

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 17 February 2011

Public Authority: Valuation Office Agency
Address: Wingate House
93/107 Shaftesbury Avenue
London
W1D 5BU

Summary

The complainant requested information relating to a change in the council tax banding of his property. The public authority refused the request, citing the exemptions provided by sections 21(1) (information accessible by other means) and 44(1)(a) (statutory prohibitions). The Commissioner finds that the public authority correctly applied the exemption provided by section 44(1)(a), but that the exemption provided by section 21(1) did not apply. In relation to the information in connection with which section 21(1) was cited, the public authority is required to either provide a detailed explanation to the complainant as to where this information can be located, or disclose it to the complainant. The public authority also breached procedural requirements of the Act through its handling of the request.

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 made the following information request on 30 January 2010:

"Under the Freedom of Information Act 2000 I would like to receive all information held on my file concerning my

banding change. In particular I would like to receive the sales evidence which you mention in the above letter from the 1991 period in relation to the decision you made in changing the banding of my property.

Please note under the Freedom of Information Act 2000, I request to receive all hand written correspondence and all emails relating to my banding change.

I would also like to formally request the statutory best practice / guidelines issued to Listing Officers when assessing and banding change."

3. The public authority responded to this on 2 February 2010. This response stated that some information was being disclosed to the complainant, but that other information was being withheld '*under the provisions of the Data Protection Act*'. No exemption from the Act was cited in this letter.
4. The public authority made reference to a response dated 30 June 2009 to an earlier information request made by the complainant. In response to that earlier request, the public authority had cited the exemption provided by section 44(1)(a) of the Act (statutory prohibitions to disclosure). The public authority believed that section 18(1) of the Commissioners for Revenue and Customs Act 2005 prohibited disclosure.
5. The complainant responded to this on 7 February 2010 and asked the public authority to carry out an internal review in relation to the information that had not been disclosed. The public authority responded on 10 May 2010 with the outcome of the internal review, which also included the handling of the earlier information request made by the complainant and referred to at the refusal notice stage.
6. The public authority now specified that it believed that the exemptions provided by sections 21 (information accessible by other means), 40(2) (personal information) and 44(1)(a) were engaged. No subsection of section 21 was specified. The public authority indicated that it believed that section 44(1)(a) was engaged in relation to the entirety of the information it held that fell within the scope of the complainant's request and that the disclosure of some of this information had been made on a discretionary basis. Section 40(2) was cited in relation to information believed to constitute personal data and section 21 was cited in relation to the complainant's request for Listing Officers' guidance. The public authority referred to it having been explained to the complainant where this information could be accessed on the website of the public authority in the response of 30 June 2009.

The Investigation

Scope of the case

7. The complainant contacted the Commissioner's office on 14 June 2010. At this stage the complainant indicated that he was dissatisfied with the explanations provided by the public authority in relation to the information that had not been disclosed to him.
8. The complainant was later contacted on 8 October 2010 in order to clarify the scope of his complaint. The complainant responded to this on 23 October 2010 and clarified that his complaint related to the exemptions applied in relation to the information that was withheld from him. He also specified at this stage that he had not received the information he had requested concerning statutory best practice or guidelines issued to listing officers.

Chronology

9. The Commissioner contacted the public authority in connection with this case on 26 October 2010. The public authority was asked to respond at that stage with further explanation concerning the information that had been disclosed and withheld, and for the exemptions cited.
10. The public authority responded to this on 11 November 2010. The public authority stated at this stage that no document had been withheld from the complainant in its entirety. Instead, documents had been disclosed to the complainant with redactions made from these. The public authority provided a list of the documents disclosed with a description of each redaction. The public authority also stressed again at this stage that it believed that all of the information falling within the scope of the complainant's request for information about the council tax banding decision was exempt by virtue of section 44(1)(a) and that the disclosures had been made on a discretionary basis.
11. On the issue of the information withheld under section 21(1), the public authority advised where the information it believed to fall within the scope of the complainant's request for best practice / guidelines could be located on its website. It also stated that the complainant had been directed to this information in the response of 30 June 2009.

Analysis

Exemptions

Section 21

12. The public authority has cited the exemption provided by section 21(1) in relation to the complainant's request for *"the statutory best practice / guidelines issued to Listing Officers"*. Section 21(1) provides that information that is reasonably accessible to the applicant by means other than through the Act is exempt. The task for the Commissioner here is, therefore, to consider whether the information falling within the scope of this request can be fairly characterised as reasonably accessible to the applicant.
13. The public authority has stated that the response of 30 June 2009 explained to the complainant where this information was available. This stated the following, apparently in response to the request in question:

"The instructions in our Council Tax Manual are published on our website www.voa.gov.uk and are therefore already available in the public domain".
14. Whilst it may be the case that this information is available on the website of the public authority and so is in the public domain, this alone does not necessarily mean that it is reasonably accessible to the complainant. The Commissioner believes that it was also necessary for the public authority to provide a clear explanation of where the specific information relevant to the complainant's request can be found.
15. In this case the Commissioner does not believe that it is clear that the public authority has done this. In its correspondence with the Commissioner, the public authority explained where the Council Tax Manual could be found on its website. It provided no such explanation to the complainant, however. Also, even if the complainant were able to locate the Manual on the website of the public authority, the public authority did not set out where within this manual the information relevant to the request could be found.
16. In the absence of a clear explanation from the public authority to the complainant as to where information relevant to his request could be located, the Commissioner does not accept that this information was reasonably accessible to the complainant. The conclusion of the Commissioner is, therefore, that the exemption provided by section 21(1) is engaged and the public authority is required to follow the step set out below at paragraph 31.

Section 44

17. 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.
18. Section 18(1) of the CRCA states the following:

“(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. 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.
20. 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?
21. The website of the public authority describes it as an executive agency of HMRC. The Commissioner is satisfied that the information held by the public authority relating to the council tax banding of the complainant's property was obtained under one of its functions. Section 18(1) of the CRCA is therefore engaged in respect of the requested information.
22. In order for section 44(1)(a) to be engaged, however, it is also necessary to meet the caveats specified in CRCA sections 23(1)(a) and (b). The Commissioner has, therefore, also considered the following questions when establishing if this exemption is engaged:
 - does the information relate to a person?; and
 - 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?

23. Section 18(2)(h) of the CRCA provides that section 18(1) does not apply to disclosure which is made with the consent of each person to whom the information relates. Having assumed that the complainant would consent to the disclosure of the information he has requested, the Commissioner has focussed on whether the information relates to and identifies any person aside from the complainant.
24. As referred to above, the public authority has described the information that was withheld. For the most part this relates to properties close to the home of the complainant and was used as evidence in the council tax banding of the complainant's property. There is also other information that relates to the complainant's address prior to his ownership of this property, and information that relates to a query made about the banding of a nearby property.
25. The Commissioner would accept that information that relates to a specified property also relates to the owner and/or occupier of that property. The remaining issue to consider is, therefore, whether this information specifies the people to which it relates, or whether it would be possible to work out to whom this information relates.
26. The Commissioner's view on this point is that, even if this information does not directly specify the identity of the residents of the properties to which it relates, there are a number of means by which an individual could be readily associated with an address for which they are owner and/or occupier. This could be through, for example, a listing in a telephone directory. The Commissioner also believes that similar means could be utilised to identify a previous owner or occupier of a property.
27. Having found that the information does relate to a person and that it would be possible to work out the identity of this person, the overall conclusion of the Commissioner is that section 18(1) of the CRCA does provide a statutory bar to the disclosure of the information requested by the complainant. The Commissioner also concludes, therefore, that the exemption provided by section 44(1)(a) is engaged.

Procedural Requirements

Sections 1 and 10

28. In failing to disclose the information in relation to which it cited the exemption provided by section 21(1) within twenty working days of receipt of the request, the public authority did not comply with the requirements of sections 1(1)(b) and 10(1).

Section 17

29. In failing to cite section 21 down to the subsection, the public authority did not comply with the requirement of section 17(1)(b).

The Decision

30. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act in that it applied the exemption provided by section 44(1)(a) correctly. However, he also finds that the public authority breached sections 1(1)(b) and 10(1) of the Act in citing the exemption provided by section 21(1) incorrectly, and section 17(1)(b) by failing to specify which subsection of 21 it believed to be engaged.

Steps Required

31. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act.
- Provide to the complainant a clear and detailed explanation of where the information falling within the scope of the request for *"statutory best practice / guidelines issued to Listing Officers when assessing and banding change"* is available on its website. Alternatively, if the public authority is not able to provide such an explanation, this would indicate that the exemption provided by section 21(1) cannot be engaged in relation to this information and it should be disclosed.
32. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

33. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

34. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern. The Commissioner's published guidance on internal reviews states that a review should be conducted within 20 working days, unless there are exceptional circumstances, in which case the review period may be extended to 40 working days. In this case the Commissioner notes that there appeared to be no exceptional circumstances, but that the public authority failed to respond with the outcome of the review within twenty working days. Neither did the public authority respond within 40 working days. The public authority should ensure that internal reviews are carried out promptly in future.

Right of Appeal

35. 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

36. 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.
37. 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 17th day of February 2011

Signed

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

Legal Annex

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 10(1) provides that –

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

Section 17(1) 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."

Section 21(1) provides that –

"Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information."

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.”