

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 February 2014

Public Authority: HM Land Registry

Address: Head Office
Trafalgar House
1 Bedford Park
Croydon
CR0 2AQ

Decision (including any steps ordered)

1. The complainant has requested a copy of the latest version of the handling plan, defensive briefing and supporting material produced by the Land Registry to manage any adverse reaction to its plans as regards land charge searches. The Land Registry provided some information but withheld 2 documents, the external stakeholder power and influence matrix and the stakeholder journey mapping. On review it upheld that decision. During the course of the Commissioner's investigation the Land Registry did however disclose redacted versions of these two documents but applied section 43(2) to the redacted sections.
2. The Commissioner's decision is that the Land Registry was not correct to apply section 43(2) to the information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To disclose the information to the complainant.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 3 May 2013 the complainant wrote to the Land Registry and requested information in the following terms:

"Please supply a PDF copy of the latest version of the handling plan, defensive briefing and supporting material produced in order to manage any adverse reaction."

6. The Land Registry responded on 7 June 2013. It provided a copy of some documents but withheld a copy of the external stakeholder power and influence matrix and the stakeholder journey mapping under section 43(2) (prejudice to commercial interests).
7. Following an internal review the Land Registry wrote to the complainant on 15 July 2013. It upheld its initial decision.
8. However during the course of the Commissioner's investigation the Land Registry wrote to the complainant and disclosed redacted copies of both documents to him. It withheld some sections of the documents retaining its reliance upon section 43(2) however.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He considers that the information which he requested should have been disclosed to him.
10. The Commissioner wrote to the complainant after the disclosure of the further information by the Land Registry and asked if he was now content with the information which had been disclosed to him. However the complainant confirmed that he wished the Commissioner to make a decision on the redacted sections of the information.
11. As part of his complaint the complainant also asked whether the information should be considered under the Environmental Regulations 2004 rather than under the Act. The Land Registry considered but did not agree that that was the case.
12. As the Land Registry disclosed other sections of the information the Commissioner has not considered this further in this decision notice.

Reasons for decision

Is the information environmental information?

13. The Commissioner has considered whether the information is environmental information which the Land Registry should have considered under the Environmental Information Regulations 2004.
14. The Land Registry has been exploring the feasibility of widening its information services to include the provision of Local Land Charges searches and Con 29 information at a standardised price, turnaround time and format. The information requested relates to the Land Registry's understanding of the position of the stakeholders during its engagement with them over the development of this project.
15. Land searches relate to searches for house purchases and sales and are normally considered as falling within the scope of the Regulations rather than the Act. However the information falling within the scope of this request does not directly relate to the land charges themselves but to a plan to re-evaluate and introduce a new means of obtaining that information.
16. The information itself does not therefore relate either to the land charges itself, nor to the environment directly. It is simply a list of the Land Registry's view of the position of stakeholders as regards the proposed changes to the land charges search.
17. The Land Registry said in response to the complainant's previous complaint that the information relates to a provision of a service rather than directly to the environment. It is not information about the environment itself nor a plan or a measure which is likely to have any effect upon the environment.
18. The Commissioner has considered this and is satisfied that the information caught within the scope of this request is not environmental information as defined in Regulation 2 of the Regulations. The Commissioner recognises a distinct difference between information on the actual searches (which provide details of land charges), and the information in this case. The withheld information in this case is a matrix showing the potential opinions of various organisations to the proposed changes to the land charge searches. It is not information on the environment itself, and the changes proposed have no direct effect on any of the environmental factors outlined in the Regulations. The information relates more to the management and design of a public service.

19. He therefore considers that the council was correct to consider the information for disclosure under the Act rather than the Regulations.

Section 43(2)

20. Section 43(2) of the Act states that information may be exempted where its disclosure would, or would be likely to prejudice the commercial interests of any person (including the public authority holding it).
21. The Land Registry considered that it would or would be likely to prejudice the commercial interests of the Land Registry. As it did not specify which of the two criteria it was relying upon the Commissioner has considered the lower requirement for the exemption to apply; that a disclosure *would be likely* to prejudice the interests of any party.
22. The Land Registry said it has a commercial relationship with the organisations and disclosing the Land Registry's view of their position in relation to the proposals for Local Land Charges, either to the organisation itself, or to others, would be likely to affect this relationship and inhibit discussions with them in the future.
23. It further argued that the redacted information is partly based on information it obtained from the organisations in commercial discussions, and the significance of this and information obtained is evidenced by the fact that non-disclosure agreements were signed relating to the exchange of information.
24. The information categorises the Land Registry's view of each organisations position as regards the proposed changes. The categories range from hostile to the changes to being positive about them or championing the project. The matrix also sets out each individual organisations power and relevance to the project and their interest in, and potential impact upon the project.
25. The redacted sections take out the findings for some organisations. The format of the document and many of the entries in the field have now been disclosed, although it is important to remember that the Land Registry initially withheld all of this information. Prior to its disclosure of some of the information the nature and categories of the matrix would not have been known.
26. The Commissioner understands the arguments submitted by the Land Registry. There may clearly be situations where it would not wish it known how it viewed a particular organisations position on the project. For instance it may not wish it known that it viewed a particular organisation as having a negative view of the project, or that it considered an organisation to have little relevance or impact on the project.

27. The Land Registry's view is that a disclosure of this position might damage its ability to work with these organisations in the future. The Commissioner agrees that there is merit to this argument.
28. The Land Registry has also argued that this might disclose information which it had received from the organisation itself. It did not provide any evidence of this, but the Commissioner can understand for instance how an organisation might have said to the Land Registry 'off the record' that it was not particularly supportive of the changes, but that the organisation might not wish that to be known publicly. A disclosure of this might therefore be seen as a breach of trust and confidence by the organisations concerned.
29. Whilst the Land Registry's arguments are fairly sparse there is no requirement to prove the degree of prejudice which would occur in order to engage the exemption. The authority must simply demonstrate that prejudice would be likely to occur. The Land Registry's arguments do have merit and so the Commissioner is satisfied that the exemption is engaged by the information.
30. The Commissioner has therefore carried out a public interest test as required by section 2 of the Act. The test is whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The public interest

The public interest in the information being disclosed

31. The Land Registry recognised that there was a public interest in the information being disclosed in order to be transparent about the development of the project.
32. The Commissioner notes that the changes to the charging system will affect large amounts of people as this is a primary essential when property is being purchased. Searches give buyers important information about the property they are considering purchasing. The changes are promoted as being necessary to take into account new legislation, and to facilitate consistency in the cost and length of time it takes to carry out such searches.
33. It is possible that the proposed changes would affect the current status quo, and potentially the revenue earned by some organisations. If the means of carrying out land charge searches affects the ways those organisation currently work, or if their ability to carry out the searches is changed in some way they may be detrimentally affected by the proposals. Some organisation may therefore be cautious about the

proposals or protective of the status quo in order to retain their ability to gain revenue from the current system.

34. If other organisations had been seeking to retain the status quo from a point of retaining their own position there is a public interest in that being known. If the changes are generally in the public interest but some organisations wish to maintain the status quo from a point or retaining their own fees, power or influence then a disclosure of this would again be in the public interest.
35. There may also be a public interest in the information being disclosed in order that the public can take into account the perceived position of an organisation should it make any public announcements about the changes. Knowing that an organisation has concerns about the project may help the public to better understand any public or press announcements that they make about the changes and to better understand how the changes may impact upon them. Clearly the matter is of great importance to any individuals, or businesses which are considering purchasing commercial or private land.
36. It is almost inevitable that some organisations would be either cautious or have reservations about any project if the proposals would have a significant impact upon them or if they are unsure of the effect of the proposals. It would not be unusual for various organisations to have reservations about changes which could negatively affect their own interests. It would not therefore be surprising to the public to find that that is the case.

The public interest in the exemption being maintained

37. The Land Registry considered that release could affect relationships with stakeholders. In the short term it could affect engagement with such stakeholders over Land Registry's proposals for taking on responsibility for the Local Land Charges Register. The Land Registry is intending to go to public consultation on the implementation of the system. In the longer term the Land Registry argued that disclosure could affect relationships and inhibit the development of services in the future, thereby prejudicing its future commercial relationships with those organisations. For these reasons, it reached the conclusion that the public interest in maintaining the exemption outweighs the public interest in disclosure.
38. The Land Registry's arguments in this respect are relatively sparse in support of its position. It is likely however that it had factored into the circumstances that it had reconsidered its position and decided to disclose the majority of the information held in the reports. Relatively few organisations records were now being withheld.

39. The Commissioner accepts the Land Registry's concerns that disclosing its view of some organisations' stance on the project may ultimately impact upon its ability to work with that organisation in the future on other projects.
40. The central concern would be a disclosure of information shared in confidence with the Land Registry by other organisations. Clearly if an organisation had been willing to state confidentially to the Land Registry that it was cautious about the changes then it may cause concerns if that information is subsequently disclosed.
41. However a disclosure of this information would not disclose the views shared with the Land Registry. It would simply provide the organisations position within the matrix and a view as to its power, influence and relevance to the project etc. It would not provide details of what the concerns were or what information had been provided to the Land Registry which had led to its view on the organisations position.
42. The Commissioner also accepts however that organisations may disagree with their placement on the matrix and that this might cause a degree of concern in future relationships. However the Commissioner considers that any such prejudice would be likely to be fairly weak given that all of the organisations would be aware of the potential for FOI requests to be received.
43. The next consideration is the safe space which the Land Registry needs to discuss and advise its decision makers. The Commissioner understands that the Land Registry, as others, would wish to retain its ability to discuss strategy on projects it is leading in confidence. As part of its development of projects it may wish to ascertain or consider the organisations and individuals who are likely to support a project or have a negative view of it. It would also be important to recognise which organisations could potentially have the greatest power to influence the outcome of the project from the outset. In this way the Land Registry can identify which organisations it may need to prioritise its negotiations with over others, or work more carefully with to establish consensus on the way forward. This would clearly facilitate and increase the potential of a successful implementation of the project. A disclosure of this information prior to the project being settled might destabilise relationships and make it harder to negotiate a successful outcome to deliver the changes.
44. There is clearly the potential to aggravate a relationship over a particular project if the organisation disputes the decisions of the Land Registry in this respect. Again however the Commissioner is not convinced that this argument can be accorded a great degree of weight in this instance given that organisations would know that the Land

Registry is subject to FOI, and because it is also likely to be a relatively normal management tool to analyse stakeholders in this way. Organisations do take managerial decisions and may decide upon a stance to such projects, and it is clearly a valid risk management strategy to identify and act on those stances accordingly. Other organisations would recognise that to be the case and would be unlikely to 'hold grudges' (as an organisation) against the Land Registry for the disclosure of this particular information in any future negotiations.

Conclusions

45. The Commissioner considers that the significance of the matrix to the general public is limited. However although the views and potential impact of particular organisations do not particularly affect the general public the effect of their representations may ultimately affect the outcome of the proposal, particularly if they have the power to influence decisions which are taken.
46. If there are organisations which have a particularly defensive view of the status quo, and which have the strong ability to influence the end decision then there is clearly a public interest in that being known in order to be transparent about stakeholders and their use of lobbying power. The counter to this is also true. If the proposals are not appropriate then there is a public interest in knowing how many, and which organisations have concerns about the implementation of the system. Knowing this can help individuals form their own opinions on the proposed changes and makes the development of the project more transparent.
47. This is particularly the case given that the disclosure would simply be of an organisations position on the matrix rather than details of the negotiations or specific examples of the views it has expressed upon the issue. The commercial sensitivity of the information is therefore not particularly strong.
48. Additionally the wide scale effect of the proposed changes in terms of cost, potential disruption and, subsequently, on the land charge search system itself create a stronger public interest in the public being able to access information on the views of stakeholders (who ultimately are the largest and most affected stakeholder).
49. The Commissioner considers that the Land Registry has failed to demonstrate an overriding public interest in the information being withheld from disclosure in this case. Its arguments in support of its position do not outweigh the public interest in the information being disclosed.

50. The Commissioner's decision is therefore that the public interest rests in the disclosure of the information in this case.

Right of appeal

51. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

52. 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.
53. 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

Gerrard Tracey
Principal Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF