

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 April 2012

Public Authority: Valuation Office Agency¹ (an executive agency of HMRC)

Address: Wingate House
93-107 Shaftesbury Avenue
London
W1D 5BU

Decision (including any steps ordered)

1. The complainant requested the sales values and dates of sales for a number of properties in Creech St Michael, Somerset.
2. The Commissioner's decision is that the public authority was entitled to withhold the information on the basis of section 44(1)(a) of the Freedom of Information Act 2000 (Act).
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

4. On 14 July 2011 the complainant requested information from the public authority in the following terms:

'I wish to enquire as to the number (recorded and therefore held data) of sales per band D and E and the corresponding total value of those sales, analysed by quarter from Q1 1990 to Q1 1995 inclusive on the following streets located in the village of Creech St Michael, near Taunton in Somerset.....'

¹ The Valuation Office Agency (VOA) is not a public authority itself. It is an executive agency of HM Revenue and Customs (HMRC) which is responsible for VOA. Therefore, the public authority is actually HMRC not VOA. However, for the sake of clarity, this decision notice refers to VOA as if it were the public authority.

5. Following the public authority's response, the complainant agreed to amend his request and on 15 August 2011 he wrote to the public authority in the following terms:

*'Please could you consider the following **two** lists of property addresses (attached), located in the village of Creech St Michael, in the County of Somerset, and provide me of a list of **sales values** and **dates of sales** for any of the properties listed.*

In considering the above amended request the following are relevant:

On the assumption that you will not wish/cannot compile a list that sets property alongside the details I have requested, all I require is a list of sales values and dates. Thus when completed, I will have a list of values and dates of which I can be assured will have been drawn from the properties I have identified but will not be able to be directly linked to.

Although I think this refreshed query should significantly reduce the resource required to respond, and consequently may be able to be answered in full, I have compiled two lists marked 'priority 1' and 'priority 2'. Should it be evident that only one can be completed, please focus on 'priority 1'.

If both lists are able to be completed, then I require that the sales values and dates are kept separate from each other. To remove doubt, I do not wish to have a single list of dates and sales drawn from both of my property lists. I need one for each.'

6. The public authority responded on 26 August 2011. It relied on the exclusion from the duty to confirm or deny it held the information requested by virtue of section 44(2) of the Act. However, in the same letter, the public authority also relied on the exemption at section 44(1)(a) to withhold the information requested.
7. Following an internal review the public authority wrote to the complainant on 10 November 2011. The original decision to rely on both sections 44(2) and 44(1)(a) was upheld, and the exemption at section 40(2) of the Act was additionally relied on.

Scope of the case

8. On 7 December 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically asked the Commissioner to rule on the public authority's decision not to provide the information requested.

9. In response to a letter from the Commissioner, the public authority accepted that relying on both sections 44(2) and 44(1)(a) was contradictory in the circumstances. It therefore withdrew its reliance on section 44(2) and maintained its reliance on the exemptions at sections 44(1)(a) and 40(2).
10. The scope of the Commissioner's investigation was therefore restricted to whether the information requested above on 15 August 2011 (the disputed information) was exempt from disclosure on the basis of either section 44(1)(a) or 40(2) of the Act.

Reasons for decision

Section 44(1)(a)

11. Information is exempt from disclosure on the basis of section 44(1)(a) if its disclosure by the public authority holding it is prohibited by or under any enactment.
12. According to the public authority, it is prohibited from disclosing the disputed information by virtue of the provisions of sections 18(1) and 23 of the Commissioners for Revenue and Customs Act 2005 (CRCA) as amended by section 19 of the Borders, Citizenship and Immigration Act 2009.
13. Section 18(1) CRCA provides:

'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.'
14. Sections 18(2 & 3) contain exceptions to the provision at section 18(1) above.
15. Section 23(1) of CRCA provides:

'(1) Revenue and customs information relating to a person, the disclosure of which is prohibited by section 18(1), is exempt information by virtue of section 44(1)(a) of the Freedom of Information Act 2000.....if its disclosure-

(a) would specify the identity of the person to whom the information relates, or

(b) would enable the identity of such a person to be deduced.
16. Section 19(4) of the Borders, Citizenship and Immigration Act 2009 provides:

In Section 23 of the Commissioners for Revenue and Customs Act 2005 (freedom of information), after subsection (1) insert -

(1A) Subsections (2) and (3) of section 18 are to be disregarded in determining for the purposes of subsection (1) of this section whether the disclosure of revenue and customs information relating to a person is prohibited by subsection (1) of that section.'

17. The Commissioner finds that the amendment above at section 19 of the Borders, Citizenship and Immigration Act 2009 precludes the consideration of the exceptions at sections 18(2 & 3) of CRCA when determining whether information is exempt from disclosure under section 44(1)(a) of the Act on the basis of the statutory prohibition at section 23(1) of CRCA.
18. The Commissioner finds that the disputed information (i.e. sales values and dates of sales for the listed properties) is held by the public authority for the purposes of its functions thus engaging section 18(1) of CRCA.
19. The Commissioner therefore considered whether the statutory prohibition at section 23(1) of CRCA applied in this case.
20. The term 'person' includes both natural and legal persons, and, for example, the tax affairs of a limited company.²
21. In terms of disclosing the sales values and dates of sales against each property on the list provided by the complainant, the public authority firmly submitted that it would enable the identity of the person(s) to whom the information relates to be deduced. It argued that any person in possession of the information could conduct a historical title register search at HM Land Registry to identify previous and current owner(s) of the properties or other persons to whom it relates. The information could also be combined with other publicly available information such as information available on the electoral register to identify persons to whom it relates.
22. The Commissioner notes that it would be equally possible to conduct title and/or occupant searches for the listed properties in the absence of the disputed information. However, in the Commissioner's view, sections 18(1) and 23(1) of CRCA both seek to prevent the disclosure of information (under the Act) which is held by the public authority in

² Paragraph 110 of the explanatory notes to the CRCA

connection with its functions and would reveal the identity of persons or aid the identification of persons to whom it relates.

23. The Commissioner therefore finds that the sales values and dates of sales directly linked to each of the properties on the list provided by the complainant are exempt from disclosure on the basis of section 44(1)(a) of the Act by virtue of the statutory prohibition at section 23(1) of CRCA.
24. In terms of disclosing sales values and dates of sales for the properties on the list without directly linking the information to the relevant property, the public authority firmly submitted that it considered this information also exempt on the basis of section 44(1)(a). It pointed out that the properties in question are all within four named streets in Creech St Michael, a village in Somerset with an estimated population of 2,464. As stated in the request, the list is divided into two, with 34 addresses on one part of the list and 31 addresses on the other. The public authority argued that the dates of sales for the properties on the list could be combined with information on websites such as Zoopla³, local newspapers property advertisements and from HM Land Registry to first identify the relevant properties and subsequently deduce the identity of the persons to whom the information relates. The Commissioner is satisfied that the same argument applies to the disclosure of sales values.
25. Given the small number of properties within an equally small geographical area, the Commissioner agrees with the public authority that the information could be combined with publicly available information to deduce the identity of the persons to whom it relates.
26. The Commissioner finds that in the circumstances of this case, the sales values and dates of sales for the properties on the list are exempt from disclosure on the basis of section 44(1)(a) of the Act by virtue of the statutory prohibition at section 23(1) of CRCA.
27. In view of his finding above, the Commissioner did not consider the applicability of the exemption at section 40(2) of the Act.

³ <http://www.zoopla.co.uk/house-prices>

Right of appeal

28. 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: 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

29. 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.
30. 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

Alexander Ganotis
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