA's view, revealing the price and date of a sale would enable



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someone to deduce the identity of the purchaser. Accordingly, VOA considered that the combined operation of CRCA sections 18 and 23 and section 44 of the Act meant that the information requested could not be disclosed.

- 5.4 VOA confirmed that they had undertaken a significant amount of work to try to seek the consent of the persons concerned. They had either not been able to contact the relevant individuals or the request had been refused.

The Commissioner's analysis

- 5.5 Sales records of properties have been in the public domain since April 2000. The Land Registry can make available details of sales transactions on request, at a charge, via their website. Information about sales before that date is held by VOA but may not be disclosed by them unless the parties to the sale agree.
- 5.6 The Commissioner welcomed VOA's efforts to contact the relevant taxpayers in order to seek their agreement to releasing the details sought by the complainant.
- 5.7 CRCA section 18 sets out the basic rule regarding disclosure of information by Revenue and Customs officials. It provides that officials must not disclose information held in connection with their official duties, subject to certain exceptions which do not apply here, and subject to any other enactment which permits disclosure.
- 5.8 CRCA section 23 provides that section 44 of the Act is only engaged if disclosure "would specify the identity of the person to whom the information relates, or would enable the identity of such a person to be deduced". VOA argue that section 44 of the Act is engaged on the facts of this case on the basis that release of the requested information; i.e. the price of a property, would indirectly reveal who paid what for the property (on the premise that, since April 2000, it has been possible to obtain information about property ownership and sales data from the Land Registry). However the Commissioner does not accept that there is of necessity a direct link between these pieces of information, i.e. he considers that the release of the price paid for the property does not specify the identity of the person to whom the information relates or necessarily enable that person's identity to be deduced. The decision of the Commissioner is therefore that the VOA were not correct in relying on section 44 as a basis for non-disclosure of the information.
- 5.9 The Commissioner is, however, satisfied that section 40 (3) (a) of the Act is engaged in that the information as to the price of a property when linked to an identifiable individual (the identity of whom it would be possible for the complainant to ascertain from the Land Registry in the great majority of cases) amounts to personal data. The Data Protection Act 1998 is specifically cited at CRCA section 22. That section provides that the VOA is not authorised to disclose information which would result in the contravention of the Data Protection Act 1998.



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- 5.10 Although VOA did not seek to rely on the exemption at s40 (3) (a) in their correspondence with the complainant or with this office, the Commissioner is satisfied that section 40(3)(a)(i) of the Act is engaged and that the disclosure of the requested information would breach the First Data Protection Principle. The Commissioner is satisfied that VOA made attempts to seek the consent of the taxpayers to the disclosure but that consent to disclose was refused.
- 5.11 Without the consent of the taxpayers the Commissioner is satisfied that there is no other basis for VOA to make a disclosure under Schedule 2 of the Data Protection Act 1998 and that the disclosure would also be unfair. Whilst parties to present day conveyancing transactions know that information relating to property prices will enter the public domain this was not the case in the early 1990s. It follows that it would not then have been the expectation of the parties that such information would become publicly available. Moreover, and significantly, the information would not then have been readily and easily accessible elsewhere.

6. Action Required

- 6.1 The Commissioner does not require VOA to take any action.

7. Right of Appeal

- 7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

- 7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 19th day of October 2006



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Signed

Graham Smith
Deputy Commissioner

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