

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 27 June 2011

Public Authority: The Valuation Tribunal Service
Address: Second Floor
Black Lion House
45 Whitechapel Road
London
E1 1DU

Summary

The complainant requested information relating to his dealings with the Valuation Tribunals Service (VTS). The VTS responded citing section 32 of the Act (court records). Following developments in this case, the Commissioner has not gone on to consider the VTS's citing of an exemption.

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 Valuation Tribunal is an independent appeals tribunal, funded by Parliament to handle council tax and rating appeals in England.

The Request

3. On 26 March 2010, the complainant wrote to the Valuation Tribunal Service (VTS) with the following request:

"I am requesting access to any recorded information showing where my formal application for directions and for the appeals to be heard

separately has been put to a Chairman together with any recorded information showing which, if any, of my correspondence and evidence sent to VTS was passed to him with my application. I am requesting access to recorded information showing his name and any recorded information showing his formal ruling and signature refusing my application.

I am requesting to be given access to any recorded information showing the name of the Chairman referred to in [named individual]'s letter addressed to Basildon Council dated 6 December 2006, and any recorded information showing where the issues that this Chairman considered needed resolving are now considered by the Tribunal to have been resolved."

4. The VTS responded on 7 April 2010, citing section 32 (court records) of the Act.
5. The complainant wrote to the VTS on 10 April 2010 expressing dissatisfaction with this response and asking the VTS to review its decision.
6. It appears that the complainant and the VTS corresponded on a number of occasions subsequent to this.
7. On 16 August 2010 the VTS acknowledged receiving a request for internal review from the complainant, dated 11 August 2010. It provided the outcome of its internal review on 31 August 2010. In this correspondence, the VTS included details of the complainant's right to refer the matter to the Information Commissioner.

The Investigation

Scope of the case

8. On 7 September 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

"While I do not consider other FOI Act requests to have been properly responded to by the VTS the information requested in the enclosed extract of my letter marked 2 is information that I am currently most anxious to obtain".

9. The enclosed extract contained the request shown at paragraph 3 above.

10. On 6 October 2010 the complainant contacted the Commissioner again, providing copies of correspondence between himself and the VTS and explaining:

"The scope of my complaint now basically concerns the failure of VTS to properly respond to my past requests within the required timescales, and their failure to advise of any right to a review or procedures for making a complaint to the ICO, both of which they have admitted. Neither am I satisfied with the response that I have received to the request I made on 26 March 2010".

11. The Commissioner wrote to the complainant on 28 March 2011 explaining that the scope of his investigation would be with respect to the complainant's request of 26 March 2010, as shown above.

Chronology

12. The Commissioner wrote to the VTS on 8 December 2010 advising that he had received a complaint. The VTS responded on 15 December 2010.
13. The Commissioner commenced his investigation on 28 March 2011. He wrote to the complainant on 28 March 2011 explaining that, while the Act enables people to access information held by public authorities, it does not enable an individual to access personal data. Accordingly, the Commissioner advised him that, having considered the wording of his request, in his view the VTS should also have considered the request under the Data Protection Act. He told the complainant that he had written to the VTS along those lines.
14. The VTS wrote to the complainant on 15 April 2011.
15. The Commissioner contacted the complainant on 18 April 2011 asking whether, in the circumstances, he was prepared to withdraw his complaint. The complainant responded on 26 April 2011 confirming instead that he would like the Commissioner to issue a Decision Notice in this case.

Analysis

Exemptions

16. Where possible the Information Commissioner prefers complaints to be resolved by informal means. Following the Commissioner's intervention, the VTS considered the request under the Data Protection Act. In the circumstances the Commissioner has not gone on to consider whether

the authority's citing of section 32 of the Freedom of Information Act was justified.

The Decision

17. It has not been necessary for the Commissioner to reach a decision as to whether the request in this case has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000. The Commissioner considers that it was appropriate for the public authority to have dealt with this request under the provisions of the Data Protection Act.

Steps Required

18. The Commissioner requires no steps to be taken.

Other matters

19. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.
20. The Commissioner wishes to emphasise that the disclosure of information under the Freedom of Information Act constitutes the disclosure of information into the public domain, without restriction. Furthermore, apart from determining whether a request is vexatious or repeated, a public authority cannot take into account the identity of a requestor when dealing with a request made under the Act.
21. In cases such as this one, the Commissioner considers that, due to the way in which the request is framed, any information within the scope of the request would, if held, clearly be the personal data of the requester. He would therefore expect the public authority to consider the request as a Subject Access Request under section 7 of the Data Protection Act 1998 as well as to consider it as a request made under the Freedom of Information Act (the Act).
22. Under the Act, he would normally expect the public authority to consider the exemption in section 40 (personal information). Specifically, depending on the circumstances, he would expect the authority to consider whether it is appropriate to cite either section 40(1) or 40(5). However, he notes that, in this case, the VTS cited section 32.

23. Section 40(1) states that:

"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject."

24. Subsection (5)(a) states that:

"The duty to confirm or deny:

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1)"

25. For this exemption to apply, the data referred to must, if held, constitute personal data under the DPA. The DPA defines personal data as:

"...data which relate to a living individual who can be identified

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect to the individual".

26. The Commissioner would also take the opportunity to remind public authorities of his published guidance on the issuing of a refusal notice:

"The refusal notice should contain the process, timescales and contact details for all of the appeals processes. It should be made clear to the applicant that they can seek an internal review by the authority. Note that under the FOIA, an authority is only legally required to offer this if it has a complaints procedure, whereas under the EIR it is compulsory to have a complaints procedure. However the ICO recommends that all authorities establish such a procedure: please see the Section 45 Code of Practice. It must also be made clear to the applicant that they can refer the matter to the Information Commissioner".

Right of Appeal

27. 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

28. 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.

29. 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 June 2011

Signed

**Jon Manners
Group Manager
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 –

- (b) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (c) if that is the case, to have that information communicated to him."

Section 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
 - (i) subsection (1), and
 - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
 - (iii) section 41, and
 - (iv) section 44"