

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **26 September 2023**

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 regarding public houses within specified postcodes. The Valuation Office Agency relies on section 44 to withhold requested information.
2. The Commissioner's decision is that the Valuation Office Agency was entitled to rely on section 44 to withhold requested information.
3. The Commissioner does not require the public authority to take any steps.

Nomenclature

4. The Valuation Office Agency (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 the VOA during the course of the request and complaint, the Commissioner will refer to the VOA for the

purposes of this notice – although the public authority is ultimately HMRC.

Request and response

5. On 08 March 2023, the complainant wrote to the Valuation Office Agency and requested information by saying as follows:

“We have been told the bands and categories for a small number of pubs in the PL5 and PL6 postcode area, this information was not available to us previously but was revealed to us as the result of a Challenge to the RV of a public house for which we act as an agent. The pub we act for is being compared to other pubs but without access to the bands and categories of other pubs cannot make fair comparisons. The types of premises we are interested in fall under the VOA SCAT codes 226 and 227.

The available Categories for wet sales are. Category 1 – Primary Licensed Trade Areas Category 2 – Destination Houses Category 3 – Community & Rural Houses Food sales will fall within either Band A (Multiple outlet standard premium priced menu operations with large volumes and not requiring specialist personnel) or Band B. Under an FOI we therefore request confirmation of the names of all pubs in the PL5 and PL6 postcode areas and their respective Categories and Bands for each site.”

6. The Valuation Office Agency responded on 4 April 2023. It provided some information within the scope of the request but refused to provide the remainder. It cited the following exemption as its basis for doing so.
- Section 44(1)(a) of the FOIA read together with section 23(1) of the Commissioners for Revenue and Customs Act (CRCA) 2005.
7. The complainant requested an internal review on 14 April 2023. The Valuation Office Agency sent him the outcome of its internal review on 11 May 2023. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner 11 May 2023 to complain about the way his request for information had been handled.

Reasons for decision

9. Section 44(1) of the FOIA provides an exemption from disclosure for any information whose disclosure would either be otherwise prohibited by another piece of legislation or which would constitute a contempt of court.
10. Section 23(1) of Commissioners for Revenue and Customs Act 2005 provides,
 - 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.

Valuation Office Agency's submissions

11. Section 44(1)(a) of the FOIA states it (i.e. VOA) cannot provide the information because another Act prevents disclosure. Section 23(1) of the Commissioners for Revenue and Customs Act (CRCA) 2005 prevents disclosure in this case.
12. Information is covered by section 23(1) CRCA when:
 - It is held for a function of HM Revenue and Customs (HMRC);
and
 - It relates to a 'person' who is identified, or who could be identified from the information. Held for a function of HMRC – The VOA is an Executive Agency of HMRC.
13. Its functions are identified in sections 7 and 10 of CRCA. The withheld information is held for Rating List purposes, one of the functions of the VOA.
14. The withheld information relates to property, where a person could be identified from that information. The term 'person' applies not just to individuals, but to any legal entity such as a company or partnership. The withheld information is about a small number of properties identified

by their names, categories, and postcode areas. There are many ways of linking this information to people by cross referencing with other information available to the public.

Complainant's Submissions

15. The information sought is a hypothetical assessment of trade, the VOA state it (the hypothetical assessment) would identify actual business trade and was therefore confidential.
16. The statutory duty of the VOA is to carry out a hypothetical assessment of trade in each public house in England and Wales so this information could never be confidential unless they have not been doing their job and have failed to carry out hypothetical assessments as required under statute.

The Commissioner's Reasonings

17. The Commissioner has viewed and considered a copy of the withheld information. It consists of names of public houses in the PL5 and PL6 postcode areas and their respective wet/dry banding.
18. The withheld information is not hypothetical information. It is the names of actual businesses in the PL5 and PL6 postcode areas and their respective categories and bands.
19. From its submission to him, and its correspondence with the complainant, the Commissioner is satisfied that the requested information is prohibited from disclosure under section 23(1) of the CRCA. This is because the VOA holds the information in order to fulfil one of its functions and because disclosing it would enable the identity of a person or persons to be deduced.
20. His decision is therefore that the information is consequently exempt from disclosure under section 44(1)(a) of the FOIA. In reaching this conclusion, he has also noted his decisions in similar cases, such as FS50538771, FS50427243 and FS50404281 .

Right of appeal

21. 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

22. 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.
23. 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

Gerrard Tracey
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SK9 5AF