Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **17 November 2016**

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

Decision (including any steps ordered)

1. The complainant has requested information about key properties in a particular postcode. The Valuation Office Agency (VOA) has relied on FOIA section 44(1)(a) – prohibitions on disclosure, to refuse the request.

2. The Commissioner's decision is that the VOA has correctly applied section 44(1)(a) to the request and she does not require the public authority to take any steps.

Request and response

3. On 18 July 2016, the complainant wrote to the VOA and requested information in the following terms:

> *"The information I require relates to Key Properties identified as part of the valuation process linked to the introduction of Council Tax (see paragraph 2.3 of Section 1 to the Council Tax Manual).*
> *Please provide me with the addresses used as key properties in Westwoodside, Haxey and Epworth in Lincolnshire, all of which are in the DN9 postcode. The information can be limited to those key properties that were then banded as either D, E and F for taxation purposes. The information should include form VO7400 (or equivalent) for each relevant property. An example of form VO7400 is shown in the Council Tax Manual. In accordance with the Council Tax Manual these documents should have been retained on a "not for destruction" basis.*

They should be held in binders and should therefore be reasonably accessible and a refusal to provide on cost basis is not anticipated."

4. The VOA refused the request on 27 July 2016 citing section 44(1)(a) FOIA. On 1 August 2016 the complainant asked for an internal review of the VOA decision. He set out that he was withdrawing the part of his request relating to form VO7400. The VOA issued its review response on 24 August 2016. It upheld its original position.

Scope of the case

5. The complainant contacted the Commissioner on 10 September 2016 to complain about the way his request for information had been handled. Particularly he set out his position that HMRC cannot be prohibited from disclosing data which is effectively already published. He has set out that his request is effectively for a sub-set of already published data which a member of the public cannot determine for themselves.

6. The complainant has also set out his view that virtually every household in the UK consents to their address being in the public domain by placing a number or name on their property. His position therefore is that consent is clear and thus the argument for citing section 44(1)(a) by virtue of section 23 of the Commissioners for Revenue and Customs Act 2005 (CRCA) is undermined.

7. Furthermore the complainant asserts that the VOA is part of 'the state' and that virtually all of the avenues which link a person to an address (identified by the VOA) are via processes whereby 'the state' either sells the relevant data or it is provided via a register where it is arguable that the relevant person has consented to their address being in the public domain.

8. The Commissioner considers the scope of the investigation is to determine if the VOA was correct to rely on FOIA section 44(1)(a) to refuse the request for information.

Reasons for decision

Section 44 – prohibitions on disclosure

9. Section 44 of the FOIA states that :

"(1) 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.

(2) 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)."

10. The relevant legislation in this case is the Commissioners for Revenue and Customs Act 2005 (CRCA)

Section 18(1) CRCA states:

"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 18(2)(a)(i) CRCA states:

"But subsection (1) does not apply to a disclosure which is made for the purposes of a function of the Revenue and Customs…."

Section 23 CRCA states amongst other things:

"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.

(2)Except as specified in subsection (1), information the disclosure of which is prohibited by section 18(1) is not exempt information for the purposes of section 44(1)(a) of the Freedom of Information Act 2000."

11. The Commissioner's position on the interaction of the FOIA at section 44 and the CRCA is well established via published decision notices. The VOA has referenced two particular decision notices in its internal review

response, FS50563305[1] and FS5038771[2]; these are broadly similar requests where the Commissioner has upheld the VOA's position in respect of section 44(1)(a).

12. The VOA has set out its position with regard to section 44 of the FOIA. It has detailed that the relevant enactment is the CRCA and the relevant section of that Act is section 23(1).

13. The VOA set out to the complainant that in order to determine whether information is captured by section 23(1) there are two relevant questions:

- Would the requested information be held in connection with a function of HMRC?; and
- Would the information relate to a "person" who could be identified from the information requested?

14. The VOA has set out in its response and internal review that the requested information relates to a function of the VOA, namely the assessment and collection of council tax; accordingly it is covered by section 18(1) of the CRCA. When section 18(1) CRCA applies, section 23 of the same Act sets out that the information will be exempt under section 44(1)(a) as set out above.

15. The Commissioner notes too that the VOA has set out the definition of the term "person", explaining that it includes legal entities such as companies, trusts and charities, as well as living individuals. This is set out in Schedule 1 of the Interpretation Act 1978 and the VOA provided a link to this legislation in its initial response.

16. The VOA's response sets out that it is possible to identify a 'person' '(or their identity to be deduced) through linking address information already in the public domain and in these circumstances section 23(1) CRCA is engaged. This means that there is a prohibition on disclosure in accordance with section 23 CRCA and accordingly section 44(1)(a) is engaged.

17. In order to clarify further, the VOA has explained to the complainant that the CRCA was amended in 2009 by virtue of section 19(4) of the Borders Citizenship and Immigration Act 2009 (BCIA). This created section 23(1)(a) and meant that the VOA must disregard any permissive

[1] https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1043447/fs_50563305.pdf
[2] https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1042114/fs_50538771.pdf

legal rights to disclose any property or person identifying information which exists in considering any request under FOIA.

18. The Commissioner accepts that disclosure under the FOIA is not a function of HMRC (and therefore the VOA) as set out in section 5 of CRCA. It is therefore not a function envisaged by section 18(2)(a)(i). The Commissioner further accepts that the exceptions at sections 18(2) and (3) should be disregarded (for the purposes of responding to a request under the FOIA) in any event by virtue of the amendment contained in section 19(4) of the BCIA.

19. The Commissioner considers that the initial response adequately explains the interaction between the CRCA and the FOIA and that it is clear that the VOA cannot, under FOIA, disclose any information which would identify a person or enable identification of a person.

20. With regard to the complainant's assertion that the VOA already publishes the information and that it is a subset of that information which he is requesting, the Commissioner notes that the complainant has set out that a member of the public cannot determine the requested information and therefore in terms of the request, the information is not effectively already published.

21. Furthermore, in its submission to the Commissioner, the VOA has set out the relevant legislation which requires it, through the statutory role of Listing Officer, to compile and maintain a Council Tax Valuation List for each local billing authority. Section 28 of the same legislation, the Local Government Finance Act (LGFA) 1992, allows the VOA to choose a suitable format to make the information available. The VOA has asserted that its web application is designed to allow self-service access via the government website. The need for disclosure for that purpose is satisfied by VOA's web application. The Commissioner therefore accepts that the requested information is not publicly available and accordingly, the fact that the VOA compiles and maintains a Council Tax Valuation List for each local billing office has no bearing on the VOA's handling of this request under FOIA.

22. The Commissioner notes the complainant's position that the VOA is part of the 'State' and that the information which could be accessed to deduce the identity of a 'person' is published also by the 'State'.

23. The Commissioner's remit is to consider whether a request for information under FOIA has been handled in accordance with the Act. Whilst she understands that the complainant may consider it paradoxical that the information which could be used in conjunction with requested information to identify a person, is available via Government sources,

the Commissioner considers that the CRCA prohibits the disclosure of the information and that this prohibition is not subject to the availability of any additional information which may enable identification.

24. With regard to the issue of consent, the Commissioner notes that when section 44(1)(a) is engaged by virtue of the CRCA, there is no consent issue as the requested information is prohibited from disclosure under the FOIA. This will be the case irrespective of whether any consent is explicit or assumed. In other words, even where a requester has submitted written consent for disclosure from a third party (for example a solicitor and client) or indeed requests (and therefore consents to) disclosure of their own information it will have no bearing on the CRCA as sections 18 and 23 of that Act set out the circumstances prohibiting disclosure of information under FOIA; the issue of consent is not something that is relevant in this case.

25. It is the Commissioner's position that HMRC has satisfactorily established that the criteria set out in in the CRCA at sections 18 and 23 are clearly met in this case and that accordingly section 44(1)(a) is engaged.

Right of appeal

26. 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: 0870 7395836
    Email: GRC@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.

28. 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 .....

Terna Waya
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF