

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 27 May 2010

Public Authority: Valuations Office Agency
Address: 3rd Floor
Wingate House
Shaftesbury Avenue
London
W1D 5BU

Summary

The complainant made a request for the rating file of a named caravan site. The information requested was withheld under the exemptions at sections 40(2) (personal information), 44(1) (prohibitions on disclosure) and 42(2) (commercial interests) of the Freedom of information Act 2000 ("the Act"); also, under the exceptions at 12(3) (personal data), 12(5)(d) (confidentiality of proceedings) and 12(5)(e) (confidentiality of a legitimate economic interest) of the Environmental Information Regulations 2004 ("the Regulations").

During his investigation the public authority released some information. The Commissioner's decision is that section 44 of the Act was correctly applied to the remaining information. The complaint is not upheld.

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. According to its website¹,

"The Valuation Office Agency is an executive agency of HM Revenue & Customs (HMRC) with 85 offices spread throughout England, Wales and Scotland employing around 4,300 people.

Our main functions are to :

- *Compile and maintain the business rating and council tax valuation lists for England and Wales. N.B. In Scotland council tax and business rates are dealt with by the Scottish Assessors*
- *Value property in England, Wales and Scotland for the purposes of taxes administered by HM Revenue & Customs*
- *Provide statutory and non-statutory property valuation services in England, Wales and Scotland*
- *And give policy advice to Ministers on property valuation matters".*

3. The complainant, a solicitor at a District Council, made a request for a named rating file. The public authority maintained that the rating file is exempt from disclosure by virtue of the statutory prohibition under section 18 of the Commissioners for Revenue and Customs Act 2005 ("the CRCA"). The full text of the CRCA is available online²; the most relevant extracts for the purpose of this investigation are as follows:

"18 Confidentiality

(1) 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."

"19 Wrongful disclosure

*(1) A person commits an offence if he contravenes section 18(1) or 20(9) by disclosing revenue and customs information relating to a person whose identity—
(a) is specified in the disclosure, or
(b) can be deduced from it."*

¹ <http://www.voa.gov.uk/>

² http://www.opsi.gov.uk/acts/acts2005/ukpga_20050011_en_1

"22 Data protection, &c.

Nothing in sections 17 to 21 authorises the making of a disclosure which—

- (a) contravenes the Data Protection Act 1998 (c. 29), or*
- (b) is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23)."*

"23 Freedom of information

(1) 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.*

(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.

(3) In subsection (1) "revenue and customs information relating to a person" has the same meaning as in section 19".

4. The public authority has also explained to the Commissioner that:

"A 'rating file' is created as a core record when a Non Domestic Rating (NDR) assessment is created to hold and store hard copy records. The file principally contains the survey and plans, but based on the 'type' of property (for example a shop, office, warehouse) it may also contain valuations, notes of contact and rental evidence (FOR) and other miscellaneous information".

The Request

5. The Commissioner notes that under the Act the Valuation Office Agency is not a public authority itself, but is actually an executive agency of Her Majesty's Revenue and Customs. However, for the sake of clarity, this decision notice refers to the Valuation Office Agency as if it were the public authority.

6. On 13 May 2009 the complainant made the following information request, citing both the Act and the Regulations:

"... I make formal request for disclosure of the VOA's rating file for the [named] site, to include site visit notes, photographs,

correspondence with the owner, assessment details and any other material not considered to be confidential or within a relevant statutory exemption".

7. On 22 May 2009 the public authority responded. It stated it was unable to provide any information by virtue of section 18 of the CRCA, as cited above. It went on to explain:

"Because of the statutory provision in section 18[1] CRCA 2005, information held by the VOA that has been obtained:

- 1. either by HMRC and passed to the VOA*
- 2. or directly by VOA staff in the exercise of their day-to-day activities*

and is held for the compilation or maintenance of non-domestic rating and council tax valuation lists or District Valuer Services work cannot be passed to external persons or agencies. Under the above circumstances details of the assessment, visit notes, correspondence with the owner etc would not be under consideration to release to a third party. In generality, we have sought legal advice on the issues concerned, and I can assure you that we have explored all possible ways to ensure that our good working relationships with BAs[billing authorities] is maintained. Unfortunately, the legal advice we have received is that the 2005 Act does prevent disclosure".

8. It further explained that, were it to consider that information was suitable for disclosure, its current policy was to contact the ratepayer or taxpayer, advise them of the request and seek their consent. It also said:

"With regard to [the Regulations] ... unfortunately, there is nothing held on file that will be of assistance to you".

9. On 3 June 2009 the complainant sought an internal review. He advised that:

"The request follows a meeting between the Council's Chief Executive and one of your South West valuers. At the meeting a file was discussed: the CE recalls in general terms what he was shown but no copies were taken. On behalf of the CE I am investigating whether a lawful development certificate granted under the Planning legislation should be revoked on account of a false declaration made by the owner. In my view, and bearing in mind that your valuer agreed to the meeting, there would be a persuasive argument that in the public interest there should be

disclosure, and that this outweighs any case for not disclosing information on the file”.

10. He also disputed the public authority's assertion that there was *“nothing held on file that will be of assistance”* in respect of the Regulations and that no exceptions had been cited.
11. On 6 August 2009 the public authority provided its internal review. It made further reference to the CRCA and asserted that disclosure under either the Act or Regulations was to the *“whole world regardless of [the] motive for the request and the use to which it will be put”*. It explained that the impact of the CRCA on the release of information was *‘very wide’* as could be seen from the wording at parts 19(1) and 23(1)(b) of that legislation (see ‘Background information’ above) where only being able to *‘deduce’* identity prohibits disclosure under the CRCA. It clarified that:

“The information you seek was created and is held to assist with the maintaining the [sic] rating assessment for [named address]. This forms the basis of the rateable liability for the rateable occupier (owner) of [named address]”.

12. It went on to consider the Regulations and withheld some information under the exceptions at sections 12(3) (personal information), 12(5)(d) (confidentiality of the proceedings of a public authority where such confidentiality is provided by law) and 12(5)(e) (confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest) of the Regulations.
13. The public authority withheld the rest of the information under sections 44(1)(a) (prohibitions on disclosure), 43(2) (commercial interests) and 40(2) (personal information) of the Act.

The Investigation

Scope of the case

14. On 12 August 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically asked the Commissioner to consider the public authority's:

“Refusal to disclose to the Council's Legal Services Department [i.e. the complainant] full details of VOA file when the same

documents had been discussed with the Council's Chief Executive Officer at a separate meeting with an officer from VOA".

15. During the course of the Commissioner's investigation the public authority disclosed some maps which were held on the rating file. These were the only items within the requested information which the Commissioner considered to fall under the remit of the Regulations. The Regulations have therefore not been further considered in this Notice.

Chronology

16. On 28 January 2010 the Commissioner telephoned the complainant to advise him that he was commencing his investigation. He discussed the background to the request and the complainant reiterated that his Chief Executive Office (CEO) had attended a meeting about the information requested and that it had been discussed with him, although he had been unable to obtain a hard copy of the information. The Commissioner believes it is important to understand that any information which has been previously shared has been done so in the CEO's capacity as a representative of the Council rather than under the terms of the Act. Access to information under the Act is to 'the world at large' and this cannot be compared to an individual disclosure granted to the CEO only.
17. On 1 February 2010 the Commissioner commenced his enquiries with the public authority. Its response was sent on 5 February 2010.
18. The Commissioner raised further queries and specifically asked the public authority if it would reconsider disclosing copies of some maps and 'brochures', both of which were held within the ratings file. He asked that it did this on the basis that this information was likely to be in the public domain.
19. On 17 February 2010, the public authority agreed that it was happy to disclose copies of the maps which were held on the ratings file, with appropriate wording to cover copyright concerns. It was prepared to do so as it did not believe that these identified the ratepayer so they were not covered by the exemption in the CRCA. However, it did not concede that the 'brochures' were suitable for disclosure. This was on the basis that the 'brochures', although publicly available in the past, were no longer available. They also clearly identified the ratepayer so were, in its view, caught under the remit of the CRCA. The Commissioner undertook an online search for the brochures and, although more recent versions were available, the ones on the ratings file were not in the public domain. Although it is not possible to state whether or not they were actually available at the time of the request

the Commissioner would expect that such information would be regularly updated so that the most recent information was available for potential customers. In any event, as stipulated by the public authority, any such information would clearly identify the ratepayer.

20. In light of this, following the disclosure of the maps, the Commissioner contacted the complainant on 10 March 2010 to ask him whether he would consider withdrawing his complaint. On 12 March 2010 the complainant declined.

Analysis

Exemption

Section 44 – Prohibitions on disclosure

21. Section 44 provides 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.”

22. Information is exempt if its disclosure by the public authority holding it is prohibited under any enactment. Section 44 is an absolute exemption and is therefore not subject to the public interest test at section 2(1)(b).
23. The prohibition being applied by the public authority is section 18 of the CRCA. This states that Revenue and Customs officials may not disclose information which is held by them in connection with a function of the Revenue and Customs. Section 23 (1)(a) and (b) further clarifies 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.
24. The public authority has explained that the ratings file information was created and is held to assist with maintaining the rating assessment and that this information forms the basis of the rateable value for the rateable occupier. Some of this information is created by the public authority in connection with its duties and some is provided by the ratepayer. The public authority explained that if it disclosed any of the remaining information requested it would be possible to deduce the identity of the person to whom that personal data relates.

25. The Commissioner is satisfied that the information held by the public authority was obtained under one of its functions and can lead to the identities of the persons to whom the information relates being deduced. Section 18(1) of the CRCA is therefore engaged in respect of the requested information.
26. Section 18(2) of the CRCA provides some caveats to section 18(1) and highlights circumstances in which disclosure is possible. The Commissioner has considered those relevant to the information requested.
27. Section 18(2)(a) provides that section 18(1) does not apply to disclosure which is made for the purposes of a function of the Revenue and Customs. In the Information Tribunal decision '*Slann v Financial Services Authority*' [EA/2005/0019] the Tribunal found that the term 'public functions' related to powers conferred on the FSA by legislation and not legislation, such as the Act, to which it was subject. Therefore making a disclosure under the Act was not carrying out a public function.
28. In line with this decision it would not be correct to say that making a disclosure under section 1(1) of the Act is a 'function' of the public authority. Complying with statutory requirements (including obligations under the Act) is one of the public authority's general responsibilities as a public authority but it is not a specific or unique function of the public authority.
29. Section 18(2)(h) of the CRCA provides that section (1) does not apply to disclosure which is made with the consent of each person to whom the information relates. The public authority has advised the complainant of this clause and said that it would disclose if this consent was provided (section 18(2)(h) does not require the public authority itself to seek consent). No such consent has been forthcoming.
30. Section 18(3) of the CRCA provides that the public authority is able to disclose information where disclosure is permitted under any enactment. The Commissioner does not consider that disclosure under the Act itself is appropriate, as evidenced by section 23 of the CRCA in the 'Background information' part of this Notice above. He has not considered whether or not any other avenue of access exists to the requester as that would fall outside his remit.
31. The information held within the requested rating file would clearly enable the identity of that person to be deduced. It would not be possible to anonymise the file as it has been specifically requested by name. The Commissioner therefore finds that section 18(1) of the

CRCA is engaged and that the information is exempt by virtue of section 44 of the Act.

32. As the Commissioner has decided that the information requested is absolutely exempt by virtue of section 44(1) he has not found it necessary to go on to consider the other exemptions cited.

The Decision

33. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

34. The Commissioner requires no steps to be taken.

Other matters

35. Although it does not form part of this Decision Notice the Commissioner wishes to highlight the following matter of concern.

Time for internal review

36. 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', published in February 2007, 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. The Commissioner is concerned that in this case, it took 45 working days for an internal review to be completed.

Right of Appeal

37. 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: 0845 600 0877

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 27th day of May 2010

Signed

**Gerrard Tracey
Principal Policy Adviser**

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SK9 5AF**