

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

### **Decision notice**

**Date:** 18 July 2012

**Public Authority:** Land and Property Services (an executive agency of the Department of Finance and Personnel NI)

**Address:** Colby House  
Stranmillis Court  
Belfast  
BT9 5BJ

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

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The complainant has requested information regarding the valuation of properties for domestic rating purposes. Land and Property Services (LPSNI) does not hold part of the requested information and has refused to disclose the remainder as per the provisions set out in section 44(1)(a) of FOIA. The Commissioner's decision is that LPSNI has correctly applied the exemption under section 44(1)(a) of FOIA. The Commissioner requires no steps to be taken.

#### **Background**

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1. The Commissioner notes that under the Act LPSNI is not a public authority itself, but is actually an executive agency of the Department of Finance and Personnel for Northern Ireland (DFPNI). Therefore, the public authority in this case is actually DFPNI, not the LPSNI. However, for the sake of clarity, this Decision Notice refers to the LPSNI as if it were the public authority. LPSNI was established on 1 April 2007, initially from the merger of the former Rate Collection Agency and the Valuation and Lands Agency. This was followed by the addition of Land Registers of Northern Ireland and Ordnance Survey of Northern Ireland on 1 April 2008.
2. Amongst its responsibilities LPSNI values all domestic and non-domestic properties in Northern Ireland, maintains valuation lists, inspects vacant properties and provides a general valuation, estate

management and property information service to government departments and the public sector in Northern Ireland.

## **Request and response**

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3. On 1 August 2011, the complainant wrote to LPSNI and requested information in the following terms:
  - "1. The criteria used to value sea views in assessing capital values for domestic hereditaments.
  2. Details of sales evidence used in assessing capital values for the Strand Road, Portstewart.
  3. Details of the various additions including percentages used for the various types of increases applied to arrive at the capital values for domestic rating."
4. LPSNI responded on 11 August 2011. It stated that it did not hold information in the format requested in parts 1 and 3 of the complainant's request and refused to disclose the information in part 2 of the complainant's request stating that it could not be disclosed as its use was governed by the Stamp Duty Land Tax (Use of Information Contained in Land Transaction Returns) Regulations 2009. It did not at that stage cite a specific exemption under FOIA.
5. Following an internal review, LPSNI wrote to the complainant on 27 October 2011. It maintained its original position with regard to the requested information, however it provided the complainant with a document explaining the procedure adopted for valuing properties for domestic rating and a full explanation as to why there can be no simple answer to parts 1 and 3 of his request. In relation to part 2 of the complainant's request, LPSNI cited the exemption under section 44(1) of FOIA (disclosure is prohibited by or under any enactment) as a basis for non-disclosure.

## **Scope of the case**

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6. The complainant contacted the Commissioner to complain about the way his request for information had been handled, specifically LPSNI's application of the exemption under section 44(1) of FOIA. He has not complained about parts 1 and 3 of his request, therefore the Commissioner has only considered LPSNI's handling of the request in relation to part 2.

7. The Commissioner has considered LPSNI's handling of the complainant's request and whether it has correctly applied the above exemption.

## Reasons for decision

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8. Section 44(1)(a) of FOIA states that information is exempt information if its disclosure (otherwise than under FOIA) by the public authority holding it is prohibited by or under any enactment.
9. LPSNI has explained that the use to which it can put information supplied by Her Majesty's Revenue & Customs (HMRC) under the Stamp Duty Land Tax (Use of Information Contained in Land Tax Returns) Regulations 2009 is restricted by regulations 3 and 4 of those Regulations.
10. Regulation 3 read as follows:-
  - 3 .—(1) Relevant information may be made available for use by the Commissioner of Valuation for Northern Ireland and District Valuers in Northern Ireland for the purposes of, the exercise of any statutory function of the Commissioner or District Valuers (as the case may be).
  - (2) Relevant information made available for use by the Commissioner of Valuation for Northern Ireland or District Valuers in Northern Ireland under this regulation may be disclosed by the Commissioner of Valuation for Northern Ireland or District Valuers in Northern Ireland to DFP for the purposes of regulation 4.
11. The requested information in this case consists of information extracted from Stamp Duty Land Tax returns, which are completed by the purchaser of a property when the transaction is complete and contain details of both the vendor and the purchaser of the property. These returns are submitted to HMRC. HMRC extracts information from these returns and supplies it to LPSNI for purposes connected with valuation, such as compiling rating lists and for use as evidence in appeals. Therefore the Commissioner is satisfied that the requested information is "relevant information" for the purposes of the above regulations.

12. Regulation 4 reads as follows: -

4— (1) Relevant information may be available for use by DFP for the purposes of any lawful function of DFP but must not be used in any way which would permit any person other than an officer of DFP to identify the vendor or the purchaser.

(2) Relevant information made available for use by DFP under this regulation must not be disclosed outside DFP without the consent of the Commissioners for Her Majesty's Revenue and Customs. Such consent may be general or specific.

13. LPSNI cited regulation 4(2) as a basis for non-disclosure, however it agreed with the Commissioner's view that regulation 4(1) would also apply. This is because the "sales evidence" sought by the complainant consists of information contained in the Stamp Duty Land Tax returns which would clearly identify the vendor and purchaser of the property. The complainant asked that, if this information could not be released, he could be provided with the addresses of the properties used in the assessment of capital values.

14. The Land Registry system in Northern Ireland consists of a database which can be searched by the public and which provides details of registered properties which have been bought and sold. This is searchable by property address. If the complainant or any other member of the public obtained the addresses, they could search the publicly accessible Land Registry system and thereby obtain the identity of both the vendors and the purchasers of the specified properties.

15. This would, as per regulation 4(1), amount to use of the information by DFP in a way which would permit a person, i.e. the complainant and any other interested member of the public, other than an officer of DFP, to identify the vendors and purchasers. That would amount to a breach of regulation 4(1) and a likely breach of the Data Protection Act 1998 (as it would likely be unfair and breach the first data protection principle).

16. Regulation 4(1) makes relevant information available for use by DFP for the purposes of any of its lawful functions. It is the Commissioner's view, agreed by the Information Tribunal in the case of *Slann v Financial Services Authority*<sup>1</sup>, that a lawful function is a function

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<sup>1</sup> EA/2005/0019

conferred on the DFP by legislation other than the FOIA. Even if this were in doubt, the wording of section 44(1)(a) makes it clear that the exemption prohibits disclosure "otherwise than under this Act".

17. Therefore, since disclosure of the information is prohibited by regulation 4(1) of the Stamp Duty Land Tax (Use of Information Contained in Land Tax Returns) Regulations 2009 it would be a breach of section 44(1)(a) of FOIA.
18. The Commissioner is satisfied that disclosure of the information requested in part 2 of the complainant's request would contravene regulation 4(1) of the above regulations and is therefore satisfied that section 44(1)(a) of FOIA has been correctly applied.

## Right of appeal

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19. 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)

20. 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.
21. 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**  
**Water Lane**  
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**SK9 5AF**