

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 January 2012

Public Authority: Valuations Office Agency
Address: Wingate House
93-103 Shaftesbury Avenue
London
W1D 5BU

Decision (including any steps ordered)

1. The complainant has requested the full postcodes of certain caravan sites licensed by Canterbury Council. The Valuations Office Agency (VOA) refused to provide this information under section 41 and section 43 of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner's decision is that the VOA has incorrectly applied section 41 and section 43 to withhold the requested information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the requested information to the complainant.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply 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.

Request and response

5. On 1 November 2010, the complainant wrote to the VOA and requested information in the following terms:
 1. Please provide the full postcode of the ONE caravan site, licensed by Canterbury Council, within the CT1 area.

2. Please provide the full postcode of the FOUR caravan sites, licensed by Canterbury Council, within the CT2 area.
3. Please provide the full postcode of the ONE caravan site, licensed by Canterbury Council, within the CT3 area.
4. Please provide the full postcode of the ONE caravan site, licensed by Canterbury Council, within the CT4 area.
5. Please provide the full postcode of the NINE caravan sites, licensed by Canterbury Council, within the CT5 area.
6. Please provide the full postcode of the FOUR caravan sites, licensed by Canterbury Council, within the CT6 area.
7. Please provide the full postcode of the FOUR caravan sites, licensed by Canterbury Council, within the CT7 area.
8. Please also supply the full postcodes of any other caravan sites, licensed by Canterbury Council, the VOA use to determine the BRMA/LRR.

Please note that I am requesting the postcodes of the actual caravan site(s) and not requesting any personal information of the owners or where they may live.

7. The VOA provided a response to the complainant on 16 December 2010 in which said it was unable to confirm whether Canterbury Council licensed the sites.
6. The complainant requested an internal review of the VOA's decision on 6 December 2010. On 3 March 2011 the VOA wrote to the complainant with the details of the result of the internal review it had carried out. It refused to provide the information requested under section 41 (information provided in confidence) and section 43(2) (prejudice to commercial interests).

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. The Commissioner will consider whether or not the VOA was correct to withhold the information requested on November 2011 under section 41 and section 43(2).

Reasons for decision

Section 41

9. Section 41(1) of FOIA states that:

“Information is exempt information if-

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”

10. In this case the VOA has argued that the postcodes were provided to it by the operators or owners of the caravan sites. The Commissioner therefore accepts that the information was obtained from another person.

11. The Commissioner has therefore gone on to consider whether disclosure would constitute an actionable breach of confidence. The Commissioner considers that a breach will be actionable if:

i. The information has the necessary quality of confidence.

(Information will have the necessary quality of confidence if it is not otherwise accessible and if it is more than trivial; information which is of importance to the confider should not be considered trivial.)

ii. The information was communicated in circumstances importing an obligation of confidence. (An obligation of confidence can be expressed explicitly or implicitly. Whether there is an implied obligation of confidence will depend upon the nature of the information itself, and/or the relationship between the parties.)

iii. Unauthorised disclosure would cause a specific detriment to either the party which provided it or any other party. (In the Commissioner's view, information on personal matters can still be protected under the law of confidence, even if disclosure may not be detrimental in terms of any tangible loss.)

12. If these parts of the test are satisfied, the Commissioner considers that he should then consider whether there would be a defence to a claim for breach of confidence based on the public interest in disclosure of the information.

13. The VOA has argued that the disputed information is the actual rents paid (as opposed to advertised rents) by tenants on specific properties owned by specific operators. The Commissioner does not consider this to be the disputed information. The Commissioner considers that the disputed information is the full postcodes of certain caravan sites licensed by Canterbury Council. The VOA has not explained how disclosure of the full postcodes requested could disclose the actual rents paid. The Commissioner therefore considers that the full postcodes do not have the necessary quality of confidence.
14. The Commissioner therefore considers that section 41 was incorrectly applied in this case. The Commissioner has therefore gone on to consider the VOA's application of section 43(2).

Section 43(2)

15. Section 43(2) FOIA states that:

"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)."

16. The VOA has argued that disclosure of the actual level of rent charged by a specific site operator would or would be likely to prejudice the commercial interests of the site operators. However again the Commissioner notes that the requested information is the full postcodes of specific sites licensed by Canterbury Council and the VOA has not provided any explanation as to how disclosure of the full postcodes requested would disclose the actual level of rent charged by a specific site operator.
17. The Commissioner has not therefore been provided with sufficient arguments to enable him to conclude that disclosure of the full postcodes requested would or would be likely to prejudice the commercial interests of the site operators or any other party. The Commissioner does not consider that section 43(2) was correctly applied in this case.

Other matters

18. The Commissioner notes that he did ask the VOA for further submissions in relation to its application of section 41 and section 43(2) in this case on 17 October 2011 due to his concerns about its interpretation of the request. On 10 November 2011 the VOA referred the Commissioner to the result of the internal review and indicated that it had no further submissions to add.

Right of appeal

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

Website: 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

Lisa Adshead
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