

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 November 2022

Public Authority: Department of Finance
Address: Clare House
303 Airport Road
Belfast
BT3 9ED

Decision (including any steps ordered)

1. The complainant has requested information relating to valuation reports conducted by Land and Property Services (LPS), part of the Department of Finance. The Department provided some information, stated that it did not hold some information, and withheld some information in reliance on the exemptions at sections 40(2) (personal data) and 41 (information provided in confidence) of FOIA.
2. The Commissioner's decision is that the Department was entitled to rely on the exemptions cited, and that the Department does not hold any further information relevant to the request. No steps are required.

Request and response

3. On 30 July 2020 the complainant requested the following information from the Department, relating to tribunal proceedings between the complainant and the Commissioner of Valuation:
 - 1.1 Please provide a copy of all valuation reports in their entirety carried out by LPS [Land and Property Services, part of the Department] prior to February 2015 from 1977 as per Rates (NI) Order 1977 of the entire Warrenpoint Harbour Authority (WHA) docks hereditament.
 - 1.2 Please provide the valuation report, all notes, minutes of meetings, communications and workings carried out by LPS in the 2015 "REVAL" of the entire WHA docks hereditament as per the Rates (NI) Order 1977.

- 1.3 Please provide any/all copies of specific notes, minutes of meetings and any other correspondence between LPS and WHA (Warrenpoint Harbour Authority) in relation to REVAL 2015 as per the Rates (NI) Order 1977.
- 1.4 Please provide all information, workings discussion minutes of meetings, communications to establish why and by whom the decision was made not to include the subject premises as a separate entry on the new NAV [Net Annual Valuation] valuation list published in February 2015 effective April 2015.
- 1.5 Please provide the valuation report carried out by [Name of individual] LPS all notes communications and calculations, in January 2017 as per Rates (NI) Order 1977. Please provide names of all those taking part, all notes taken, memorandums, copies of notes of any meetings held and any other documents held relevant to same.
- 1.6 Please provide details of who submitted the information to the LPS in relation to the alleged occupiers of units within the docks undertaking.
- 1.7 Please provide all information, calculations notes and communications on how [Name of complainant] was designated as "Unit12" and the subsequent original NAV calculated. Please note no communication with [Name of complainant] was sought or provided at this time.
- 1.8 Please provide all information or evidence that during the valuation, the alleged occupied offices were measured and visited by LPA personnel in January 2017. Please note no authorisation to access or carry out such activity had been sought or given by [Name of complainant] for such an exercise.
- 1.9 [Name of complainant] have no record nor understanding or any frame of reference linking them to Unit 12, 7A, BT34 3JU please provide all information linking [Name of complainant] to this valuation entry.
- 1.10 Please provide a copy detailing the monies/revenue actually received by the Revenue & Benefits section of the LPS per unit for hereditaments contained within the newly applied postcode of BT343JU from January 2017.
- 1.11 Please provide the LPS documented procedures or policy documents and any and all relevant information to support the decision that it is correct and proper and within the normal rules of justice that an appeals officer would carry out an appeal into work previously carried out by that same individual.

- 1.12 Please provide a copy of the Valuation exercise carried out in January 2020. As such also please provide all information as to the decision that remaining tenants within the WHA docks hereditament, it is now our understanding have been zero rated for rates.
4. A hereditament is defined in section 2(2) of Rates (Northern Ireland) Order 1977 as "property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in a valuation list."¹
 5. The Department responded to the complainant on 25 August 2020. It provided some information, stated that it did not hold other information, and withheld some information under sections 41 and 40(2) of FOIA.
 6. The complainant requested an internal review on 10 September 2020, and the Department issued the outcome of that review on 9 October 2020. The Department upheld all elements of its original response.

Scope of the case

7. The complainant contacted the Commissioner on 3 December 2020 to complain about the Department's handling of the request.
8. The complainant confirmed that they were content with the Department's response to parts 1.5, 1.6, 1.8 and 1.11. In addition the complainant did not dispute the Department's reliance on section 40(2). However the complainant stated that they had not been provided with the remainder of the information they requested.
9. The Commissioner agreed that the information had not been provided but noted the Department's position that some information was exempt and the remainder not held. He therefore asked the complainant to explain why they disagreed with the Department's refusal notice and internal review letter. The complainant duly provided a submission in support of their complaint.
10. The Commissioner would remind complainants that they are responsible for setting out clear grounds for complaint. It is not sufficient to state that a public authority has "failed" to disclose the requested information,

¹ <https://www.legislation.gov.uk/nisi/1977/2157/article/2>

since in some cases the public authority will be entitled to rely on exemptions. Nor can information be disclosed if it is not held.

11. The Commissioner would encourage complainants to ensure that they explain why they are dissatisfied, at internal review stage and subsequently when submitting a complaint to the Commissioner. This will help ensure that the Commissioner's investigation considers both parties' positions, and may assist informal resolution of a complaint.
12. During the course of the Commissioner's investigation the Department disclosed most of the information withheld under section 41(1) of FOIA.
13. In light of the above, the Commissioner's investigation was limited to the Department's reliance on the exemption at section 41 in respect of the remaining withheld information, and the Department's position that it did not hold some of the requested information. The Commissioner excluded the information withheld under section 40(2) of FOIA because the complainant did not indicate that he wished to dispute it.

Reasons for decision

Section 1: information not held

14. Section 1 of FOIA says that public authorities are required to respond to requests for information. The authority is required to disclose information in response to a request, unless an exemption or exclusion applies. If a public authority does not hold recorded information that would answer a request, the Commissioner cannot require the authority to take any further action.
15. FOIA only provides for recorded information to be disclosed into the public domain. This means that a public authority is only required to provide recorded information that it holds at the time of the request. Public authorities are not required to provide commentary or explanations that are not already recorded. In addition FOIA does not in itself require public authorities to hold information, it merely provides for access to information that is already held.
16. In cases where there is a dispute as to the information held by a public authority, the Commissioner will use the civil standard of proof, ie the balance of probabilities. His investigation will consider the public authority's reasons for stating that it does not hold the information in question, as well as the extent and reasonableness of any search conducted. The Commissioner will also consider any arguments put forward by the complainant as to why the information is held (as opposed to why it ought to be held). Finally, the Commissioner will

consider whether there are any further steps he could require the public authority to take if the complaint were upheld.

17. The Department claimed that it did not hold recorded information in respect of parts 1.7, 1.9, 1.10 and 1.12 of the request.
18. With regard to parts 1.7 and 1.9, the complainant advised the Commissioner that the Department had calculated a NAV, therefore it must hold information relating to that calculation. The complainant argued that the Department could not have calculated a NAV without notes, measurements, communication or other relevant information.
19. The Department advised the Commissioner that it had previously explained to the complainant how the NAV was calculated. The Department said that Article 40 of the Rates (Northern Ireland) Order 1977 said that Valuation Lists

"shall be conclusive evidence for the purposes of the making and levying of that rate of the NAVs of the hereditaments in the Lists."
20. The Department said it had explained to the complainant that it had used Unit 12 to identify the property in the Valuation List, rather than using the description in the lease. The Department also confirmed that it had searched its records management system and business valuation system but had not identified any relevant information.
21. The Commissioner understands the Department's position to be that it does not hold any other information relating to the calculation of the NAV. The complainant on the other hand disputes the calculation of the NAV and assumes that information must be held in order to support their position. However the Department does not consider that it would need to hold any other information in order to calculate the NAV.
22. The Commissioner is mindful that his role is to decide whether a request for information has been handled properly. It is not his role to comment on disputes or other matters that fall outside the scope of FOIA. The Commissioner is satisfied that the Department has explained the information that it holds. The fact that the complainant disagrees with the Department's decision making cannot constitute evidence that further information is held. Therefore the Commissioner accepts the Department's position that it has provided the recorded information that it holds which is relevant to part 1.7 of the request.
23. With regard to part 1.10 the complainant advised that it had requested information relating to all hereditaments at a particular postcode. The complainant understood this to include 22 units, but the Department had only provided information relating to one unit.

24. The Department advised the Commissioner that it had interrogated its Abacus Rating system to identify relevant information. It subsequently carried out a fresh SQL (Structured Query Language) search, which had not returned any further information. On this basis the Department concluded that it had provided accurate information and did not hold any other information.
25. With regard to part 1.12 the complainant advised that it had requested the valuation exercise, report and information relating to communications, but these had not been provided. The complainant argued that the Department would be obliged to maintain a full record of its decision making process, for example supporting information such as reports and/or internal correspondence.
26. The Department advised the Commissioner that it had already provided the complainant with all of the relevant information it held. The Department clarified that premises had been removed from the Valuation List owing to demolition, and that a number of temporary buildings remained valued separately.
27. The Commissioner has considered the Department's explanation of its position, and the information provided by the complainant. The Department has provided evidence of having undertaken appropriate, reasonable searches. The complainant maintains that further information must be held, but has not provided any evidence that further information is held.
28. The Commissioner recognises that it is difficult to prove a negative, ie that information is not held. He is necessarily reliant on both parties providing information to him in good faith. The Commissioner appreciates that the complainant disagrees with the Department's decision making, but the Commissioner has seen no evidence to indicate that the Department has sought to mislead the complainant – or indeed the Commissioner - as to the extent of the information it holds. The Commissioner cannot find that information is held simply because the complainant believes it ought to be held by the public authority.
29. In addition, the Commissioner is unable to identify any further action that the Department could reasonably be expected to take in order to comply with the request. As has been set out above, if information is not held then it cannot be disclosed in response to a request. In conclusion, the Commissioner finds, on the balance of probabilities, that the Department does not hold any further information relevant to the request.

Section 41: actionable breach of confidence

30. 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.”

31. The Department set out that it had relied on section 41 of FOIA in respect of parts 1.1, 1.2, 1.3 and 1.4 of the request. This covered information relating to depreciation charge and rental income, and the detailed breakdown of how the NAV had been calculated. The Commissioner accepts that most of this information was obtained by the Department from WHA, therefore the test at section 41(1)(a) is met in respect of this information.

32. The Commissioner identified a small portion of information that was generated by the Department and therefore not obtained from a third party. The Commissioner advised the Department that it could not rely on section 41 in respect of this information, and the Department subsequently disclose it to the complainant. The Commissioner’s analysis regarding section 41(1)(b) is therefore limited to the information that was in fact obtained by the Department from a third party.

33. For section 41(1)(b) to be met disclosure of the withheld information must constitute an actionable breach of confidence. In the Commissioner’s view a breach will generally be actionable if:

- 1. The information has the necessary quality of confidence.
- 2. The information was communicated in circumstances importing an obligation of confidence.
- 3. Unauthorised disclosure would cause detriment to either the party which provided it or any other party.

34. The Commissioner is satisfied that the information has the necessary quality of confidence since it is not trivial and is not in the public domain.

35. The Department confirmed that it had obtained the withheld information for the purposes of assessing WHA for rating purposes as well as assessing the property for the 2015 Non Domestic Revaluation (referred to at part 1.3 of the complainant's request as REVAL 2015). The information was obtained under powers set out at Article 59 of the Rates (Northern Ireland) Order 1977² which authorise the Department to obtain information for Valuation List purposes.
36. In light of the above the Commissioner is also satisfied that the withheld information was provided in confidence to the Department, for specific and limited purposes.
37. The Department did not provide the Commissioner with detailed arguments relating to the third criterion. However the Commissioner is prepared to accept that detriment would be caused to the confider, if the withheld information were to be disclosed into the public domain.
38. The complainant argued to the Commissioner that the Department could not rely on section 41 because the information in question was "historical or publicly reported". The Commissioner notes that historical information is not excluded from the scope of the exemption, and the Department has not sought to rely on section 41 in respect of information that is in the public domain. Accordingly the Commissioner does not consider the complainant's arguments to be persuasive in the circumstances of this case.
39. The exemption at section 41 of FOIA is not subject to the public interest test at section 2(2). However the Commissioner is mindful that an action for breach of confidence will fail if there is a public interest defence to disclosure. Therefore the Commissioner has considered whether there is an overriding public interest in disclosure which is sufficient to set aside the public interest in maintaining the duty of confidence.
40. The Department did not provide details of any public interest in disclosure. Nor did the complainant put forward any arguments on this issue. On the basis of the information provided by both parties, the Commissioner is unable to identify an overriding public interest in disclosure. Therefore he finds that the Department was entitled to rely on the exemption at section 41 of FOIA in respect of the withheld information.

² <http://www.legislation.gov.uk/nisi/1977/2157/article/59>

Right of appeal

41. 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: 0203 936 8963
Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

42. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Tribunal website.
43. 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

Sarah O’Cathain
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SK9 5AF