

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 7 July 2011

Public Authority: The Valuation Office Agency
Address: 3rd Floor
Wingate House
93-107 Shaftesbury Avenue
London
W1D 5BU

Summary

The complainant asked the Valuation Office Agency (the "public authority") to provide information relating to a specific property which was owned by her. The public authority provided some information, outside the terms of the Freedom of Information Act (the "Act"), but withheld the remainder using the exemptions in sections 44(1) (prohibitions on disclosure) and 43(2) (commercial interests). The Commissioner's decision is that the exemption in section 44(1) is engaged. The public authority's handling of the request also resulted in breaches of certain procedural requirements of the Act as identified in this Notice.

The Commissioner's role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. The public authority has the following information on its website¹:

¹ <http://www.voa.gov.uk/publications/access-to-information/freedom-of-information.htm>

"Information we will not disclose under Freedom of Information (FOI) Act 2000

Release of information under FOI is release to the world. Public authorities are not allowed to take account of the identity of the person making the request, or their motives, when deciding what information will be disclosed in response to an FOI request.

*To carry out its functions the Valuation Office Agency (as part of HM Revenue and Customs HMRC) holds confidential customer information including information on properties. When HMRC was created in April 2005, Parliament decided that any information held for an HMRC function that identifies a 'person', (including legal entities such as limited companies), or which **would enable their identity to be deduced**, is exempt from disclosure under the FOI regime. The provision is set out in Section 23 of the Commissioners for Revenue and Customs Act (2005) and applies even if the requestor is an individual asking for information we hold about them, or a director asking for our information about their company.*

District Valuer Services (DVS) is the commercial property services arm of the Valuation Office Agency (VOA), providing professional property advice right across the public sector, including private and third sector clients involved in delivering public services and functions of a public nature. In line with the Information Commissioner's guidance the Agency will always consult with its client before considering whether it is in a position to release any information requested. It may be more appropriate to make a request direct to the respective client, rather than the Agency, when seeking information.

All other requests for confidential information held by the Agency should be made to the Agency, via Access to Information, we will consider whether we are able to release any information on a discretionary basis, under our normal business as usual arrangements. For example, outside the terms of FOI, we will supply information we hold about an individual, under the Data Protection Act, or to a taxpayer provided they can provide verifiable proof that they are the taxpayer at the time of the request".

3. The public authority has also provided the following background information to the Commissioner:

"Medway Council (the client) requested the Commercial Services Business stream of the Valuation Office Agency (VOA), which is known as the DVS Property Specialists (DVS) to carry out two tax evaluations of [the complainant]'s former property [address removed] so that they could deal with a complaint which [the complainant] had made to the Local Government Ombudsman (LGO).

[The complainant] was seeking compensation because, in her opinion, the property's value had been negatively affected by the adjacent development of flats. Her initial objections to the development had been considered by the Council but a second application had been made proposing changes to the planned development. The development went ahead as per the second application without [the complainant]'s objections being considered. Medway intended to use the valuations to determine the diminution in value of the property as a result of the development being built in line with the second rather than the first application and then calculate an appropriate amount of compensation to pay [the complainant].

Medway Council were our client in this case and gave their permission for the VOA / DVS to release the information held on our files even though the case was closed.

Outside of FOIA and the DPA [the complainant] is also pursuing her concerns under our Code of Practice (COP) on Complaints as set out in the leaflet, "Putting things right for you". At the time of the internal review the original case papers are / were held by the Adjudicator as the complaint had been escalated to her".

The request

4. On 4 January 2010 the complainant made the following information request:

"...I request a copy of the entire file regarding [address removed]".

5. On 19 January 2010 the public authority wrote to the complainant. In line with the guidance on its website (see 'Background' information above) it advised her that it was seeking third party consent prior to any release. No reference was made to the Act.

6. On 11 February 2010 the public authority sent a formal response under the Act. It advised the complainant that the information was exempt from disclosure by virtue of section 44(1) of the Act and explained how the statutory bar applied to her request. It did go on to provide her with some information, but clarified that this was given to her outside the terms of the Act.
7. On 19 October 2010 the complainant requested an internal review. Within this correspondence she clarified:

"I formally request an internal review regarding my previous request for the entire file".
8. She also asked to be provided with any further information held since the date of her original request and added:

"I request a full inventory of all information provided".
9. On 20 December 2010 the public authority sent out its response. It apologised for the delay, explaining that this was partly because the information had been held by a different party investigating a complaint made by the complainant. It upheld the citing of section 44(1) and also added section 43(2) in respect of some of the information.
10. Within its internal review, the public authority made reference to the additional requests, as cited above, and it also made further disclosures to the complainant - with the consent of its client - outside the terms of the Act. It explained to the complainant that these disclosures had been made with regard to her 'subject access' rights under section 7 of the Data Protection Act (the "DPA").

The investigation

Scope of the case

11. On 4 February 2011 the Commissioner received a complaint. The complainant specifically asked the Commissioner to consider the following point:
 - the withholding of the requested information.
12. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

13. On 17 February 2011 the Commissioner commenced his investigation and raised queries with the public authority.
14. On 15 March 2011 the Commissioner wrote to the complainant to advise that he had commenced his enquiries.
15. On 28 March 2011 the public authority sent a response to the Commissioner.

Findings of fact

16. The public authority has relied on the Commissioners for Revenue and Customs Act 2005² (the "CRCA") to justify non-disclosure. It has clarified that its own role is determined by section 10 of the CRCA and it is relying on sections 18(1) and 23(1) of the CRCA.
17. In its refusal notice it explained to the complainant:

"Section 18(1) of the [CRCA] provides that 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. The information you are seeking, if held, would be held in connection with our function.

Section 23(1) CRCA further provides that where information falling in section 18(1) relates to a 'person'; who is identified or who could be identified the exemption in section 44(1)(a) FOIA applies. 'Person' includes both living persons and legal entities such as companies, trusts and charities (see paragraph 110 of the explanatory notes to the CRCA).

Therefore, to engage the section 44 FOIA exemption we consider 'Is the information held by us for one of our functions?' and 'Does it relate to an identifiable person?' if the answer to both the questions is 'yes' the information is exempt from the right to information under FOIA. This applies no matter whether the applicant is a third party, the individual/organisation or someone acting with the individual's/organisation's permission."

² <http://www.legislation.gov.uk/ukpga/2005/11/contents>

Analysis

Exemptions

Section 44 – prohibitions on disclosure

18. The public authority has cited the exemption provided by section 44(1)(a). This provides an exemption for information the disclosure of which is prohibited by, or under, any enactment aside from the Act. The statutory prohibition that the public authority believes applies here is provided by section 18(1) of the Commissioners for Revenue and Customs Act 2005 (CRCA). The task for the Commissioner here is to reach a conclusion as to whether section 18(1) of the CRCA does provide a statutory prohibition to disclosure. If it does, the exemption provided by section 44(1)(a) is engaged.
19. Section 18(1) of the CRCA states the following:

“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.”
20. Sections 23(1)(a) and (b) of the CRCA further clarify that the information is exempt if its disclosure would specify the identity of the person to whom the information relates or would enable the identity of the person to be deduced.
21. The questions to answer when considering if section 18(1) of the CRCA is engaged are as follows.
 - Is the information held by HM Revenue and Customs (HMRC)?
 - Is the exemption being claimed by an HMRC official?
 - Is the information held in connection with a function of HMRC?
22. The public authority has already explained its position in respect of the CRCA in that it is specifically identified in section 10 of the CRCA as an executive agency of HMRC. The Commissioner is satisfied that the information held by the public authority was obtained under one of its functions. Section 18(1) of the CRCA is therefore engaged in respect of the requested information.
23. In order for section 44(1)(a) to be engaged, however, it is also necessary to meet the caveats specified in sections 23(1)(a) and (b) of

the CRCA. The Commissioner has, therefore, also considered the following questions when establishing if this exemption is engaged:

- does the information relate to a person;
- does the information either specify the person to whom it relates; or
- is it possible to work out the person to whom it relates from the information?

24. The request clearly centres on information concerning one particular property. The Commissioner is of the view that information which relates to a specified property also relates to the owner and/or occupier of that property. Therefore, the Commissioner finds that section 18(1) of the CRCA does provide a statutory bar to the disclosure of the information requested - both to the original request and the subsequent requests within the complainant's request for an internal review. The Commissioner therefore concludes that the exemption provided by section 44(1)(a) is engaged.

Section 43(2) – commercial interests

25. As the Commissioner has concluded that section 44(1) has been properly applied in this case he has not gone on to consider this exemption.

Procedural requirements

Section 17(1) - Refusal of request

26. Section 17(1) of the Act provides that:

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,*
- (b) specifies the exemption in question, and*
- (c) states (if that would not otherwise be apparent) why the exemption applies.”*

27. In failing to provide a valid refusal notice within the statutory time limit, the Constabulary breached section 17(1).

The Decision

28. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- it correctly withheld the information under section 44(1).
29. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- it failed to issue a valid refusal notice within 20 working days thereby breaching section 17(1).

Steps required

30. The Commissioner requires no steps to be taken.

Other matters

31. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.

Internal review

32. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
33. The Commissioner does not consider this case to be 'exceptional', so is concerned that it took over 20 working days for an internal review to be completed.

Personal data

34. Section 7 of the DPA gives an individual the right to request copies of personal data held about them – this is referred to as the right of 'subject access'. The Commissioner notes that some of the information requested in this case is the 'personal data' of the requester and the public authority correctly identified this in its correspondence with her. It clearly stated that information disclosed to her was given in consideration of her rights under the terms of the DPA.

35. The Commissioner is conducting an assessment under section 42 of the DPA to determine whether or not the public authority has complied with the complainant's subject access rights. The outcome of that assessment will be communicated to the complainant in due course.

Right of Appeal

36. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

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

Dated the 7th day of July 2011

Signed

**Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**