

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 December 2019

Public Authority: Valuation Office Agency
(Executive Agency of HM Revenue & Customs)

Address: 10 South Colonnade
Canary Wharf
London
E14 4PU

Decision (including any steps ordered)

1. The complainant has requested Gross External Area (GEA) data in relation to 34 specified addresses. The Valuation Office Agency ("VOA") refused to confirm or deny holding information as it argued that to do so would breach another piece of legislation.
2. The Commissioner's decision is that VOA is entitled to rely upon section 44(2) of the FOIA to neither confirm nor deny holding information within the scope of the request.
3. The Commissioner does not require any further steps.

Nomenclature

4. VOA is not listed as a separate public authority in Schedule 1 of the FOIA because it is an Executive Agency of HM Revenue & Customs (HMRC). However, as it has its own FOI unit and as both the complainant and the Commissioner have corresponded with "VOA" during the course of the request and complaint, the Commissioner will refer to "VOA" for the purposes of this notice – although the public authority is ultimately HMRC.

Request and response

5. On 22 August 2019, the complainant wrote to VOA and requested information in the following terms:

"To enable the completion of my response to the Valuation Office Agency's submission at the References it is requested that Gross External Area data for the properties detailed at the Annex be forwarded."

6. The request was accompanied by an annex listing 34 separate addresses for which the complainant wished to obtain the GEA data.
7. VOA responded on 9 September 2019. It refused to confirm or deny holding information within the scope of the request. It argued that providing a confirmation or a denial would breach section 18(1) of the Commissioners for Revenue and Customs Act 2005 (CRCA) and therefore section 44(2) of the FOIA would apply.
8. Following an internal review VOA wrote to the complainant on 4 October 2019. It upheld its original position.

Scope of the case

9. The complainant contacted the Commissioner on 27 September 2019 to complain about the way his request for information had been handled.
10. The Commissioner considers that the scope of her investigation is to determine whether or not there is a statutory bar which would prevent VOA from giving a confirmation or a denial that information is held. If there is, then section 44(2) of the FOIA will apply.
11. For clarity, the Commissioner has not considered it necessary to ask VOA to confirm its position, in relation to the information it holds, in order to reach her decision. Therefore nothing in this decision notice should be construed as indicating that VOA does or does not hold information relevant to the request.

Reasons for decision

12. Section 1(1) of the FOIA states 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.*

13. Section 44(1) of the FOIA provides an exemption from disclosure for any information whose disclosure would either be otherwise prohibited by another piece of legislation or which would constitute a contempt of court.
14. Section 44(2) of the FOIA provides an exemption from the duty to confirm or deny whether information is held if the mere act of confirming or denying alone would involve the disclosure of information which was otherwise prohibited.
15. Employees and ex-employees of HMRC (and, hence, VOA) are governed by the CRCA, section 18(1) of which makes it an offence to disclose information HMRC holds in connection with its functions.
16. Section 23(1) of the CRCA states that:

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 (c. 36) (prohibitions on disclosure) 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.*

17. For the purposes of CRCA, a “person” can be either a natural person or a company, trust or charity.
18. In order for VOA to demonstrate that it is entitled not to confirm or deny holding the requested data, it must therefore demonstrate that a confirmation or denial that data is held would, in itself, disclose information, held in connection with a function of VOA, about an identifiable person.
19. The complainant argued that VOA had been able to produce similar information for the purpose of a council tax banding dispute he had been

involved in. He argued that it was unfair that VOA was able to disclose information only when it was advantageous to do so.

Is the information identifiable and does it relate to a function of VOA?

20. VOA has argued that the very wording of the request itself makes "persons" identifiable because it lists specific addresses that the complainant wants GEA data about. Any information which VOA did hold which fell within the scope of the request must be linked to one of the named residential properties (if it was not, it would not be within the scope of the request) and thence the owner(s) of that property.
21. VOA explained that it would acquire GEA data in the course of its duties to compile and maintain the Valuation Lists for the purpose of determining council tax liabilities. Houses and bungalows which are classed as "dwellings" would usually be given a Gross External Area value, whereas flats or maisonettes would have a Net Internal Area value.
22. It went on to explain that a particular property may not require a GEA value because it was a non-domestic property or for various other statutory reasons.
23. VOA argued that issuing a confirmation or a denial that information was held in relation to a specific property would allow the world at large to learn something about where it does and doesn't hold GEA data. That would, in turn, reveal something about the nature of the property. By maintaining a neither confirm nor deny (NCND) position in relation to a request for data about multiple properties, VOA went on to argue that it was preventing a "mosaic effect" emerging of where it did and did not hold information.
24. Whilst the Commissioner considers that VOA could have been more helpful in explaining its use of section 44, she nevertheless considers that the exemption is engaged.
25. Sections 18(1) and 23(1) of the CRCA are broadly drawn. Where information is held in connection with a function of VOA and identifies an individual (or could be used to identify an individual) it will be exempt.
26. The Commissioner accepts that VOA collects GEA data to fulfil its functions and that it holds the information for that purpose. It does not collect GEA data for every property and therefore issuing confirmations or denials would, in itself, reveal information about those properties.
27. Whilst VOA could, in principle, issue a single confirmation or denial in respect of all 34 properties without linking information to any single property (and, hence, its owner), the Commissioner accepts that to do

so would undermine VOA's ability to rely on an NCND response in the future. She further accepts that using NCND consistently prevents a pattern emerging which would enable the world at large to see where VOA does or does not hold GEA data.

28. The Commissioner therefore considers that, for VOA to even confirm or deny that it holds information would breach section 18(1) of the CRCA. She thus concludes that VOA is entitled to rely on section 44(2) of the FOIA to neither confirm nor deny holding information within the scope of the request.

Right of appeal

29. 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 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.
31. 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

Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF