

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

### **Decision notice**

**Date:** 12 December 2012

**Public Authority:** Valuation Office Agency<sup>1</sup> (an executive agency of HMRC)

**Address:** Wingate House  
93 – 107 Shaftsbury Avenue  
London  
W1D 5BU

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

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1. The complainant has requested information relating to council tax banding for a particular area. The VOA provided some information but has claimed a reliance on section 12 (cost of compliance) of FOIA for the remaining requests. The Commissioner's decision is that the VOA was entitled to refuse to comply with the complainant's requests on the basis of section 12. He does not therefore require the VOA to take any steps to ensure compliance with the legislation.

#### **Request and response**

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2. On 19 March 2012 the complainant wrote to the VOA and requested information in the following terms:

- 1. Details of the process followed when allocating council tax bands to houses built on the High Beech Estate in St Leonards-in-Sea. These houses were built about 12 years ago, several years after*

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<sup>1</sup> The Valuation Office Agency (VOA) is not a public authority itself. It is an executive agency of HM Revenue and Customs (HMRC) which is responsible for VOA. Therefore, the public authority is actually HMRC and not the VOA. However, for the sake of clarity, this decision notice refers to the VOA as if it were the public authority.

*the initial allocation of council tax bands. These houses fall into post code area: TN37 7TN, TN37 7TF, TN37 7TH, TN37 7TJ.*

- 2. Details of any properties in Band E and Band F within Hastings and St Leonards-on-Sea which have been allocated council tax bands in 1993 based on values at 1991 which were used for comparison purposes in establishing the council tax bands for postcodes listed at 1 above.*
  - 3. Copies of any internal reports which made recommendations for banding of properties in post codes listed at 1 above.*
  - 4. Details of any professional valuers, either within VOA or external companies, who were involved in the High Beech estate valuation process.*
3. The VOA responded on 4 April 2012, addressing each of the requests.
  4. In relation to request 1, the VOA pointed the complainant to manuals and guidelines already in the public domain that demonstrated how it banded dwellings for council tax purposes.
  5. Turning to requests 2 and 3, the VOA advised that the exclusion to compliance provided by section 12 was engaged as it considered it was unable to comply with the requests within the appropriate cost threshold. The VOA suggested to the complainant that he may wish to narrow the scope of his requests in order to bring them within the cost limit. However, it stated that any information held would likely be exempt from disclosure under section 44(1) (prohibition on disclosure) of FOIA. The VOA also explained that certain paper records would be destroyed 18 months after an initial decision on council tax banding had been made.
  6. Finally, in connection with request 4, the VOA stated that the determination of the valuation band is carried out by a listing officer (LO); identifying the current and former LO for Hastings' Council Tax Valuation List.
  7. The complainant wrote to the VOA again on 25 April 2012 challenging its position. In terms of request 1, the complainant advised that he was seeking information detailing the process which was followed and not the process that *should* have been followed. The complainant also went on to question the VOA's application of section 12 to other information he had requested.
  8. The VOA subsequently carried out an internal review, the outcome of which was provided to the complainant on 23 May 2012. To begin with, the VOA noted that its original interpretation of request 1 differed from

that of the complainant. On the basis of the complainant's clarification, the VOA now claimed that the time needed to comply with the combination of requests 1 – 3 would exceed the appropriate limit for the purposes of section 12. Elsewhere, the VOA was satisfied that it had met its duty under section 16 of FOIA to provide advice and assistance to an applicant.

## Scope of the case

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9. The complainant contacted the Commissioner on 31 May 2012 to complain about the way his requests for information had been handled. In particular, he has asked the Commissioner to consider the VOA's application of section 12 to requests 1 – 3.
10. The Commissioner has not therefore had to address as part of this notice any other issues relating to the VOA's handling of the requests, including its response to request 4.

## Reasons for decision

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### Section 12 – cost of compliance

11. Section 12 of FOIA states –

*(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.*

*(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.*

12. The appropriate limit referred to by section 12 is specified in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations"). Section 4 of the Regulations sets out the terms upon which an estimate can be made.

*(3) In a case in which regulation has effect, a public authority may, for the purposes of its estimate, take account only the costs it reasonably expects to incur in relation to the request in –*

- (a) determining whether it holds the information,*

- (b) *locating the information, or a document which may contain the information,*
- (c) *retrieving the information, or a document which may contain the information, and*
- (d) *extracting the information from a document containing it.*

*(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs will be estimated at a rate of £25 per hour.*

13. The Regulations state that the appropriate cost limit is £600 for central government, legislative bodies and the armed forces and £450 for all other public authorities. The VOA has explained that the appropriate limit applicable to it is £600, which is equivalent to 24 hours work.
14. Section 12(4) of FOIA provides that in certain cases a public authority can aggregate the cost of complying with these requests. As part of the statutory instrument associated with section 12(1) of FOIA, section 5 of the Regulations sets out the circumstances in which it may be appropriate to aggregate requests. This states that two or more requests to one public authority can be aggregated for the purposes of calculating costs if they are –
  - by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
  - for the same or similar information to any extent; and
  - the subsequent request is received by the public authority within 60 working days of the previous request.

#### *The VOA's position*

15. The Commissioner notes that there was some initial confusion about whether section 12(1) or 12(2) was being argued. However, the VOA has clarified that the issue here is not whether it holds any information covered by the three requests – it would – but the difficulty of ascertaining the extent of this information. It has therefore followed that the VOA has specified 12(1) as the relevant ground for refusing the requests.
16. In considering whether section 12 applies, the VOA has indicated that it has chosen to aggregate the requests under section 12(4) of FOIA for costs purposes. In practice, this means that for section 12(1) to be

engaged the VOA would only have to demonstrate that the cost of compliance with all of the requests would exceed the appropriate limit and not each of the requests when considered in isolation. In this case, the VOA has argued that is entitled to aggregate the requests because each of the conditions set out at section 5 of the Regulations are satisfied; that is, the requests were made by the same applicant for similar information within 60 consecutive working days of each other.

17. The VOA has gone on to provide the Commissioner with the explanation outlined below, which describes how it would locate and retrieve the requested information.
18. It has been established that there are 78 council tax entries linked to the four postcodes cited in the request. The starting point is therefore to identify and view each individual property and case record linked to a council tax assessment on the VOA's operational database. This database is known as the Central Data Base.
19. The system is structured from a case or individual property perspective. Access is via separate formats, with search parameters for 'reports', 'cases' and the banding information linked to an 'address'. As well as checking these sources for information, the VOA has explained that it would have to review comments made in 'free boxes' and refer to the date of any changes made to an entry as this can effect where any further records are stored.
20. The next stage would be to interrogate the categories of records described above with the aim of extracting anything which is captured by the requests. This, according to the VOA, may require some skill and judgement. As part of this process, further searches would have to be made of electronic files linked to a particular case reference. If there are no papers held electronically, a search may have to be conducted for any paper records linked to that case reference. Next, an examination of a taxpayer's property survey records would take place in case anything relevant was caught within the scope of these records.
21. A corresponding search would also take place for case records which are held locally. Any records dating between 1993 and 2000 are out-housed in batches and stored in date periods by the local authority. Once a record has been located, which may not necessarily be an easy or quick process, the VOA would then have to investigate this information for pertinent information.
22. In addition to the above steps, the VOA would have to take further measures to extract information relating to requests 2 and 3. For request 2, the VOA would check that any property used for comparison purposes was in Hastings' Council Tax List between 1 April 1993 and 31

December 1993. For request 3, the VOA has noted that internal reports may relate to broader issues and, as such, a wider search will need to take place for this information.

23. The VOA has concluded that a conservative estimate indicates that the time for compliance will exceed 27 hours, with the likelihood that the time required will actually be far higher.

*The Commissioner's position*

24. In considering the question of whether section 12 has been correctly applied, the Commissioner has adopted the approach followed by the Information Tribunal in *Alasdair Roberts v the Information Commissioner* (EA/2008/0050)<sup>2</sup>. The Tribunal proposed that the following points should be considered when looking at whether a public authority's estimate was reasonable in the circumstances –

- A public authority has only to provide an estimate rather than a precise calculation.
- The cost estimate must be reasonable and only based on those activities described at section 4(3) of the Regulations.
- Time spent on considering exemptions or redactions cannot be taken into account.
- Estimates cannot factor in the costs relating to data validation or communication.
- The determination of a reasonable cost estimate can only be considered on a case-by-case basis.
- Any evidence should be sensible, realistic and supported by cogent evidence.

25. The Commissioner has therefore analysed the strength of the VOA's arguments using the above guiding principles. Having done so, he takes the view that the estimate provided by the VOA is a sensible one and demonstrates the cost of compliance would exceed the cost threshold of

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<sup>2</sup>[http://www.informationtribunal.gov.uk/DBFiles/Decision/i275/Roberts%20v%20IC%20\(EA-2008-0050\)%20Decision%2004-12-08.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i275/Roberts%20v%20IC%20(EA-2008-0050)%20Decision%2004-12-08.pdf)

£600. Importantly, there are no evident inconsistencies which could give cause for the Commissioner to doubt the accuracy of the estimate.

26. In coming to this decision, the Commissioner has allowed that the VOA would be entitled to aggregate the requests under section 12(4) of FOIA. This is because the requests satisfy each of the previously listed conditions set out at section 5 of the Regulations. There can be no dispute in this case that the requests were made by the same person within 60 working days of each other. The Commissioner is equally satisfied that the requests are for similar information, that is information relating to council tax banding at a specific area.
27. Looking at the estimate itself, the Commissioner has reminded himself that a public authority is not required to produce a precise calculation but only an estimate. Nevertheless, an estimate should be realistic. In many cases then, good practice suggests that a public authority should not base its estimate on general assumptions but must consider the particular circumstances of the case and the specific tasks required to recover information.
28. In this case the Commissioner has been informed by the VOA that its estimate has been based as far as possible on timings derived from a sampling exercise. This, to the Commissioner's mind, significantly strengthens the claim that the estimate is supported by cogent evidence. While a public authority does not have to consider every possible means of obtaining information, the Commissioner has also been reassured to some degree by the VOA's statement that, to the best of its knowledge, the estimate refers to the quickest method of gathering the requested information. Similarly, it is accepted that the estimate is only made up of the activities listed at section 4(3) of the Regulations.
29. Having weighed up the submissions provided by the VOA, the Commissioner has found it reasonable in all the circumstances to conclude that section 12(1) is engaged. In reaching this view, the Commissioner has acknowledged that the estimate shows the cost of compliance with the three requests to exceed the appropriate limit by at least 10% of the cost threshold and has the potential to go significantly beyond this threshold. Although the Commissioner appreciates that an estimate may not, by its very nature, be entirely accurate, he is of the opinion that the estimate sufficiently exceeded the threshold in this case to find that it was appropriate for the VOA to confidently rely on section 12(1) of FOIA.
30. In making the finding that section 12(1) is engaged, the Commissioner has also reflected on the arguments advanced by the complainant against the application of section 12. These are as follows –





## Right of appeal

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34. 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)

35. 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.
36. 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 .....**

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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