



Valuation Office  
Agency

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To: John Hanlon

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Our Reference: 11804135.2CEO

Date: 14 October 2020

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Dear Mr Hanlon

**Freedom of Information Act (FOIA) – Internal Review.**

Thank you for your email of 16 September 2020. We have treated this as a request to review the Valuation Office Agency's (VOA) response to your request for information under the FOIA.

**The purpose of an internal review:**

The purpose of this review is to provide a fair and thorough evaluation of the decisions made in replying to your request under the FOIA. Links to the legislation quoted are set out at the end of this letter.

**My decision:**

I uphold the Agency's decision not to disclose any information, if held, under the FOIA. I have set out below your request, the Agency's response, and the reasoning for my decision.

**Your request for information under the FOIA for which you seek a formal review:**

On 21 August 2020 you asked:

*"Records show on your website that 10-12 Forth street [sic], Liverpool 20<sup>1</sup> used to generate in excess of £50,000 per year in business rates. Then in sometime around 2017 these rates were removed as the building was in disrepair. Therefore, can you please supply the following information:*

- 1. Who classed this property as being in disrepair?*
- 2. Did anybody from Liverpool City Council ever contact your Office to have the business rates removed under their any powers they have?*
- 3. If the answer is yes to question 3, please provide their name?*
- 4. Please provide all correspondence/emails between Liverpool City Council and your Office over 10-12 Forth Street, L20?"*

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<sup>1</sup> All references to individuals and the identifying element of property addresses, have been redacted.

## The Agency's response under FOIA:

The Agency considered your request under the FOIA. The response provided to you on 16 September 2020 explained they could not confirm whether the information you had requested was held as another Act prevented this. It was explained the other Act was the Commissioners for Revenue and Customs Act (CRCA) 2005, of which sections 18(1) and 23(1) applied.

## Your request for an Internal Review under FOIA:

On 16 September 2020 you stated:

*"Please pass this on to the person who conducts Freedom of Information reviews.*

*I am writing to request an internal review of Valuation Office Agency's handling of my FOI request '10-12 Forth Street Liverpool L20', due to your refusal to provide information which is in the interest of the public.*

*The said property is not in a state of disrepair as claimed on your web page and is currently being used by a local construction company. This in turn is being rented to the construction company by Liverpool City Council.*

*Therefore, I would ask you to reconsider your response."*

## The detailed response to the internal review:

You referred to a property in the Non-Domestic Rating List and asked for information about the status of that property.

Under the FOIA, a public authority cannot take into consideration why the requester would like the information, or consider any benefit disclosure might bring to the individual, or the public more widely.

The fact that some or all of the requested information is already publically available cannot be taken into account when considering disclosure under the FOIA. The information in scope of each request must be considered solely against the requirements of the Act.

To help explain my decision more fully, I will set out the statutory framework the VOA operates within and its application to your request.

1. The VOA is an Executive Agency of HMRC and collects and holds data relating to individual properties to undertake its functions. This includes information about the property you are seeking.
2. Section 10 of the CRCA sets out the functions of the Valuation Office. Schedule 1 identifies the provision of 'rating lists' and 'valuation of property' as former functions transferred to HMRC.
3. VOA staff are officers of HMRC and are prohibited from disclosing information relating to VOA functions under section 18(1) of the CRCA. The information you have requested, **if held**, is held for VOA functions which means that section 18(1) of the CRCA applies.
4. When section 18(1) of the CRCA applies, section 23(1) of the CRCA then specifies that, under section 44(1)(a) of the FOIA, the VOA must not disclose information when it would either:
  - (a) specify the identity of the 'person' to whom the information relates, or
  - (b) enable the identity of such a person 'to be deduced'.

Section 23(1)(b) of the CRCA includes when a 'person' can be deduced from property data such as an address.

The term '**person**' means legal entities such as companies as well as individuals<sup>2</sup>.

5. Section 44(2) of the FOIA removes a public authority's duty to confirm whether information in scope of a request is held. This applies when confirming whether the information is held would be exempt from disclosure under section 44(1) of the FOIA. Section 44(1)(a) applies when disclosure is prohibited by another Act. In this case the other Act is section 23 of the CRCA.
6. Although the information you have requested does not directly identify a 'person' (including legal entities, such as companies), it would enable a person's identity to be deduced. This is because the requested information is at address level and can be linked with other information, from publically available sources, to identify any 'person' associated with the relevant address.
7. The CRCA was drafted to ensure that the VOA's general duty of confidentiality covers taxpayer's information, whether they are an individual, or for example, a company which owns a property.
8. Section 23 of the CRCA was amended by section 19(4) of the Borders, Citizenship and Immigration Act 2009, to state that the VOA must disregard any permissive rights set out in sections 18(2) or (3) of the CRCA when considering an FOIA request. This means that although we can disclose information during the course of our work when permitted by another Act, we cannot do so under the FOIA.
9. Section 19 of the CRCA makes it a criminal offence for any member of VOA staff to disclose any 'person's' information under the FOIA.
10. Section 44 of the FOIA is an absolute exemption; meaning there is no requirement to assess any public interest arguments for and against disclosure.

Looking at other aspects of the Agency's FOIA response I can see:

- You were provided with a response to your request within 20 working days of receipt, as required by section 10 of the FOIA.
- Details of the FOIA internal review procedure and your right to complain to the Information Commissioner were also provided, as required by sections 17(1) and 17(7) of the FOIA.

The ICO has considered and upheld the application of the exemption in section 44 of the FOIA to requests for information held by the VOA on a number of occasions.

The ICO's Decision Notices are published on their website here:

<https://icosearch.ico.org.uk/s/search.html?collection=ico-meta&profile=decisions&query>

The following cases may be of interest:

**FS50877962** – The complainant sought the area relating to a number of properties; the Commissioner's decision is that the VOA were entitled to rely on section 44(2) of the FOIA to neither confirm nor deny holding information in scope of the request.

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<sup>2</sup> Schedule 1 to the Interpretation Act 1978 - <http://www.legislation.gov.uk/ukpga/1978/30/schedule/1> and section 110 of the CRCA Explanatory Notes states 'The term "person" includes both natural and legal persons, and, for example, the tax affairs of a limited company are also protected by the provisions of the subsection.'

**FS50404281** - The complainant requested a copy of survey notes relating to a specific building. The Commissioner's decision is that the VOA was correct to refuse to confirm or deny that it holds the requested information under section 44(2) of the FOIA.

**The additional points you raised:**

*"....The said property is not in a state of disrepair as claimed on your web page..."*

When we are notified of potential changes to properties in the Rating List, we may investigate and seek further information, as necessary, to reach a decision on the valuation position. Any resulting updates to valuations are reflected on the "Find Your Business Rates Valuation" service which can be seen here: <https://www.tax.service.gov.uk/business-rates-find/search>.

**To sum up:**

Having reviewed this case I confirm that:

- The information sought, if held, is held in connection with VOA's functions.
- The information, if held, was correctly withheld from disclosure under section 44(1)(a) of the FOIA as section 23(1)(b) of the CRCA applies to "person" identifying information.
- Section 44(2) was correctly cited as, the duty to confirm or deny whether information is held does not apply.
- Section 44 is an absolute exemption and does not require any public interest arguments to be considered.
- The VOA refusal notice complied with all other requirements of FOIA.

**Appeal Rights:**

If you are not content with the outcome of this review or any of these decisions made by the VOA you may apply directly to the Information Commissioner, who can be contacted by email at: [casework@ico.org.uk](mailto:casework@ico.org.uk).

Yours sincerely,

*Douglas Stoneham*

Douglas Stoneham  
Director of Policy and Customer Insight

**Here are links to the legislation quoted in the review:**

- **The Freedom of Information Act**  
<http://www.legislation.gov.uk/ukpga/2000/36/contents>
- **The Commissioners for Revenue and Customs Act**  
<http://www.legislation.gov.uk/ukpga/2005/11/contents>

**(as amended by) Section 19 (4) of the Borders, Citizenship and Immigration Act**  
<http://www.legislation.gov.uk/ukpga/2009/11>