

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 28 January 2008

Public Authority: Valuation Office Agency
(An executive Agency of Her Majesty's Revenue and
Customs)
Address: New Court
Carey Street
London

Summary

The complainant requested all the sales data for residential properties for a specified location. The Valuation Office Agency refused to disclose the information as to locate, retrieve and extract the information would exceed the appropriate cost limit and under section 12 of the Act it was therefore not obliged to comply with the request. The Valuation Office Agency found that some information could be provided within the cost limit but that this was exempt under section 44 of the Act. The Commissioner investigated and found that section 12 did apply as to provide the information would exceed the cost limit. For the information which could be supplied within the cost limit the Commissioner found that section 44 was engaged.

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.

The Request

2. The complainant has advised that on 24 May 2006 he made the following request for information to the Valuation Office Agency (VOA)

"For complete clarity I would request for properties in the West Dorset District Council Area, for each property sold in at least the period 1 January 2004 to 1 April 2006, but extended as necessary to include all data up to and including the date of any examples you intend to present at

the tribunal, 'Address and Post Code', 'Price Paid', 'Date of Sale', and 'Council Tax Band Allocated'.

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

3. The VOA responded on 19 June 2006 informing the complainant that the post 1 April 2001 sales data was available online from the Land Registry web site, VOA stated the information was therefore exempt under section 21 'information accessible by other means'.
4. On 20 June 2006 the complainant responded, he informed the VOA that prior to 1 April 2000 the Land Registry did not hold the information and asked the VOA to supply all the pre 2000 data to him.
5. VOA responded on 22 June 2006 informing the complainant that he had the right to inspect the Particulars Delivered document which contains details of the sale data for the 12 properties used in the Valuation determination of the complainant's own property. The sale data for these properties was pre 2000 and the Local Government Finance Act allowed the complainant access to these in line with the complainant's appeal to the Valuation Tribunal.
6. VOA wrote again to the complainant on 28 June 2006 explaining that section 44 of the Act prohibits disclosure of information if it is prohibited under any other enactment. VOA explained that the Commissioner for Revenue and Customs Act (CRCA) sets out what confidential information the VOA can disclose. They explained that the Land Registry, which published the post April 2000 data, is not restricted by the CRCA and so chooses to publish the data.
7. On 9 July 2006 the complainant wrote to VOA to clarify the scope of this request, he informed VOA that his request was:

*"To further clarify the data I know require from the VO as I learn more about their ways, I will list my current data requirement.
I require for the WDDCA between 1.1.1990 and now all sales data for domestic residential properties to include, but not necessarily limited to, all data collected on these properties by the VO which would be likely to be included in a sales brochure, together with the actual sales prices, dates of sales, addresses and post codes.
In addition the information provided should include all data used to justify any comparisons made between properties to determine banding"*

8. VOA responded on 28 July 2006 clarifying that section 18 to 23 of the CRCA prohibits it from disclosing information to a third party unless there is a statutory authority to do so. It explained that regulation 25 of the Local Government Finance Act 1992 provided the Listing Officer with the statutory authority to

- release a restricted number of Particulars Delivered in evidence when an appeal is listed to the Valuation Tribunal.
9. On 29 July 2006 the complainant wrote to the VOA requesting a review of the decision not to release the pre April 2000 sales data to him.
 10. On 18 August 2006 the complainant wrote to the Commissioner asking him to now investigate the handling of his information request. In doing so the complainant clarified that his request of 9 July 2006 superseded his request of 24 May 2006.
 11. On 21 August 2006 VOA wrote again to the complainant upholding the decision to withhold the pre April 2000 sales data under section 44 of the Act.
 12. On 9 September 2006 the complainant wrote to VOA asking them to confirm if they had now completed the internal review and if the letter of 21 August 2006 was its response.
 13. VOA responded on 11 September 2006 confirming that it could not supply the pre 2000 sales data as disclosure is prohibited under the CRCA and therefore section 44 of the Act.

The Investigation

Scope of the case

14. On 18 August 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. Following receipt of the internal review the complainant wrote again on 15 September 2006. The complainant specifically asked the Commissioner to consider if the VOA were required to disclose the pre April 2000 sales data.

Chronology

15. On 4 October 2007 the Commissioner began his investigation by writing to the VOA to ask further questions regarding its application of section 44. The Commissioner also asked questions regarding the publicly available information via the Land Registry and the information provided to the complainant as part of his appeal.
16. The VOA responded on 23 November 2007 explaining to the Commissioner that it now considered the correct response to the complainant's request should have been to explain that it was not obliged to comply with the request as the cost of locating, retrieving and extracting the information would exceed the cost limit. VOA went on to explain that whilst it had considered if it would have been able to provide the information held in relation to part of the request if the complainant had refined his request, it concluded that although some information could be retrieved within the cost limit this information would have been subject to the

exemption at section 44 of the Act. The VOA then went onto explain in more detail its reliance on section 44.

17. At the Commissioner's request the VOA wrote to the complainant on 10 December 2007 explaining its findings that to provide the requested information would exceed the cost limit. VOA also explained that whilst some information would be provided within the cost limit it considered that this would be exempt under section 44 of the Act.

Background

18. The basis of Council Tax valuation for a dwelling which is not used for any business purpose is the amount which, subject to certain assumptions, it would have sold for on the 'open market' by a 'willing vendor' on 1 April 1991.
 - 'Open market' means a market where the property is offered openly with adequate publicity being given to the sale.
 - 'Willing vendor' means someone who sells the property as a free agent and not someone who is forced to do so.
19. Council Tax came into effect on 1 April 1993. However, the process of valuing every domestic property in England and Wales for banding purposes started some time before this. Therefore, VOA had to adopt a valuation date prior to 1 April 1993 so that all properties would be valued on a common footing. Even if a property was built after 1 April 1993, VOA must band the property according to what it thinks that its value would have been on 1 April 1991. This means that recent sale prices are not necessarily a good guide to the correct band for a property.
20. Following the purchase of a property the complainant's property banding was reviewed, this review found that the property should be viewed as two separate living accommodations with two bandings. The complainant has appealed against this decision to the Valuation Tribunal.
21. In reaching the banding decision the VOA compared the sale prices of similar properties in a similar locality to the complainant's property, this consisted of 12 properties. Regulation 26 of the Local Government and Finance Act 1992 allows the VOA to release to the complainant the details of the 12 properties being used as sales evidence in support of the current branding on his property for the Appeal. This data has been disclosed to the complainant and contains: address data; council tax band; area and sale price.
22. The complainant's request is for all the pre 2000 sales data for the West Dorset District Council Area in addition to the data the VOA have used as comparables in reaching its decision.

Analysis

Procedural matters Section 12 'Cost Limit'

23. Section 12 of the Act does not oblige a public authority to comply with a request if the authority estimates the cost of complying with the request would exceed the appropriate limit. The VOA state that to obtain the information requested in points one and two of the complainant's request would exceed the appropriate limit as set out in the Appropriate Limit and Fees Regulations 2004. These regulations set a limit of £450 to the cost of complying with a request for all public authorities subject to the Act not listed in Schedule 1 part I. In estimating the cost of complying a public authority can take the following into account:

- determining whether it holds the information requested,
- locating the information or documents containing the information,
- retrieving such information or documents, and
- extracting the information from the document containing it.

The Regulations state: *'any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour'*.

24. The VOA explained that it has separated the complainant's request into three parts:

(a) All sales data for domestic residential properties in the West Dorset District Council Area in the period 1990 to 9 July 2006:

- (i) to include, but not necessarily limited to, all data collected on these properties by the Valuation Office which would be likely to be included in a sales brochure;
- (ii) Together with the actual sales prices, dates of sales, addresses and post codes.

(b) In addition the information provided should include all data used to justify any comparison between properties determining banding.

25. VOA understands the reference in (a) (i) to include pictures of the property and plans, along with property descriptions. The VOA understands the reference at (b) to refer to all sales data used to justify any comparison between properties that determined banding. In other words what features of particular sales were compared and contrasted to arrive at a banding result. VOA explained that the appropriate limit applicable to it is £600 as it is listed, as HMRC is, in Schedule 1 part 1 of the Act and this is calculated at £25 an hour. Therefore, if it estimates that it cannot locate, retrieve and extract the relevant information within 24 hours of work, it need not comply with the obligation to communicate the requested information.

26. VOA explained to the Commissioner that it hold the information in various formats including electronic and paper records. Each property may have a number of

paper files including one containing property attribute data with layout plans and dimensions and others relating to any particular activities such as banding disputes, or other valuation matters such as inheritance tax and capital gains tax which concern that property. The information which falls within (a) (i) and (b) would mostly be located on hard copy documents with similar basic details coded and stored electronically. A small proportion of the properties also have a digital image as part of core records.

27. Valuation Offices were also required to gather data on 'key' properties when the council tax valuation list was compiled in 1992. These are paper-based documents containing 1991 sales and attribute data on particular property types within certain locations particularly pertinent to banding decision. The information within the scope of the request would be capable of being extracted from the database of property information held by the VOA together with both current and historic attribute details relevant at the time of sale. This sales data comes from a database compiled by the VOA to carry out its functions set out in section 10 of the CRCA 2005 such as compiling and maintaining the Council Tax Valuation Lists and non-domestic Rating Lists for England and Wales.
28. VOA estimate that there are more than 5,800 sales that fall within the years 2004 – 2006 alone in the location specified in the request. If dealing with a request limited to those dates at least that number of papers files would need to be retrieved and reviewed, together with individual identification and extraction of digital images of each property if it were to fully meet the requirement for details likely to be included in a sales brochure. VOA stated, that ignoring the question of where the paper files are stored, and estimating conservatively that each property only has one file, it will take a minute to retrieve that file and five minutes to review and extract the material. This results in an estimate of six minutes per file and 10 files per hour. VOA found that even by limiting the request to a smaller time period (2004-2006) it would take 580 hours to retrieve the paper files and extract the information.
29. The Commissioner is satisfied that to provide the complainant with all the information sought would exceed the appropriate limit.
30. The Commissioner notes that the VOA has considered, under its duty to advise and assist contained at section 16 of the Act, if it would have been able to provide some of the information sought within the cost limit. VOA found that the database was not able to extract all the records including attribute data in one operation and in its view it would be necessary to request data in year long periods. Therefore at least 16 extractions would be necessary. With four sales and associate data per sheet this would result in a huge document running to many hundreds of pages. VOA concluded that it would not be possible to extract and retrieve the sales and address information alone within the appropriate limit.

Exemption: Section 44 'Prohibitions on disclosure'

31. Section 44 provides that 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).
32. The prohibition being applied by VOA is section 18 of the Commissioners for Revenue and Customs Act 2005 (CRCA). This states 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. 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.
 33. VOA have explained that the sales data comes from a database compiled by the VOA under its functions set out in section 10 of the CRCA such as compiling and maintaining the Council Tax Valuation Lists and non-domestic Rating lists of England and Wales. VOA explained that if it disclosed the information requested, namely the property address, the data of sale and the sale price, the effect of that disclosure is that the requestor would be able to deduce the identity of the person to whom that personal data relates. This is because a member of the public would be able to conduct a historical title register search at the HM Land Registry with that information.
 34. The Commissioner is satisfied that the information held by VOA 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.
 35. 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.
 36. 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 Customers. In the recent Information Tribunal decision EA/2005/0019 '*Slann vs. Financial Services Authority*' the Tribunal found that the term public functions related to powers conferred on the FSA by legislation and not legislation such as the Freedom of Information (FOI) Act, to which it was subject. Therefore making a disclosure under FOI was not carrying out a public function.
 37. 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 VOA. Complying with statutory requirements (including FOI obligations) is one of VOA's general responsibilities as a public authority but it is not a specific or unique function of HMRC.
 38. Section 18(3) of the CRCA provides that VOA is able to disclose information where disclosure is permitted under any enactment. Regulation 26 of the Local Government Finance Act 1992 allows the provision of a restricted number of particulars delivered to the Valuation Tribunal. Particulars delivered are a source of property transaction details used by the VOA to help carry out its functions in compiling and maintaining the Council Tax Valuation Lists. The number of particulars delivered which can be disclosed is linked to the number contained in

a Listing Officer's Notice. The complainant could therefore have asked, and did, for the purposes of his appeal to the Valuation Tribunal, for the particulars delivered for the 12 comparable properties used by the Listing Officer and these would have been supplied.

39. The Commissioner has considered the relevance of Regulation 26 of the Local Government Finance Act 1992 (LGFA) to the complainant's information request and considered that the provision for disclosure under this Regulation is restricted to the particulars delivered and does not permit disclosure of information to the public but to a specific party for the purpose of a Valuation Tribunal.
40. 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. It is clear that at the time the request was made there was no consent from all the individuals who could be identified from the sales data and addresses of the properties to disclose the information, Section 18 (2) (h) does not require VOA to seek consent.
41. The Commissioner finds that section 18(1) of the CRCA is engaged in respect of the information requested and therefore that the information is exempt by virtue of section 44 of the Act.

The Decision

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

Steps Required

43. The Commissioner requires no steps to be taken.

Right of Appeal

44. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.

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

Dated the 28th day of January 2008

Signed

**Jane Durkin
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides that -

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

Section 1(2) provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 1(3) provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

Section 1(4) provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

Section 12(2) provides that –

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

Section 12(3) provides that –

“In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.”

Section 12(4) provides that –

“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

Section 12(5) – provides that

“The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.

Prohibitions on disclosure.

Section 44(1) provides that –

“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.”

Section 44(2) provides that –

“The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).”