

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 23 November 2011

**Public Authority:** Valuation Office Agency  
**Address:** Chief Executive's Office  
Wingate House  
93-107 Shaftesbury Avenue  
London  
W1D 5BU

#### **Decision (including any steps ordered)**

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1. The complainant requested the 'original list' that was considered when assessing the council tax banding of his street. The 'original list' was a document that was provided around 1993 by the Valuation Office Agency ('VOA') to each local authority to enable them to place a council tax banding on each property in their area.
2. The VOA replied that it no longer held the 'original list' but was able to recreate the information that was on it by interrogating its computer database. It explained that his local authority may also hold the original list and advised the complainant to ask for it. The complainant did not believe that the VOA did not hold the recorded information that he requested.
3. The Commissioner has considered this case and concludes that, on the balance of probabilities, the VOA did not hold the 'original list' and had complied with its obligations under FOIA. It also provided adequate advice and assistance. He requires no remedial steps to be taken.

#### **Request and response**

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4. The Commissioner notes that under FOIA the Valuation Office Agency (VOA) is not a public authority itself, but is actually an executive agency of HM Revenue and Customs (HMRC) which is responsible for the VOA. Therefore, the public authority in this case is actually the HMRC not the

VOA. However, for the sake of clarity, this decision notice refers to the VOA as if it were the public authority.

5. There have been a large number of previous requests that focus on the banding of the complainant's house and the reasons for it.
6. On 21 April 2011 the complainant requested the following from the VOA [in the context of the dispute over the banding of his house – the Commissioner has redacted the location information because it would identify the complainant]:

*'a copy of the original list for [road redacted] [postcode redacted]'*

7. For the sake of clarity, it should be noted that the 'original list' refers to a document that was provided in 1993 by the VOA to each local authority to enable them to place a council tax banding on each property in their area. This was produced from the local authority providing it with a list of addresses and it considering the information it had about the sale of those properties at the valuation dated 1 April 1991.
8. On 18 May 2011 the VOA issued its response. It confirmed that it no longer holds a copy of the original council tax list that came into force on 1 April 1993. It provided a print out of the information that would have been on that list from its database and advised the complainant that his local Council may still hold this information.
9. As noted above, the request was one of many and the Commissioner used his discretion to consider it without a further internal review.

### **Scope of the case**

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10. On 22 August 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
11. On 27 October 2011 he confirmed that the only issue he wanted the Commissioner to look at was whether the VOA held the original list and the Commissioner agreed to do so.

### **Reasons for decision**

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12. Section 1(1)(a) states 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,*

*(b) if that is the case, to have that information communicated to him"*

13. It should be noted at this stage that FOIA only offers the complainant the right to the information and no right to a specific document.
14. The VOA provided the complainant with what it considered from experience would be contained in the 'original list' and therefore it could be argued that the VOA fully complied with the request in doing so.
15. However, the complainant considers that the original list may contain different information than what was subsequently generated by VOA, and the Commissioner considers that it is correct to consider whether the VOA still holds all the information on the original list (in its original form).
16. In determining whether the VOA does hold the requested information, the Commissioner considers the standard of proof to apply is the civil standard of the balance of probabilities.
17. In deciding where the balance lies in cases such as this one, where the complainant has asked him to consider the public authority's response with regard to whether or not the requested information is held, the Commissioner may look at:
  - explanations offered as to why the information is not held; and
  - the scope, quality, thoroughness and results of any searches undertaken by the VOA.
18. The VOA explained that it was important to consider the nature of the 'original list'. The 'original list' dates back to the time when Council tax was introduced and the work that was done between 1991 and 1993.
19. The purpose of the 'original list' was for the VOA to use its knowledge to inform each and every council what tax band to place on each property in the UK for when Council tax came into force in 1993.
20. The VOA explained that after 1993 it provided each Council with an updated complete list annually outlining the current banding for every property. As far as the VOA and the Council are concerned the old list then becomes obsolete because the new list reflects the current position. The list had therefore gone through up to 18 iterations between the 1993 and the date of the request. Each iteration made the original list less and less relevant.

21. The VOA explained that it therefore had no business or legal reason to keep the obsolete information and did not do so. It confirmed that it was likely to have destroyed the information, although it had no record of doing so.
22. The VOA also stated that should it require the information on the original list for a miscellaneous reason that it had not anticipated, it was able to use its database to regenerate what was on that list. As noted above, it has provided the complainant with the regenerated list. The Commissioner considers that the ability to regenerate the list offers the VOA further support about why it had no reason to keep the original.
23. The original council banding exercise was informed from information the VOA held on the prices properties obtained and survey information. The survey information was held in paper copies, but these were all destroyed last year. The VOA decided that it was more appropriate to capture the relevant information on its database. There is therefore no possibility that the original list would have been kept in the paper files as they do not exist.
24. The VOA also explained that it has carefully interrogated its records of the complainant's complaint to ensure that it had not kept a copy of the original list within it. It also confirmed that the complainant was the first occupier to challenge the band of his property and there were therefore no previous complaints to consider.
25. The complainant has explained that he would expect that the information continued to be held because it informed what constituted the original Council tax band. The Commissioner considers that this argument does not reflect what the VOA holds the information for.
26. The Commissioner considers that the VOA has demonstrated that on the balance of probabilities that it does not hold the information contained on the original list. He therefore upholds the VOA's position that it does not hold the information.

### **Section 16(1)**

27. Section 16(1) imposes an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the Section 45 Code of Practice in relation to the provision of advice and assistance.
28. The VOA provided the complainant with two sorts of assistance in this case. It:

1. tried to regenerate the requested information using its database;  
and
  2. explained that the complainant should consider approaching the other side (the Council) as they may hold the requested recorded information.
29. The complainant did approach the Council, but wasn't successful.
30. The Commissioner considers that the VOA has done everything possible in this case to enable the complainant to receive the requested information. He considers that the VOA has offered reasonable advice and assistance and that it has complied with its obligations under section 16(1).
31. He has therefore found that the VOA complied with all of its obligations under FOIA and requires no further information to be provided to the complainant.

## **Right of appeal**

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32. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

33. 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.
34. 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** .....

**Pamela Clements**  
**Group Manager – Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
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