

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 May 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 submitted a request to the Valuation Office Agency (VOA) requesting information relating to the valuation of their property in determining it's Council tax band.
2. The Commissioner's decision is that VOA correctly applied section 44(1)(a) of FOIA to the request.
3. The Commissioner does not require any further steps.

Nomenclature

4. VOA is not listed as a separate public authority in Schedule 1 of FOIA because it is an Executive Agency of HM Revenue & Customs (HMRC). However, as it has its own FOI unit and the complainant has corresponded with VOA during the course of the request and complaint, the Commissioner will refer to VOA for the purposes of this notice – although the public authority is ultimately HMRC.

Request and response

5. On 15 April 2021, the complainant wrote to the public authority and requested information in the following terms:

“I would like a copy of, or a link to all of the reference(s) that you quote - but are refusing to cite - which form the basis for your statement that a one-bedroom bungalow in [address redacted] was correctly valued on 1st April 1991 at £55,000, in order to determine the band it which it would be placed for the purposes of calculating council tax...”
6. After receiving clarification regarding the address for which the request related to, VOA responded on 26 May 2021. It stated that it did hold some of the information in scope of the request but refused to disclose it, citing section 44(1)(a) of FOIA.
7. Following an internal review VOA wrote to the complainant on 24 June 2021 and stated that it was upholding its original decision.

Scope of the case

8. On 25 August 2021, the complainant contacted the Commissioner to complain about the way their request for information had been handled.
9. The complainant stated that the VOA had evidence which proved that “my building had been assessed and correctly banded, but were not able to produce them as this would infringe the Data Protection Act.”
10. On 12 May 2022, the Commissioner wrote to the complaint with his preliminary view that VOA had correctly cited section 44(1)(a). The complainant responded and stated:

“Buildings in this area change ownership frequently, as people die, move away etc, so I’m not sure that their claim that letting me see bills of sale or other evidence with-at my suggestion-redacted identifying information, constitutes an infringement of the GDPR (sic) UK/DPA.”
11. The Commissioner considers the scope of this case to be to determine if the public authority has correctly applied section 44(1)(a) to the request.

Reasons for decision

Section 44-prohibitions on disclosure

12. Section 44 of 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.

Is disclosure of the requested information prohibited by or under any enactment

13. Information is exempt under section 44(1)(a) if its disclosure would breach any of the following:

- i. primary legislation (an Act of Parliament); or
- ii. secondary legislation (a Statutory Instrument).

14. The relevant legislation in this case is the Commissioners for Revenue and Customs Act 2005 (CRCA).¹

15. Section 18(1) of the 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 18(2)(a)(i) of the CRCA states:

“But subsection (1) does not apply to a disclosure which is made for the purposes of a function of the Revenue and Customs....”

¹ [Commissioners for Revenue and Customs Act 2005 \(legislation.gov.uk\)](http://legislation.gov.uk)

Section 23 of the 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.”

16. The VOA's position is summarised below.
17. The VOA is an executive agency of HM Revenue and Customs and section 10 of the CRCA sets out the functions of the 'Valuation Office' (i.e. the public authority). Furthermore, section 7 of Schedule 1 of the CRCA identifies the provision of valuation lists in relation to Council Tax and valuation of property as HMRC functions. VOA's staff are officers of HMRC and are prohibited from disclosing information relating to the public authority's functions under section 18(1) of the CRCA.
18. The withheld information is held in connection with specific property valuations which is a function of the public authority.
19. The requested information is therefore prohibited from disclosure under section 18(1) of the 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 FOIA by virtue of section 23(1) of the 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.

21. VOA set out, in its response to the complainant, that in order to determine whether information is captured by section 23(1) there are two relevant questions:
- Would the requested information be held in connection with a function of HMRC?; and
 - Would the information relate to a "person" who could be identified from the information requested
22. Furthermore, VOA explained the definition of the term "person," stating 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 VOA provided a link to this legislation in its initial response.

The Commissioner's view

23. The Commissioner considers that the initial response adequately explains the interaction between the CRCA and FOIA and that it is clear that VOA cannot, under FOIA, disclose any information which would identify a person or enable identification of a person.
24. 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 sources.
25. The Commissioner understands that the complainant would like to obtain information in the form of comparable properties and sales information used by VOA to inform the Council Tax Band for their property and that they are frustrated in that it appears that similar information is already available via other online sources.
26. In response to this, the Commissioner notes that, VOA explained that information similar in type may be published by HM Land Registry, however they are "not subject to the same confidentiality provisions as those placed on HMRC by the CRCA."
27. 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 of FOIA. It should also be noted that section 19 of the CRCA makes it a criminal offence for any member of staff to disclose any person's identifying information under FOIA.

28. In conclusion, the Commissioner's decision is that VOA has correctly applied section 44(1)(a) to withhold all the requested information in this case.

Right of appeal

29. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.
31. 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