

Property Transactions and the Freedom Of Information Act

In a decision of September 2003 the Information Commissioner has directed that details of property transactions involving public bodies are to be made available to property valuers, under the provisions of the Freedom of Information Act (1997) and (2003).

In making the decision the Commissioner stated;

“there is a strong public interest in members of the public exercising their rights under the FOI Act and in public bodies being open and accountable particularly in relation to the use of public funds”.

Furthermore, the Commissioner stated that the reasons for the request are not relevant and it does not matter that the requester is going to use the information for business purposes. The information to be released is to include price, surveys (including valuation reports) title, dates and contract terms. The only items to be excluded, on grounds of confidentiality, are the names of the vendors.

The case, at the base of this decision involved a request made to Ennis Town Council. The information requested was in respect of a number of properties that the Council had recently acquired close to the town centre. The information was required in order to assist with the preparation of several compulsory purchase cases which were due to be heard before one of the Property Arbitrators.

The initial request was refused. The view of the Council was that the information was sensitive and could impact on current and ongoing negotiations for similar properties in the area. A review of that refusal was requested under the internal review procedures available under the FOI Act. Not surprisingly, that decision was also negative. The reasons for refusal, though more elaborate than the first time around, were essentially the same.

An appeal was made to the Information Commissioner. The Commissioner set up a review under Section 34(2) of the Act. The Council argued that it had refused to disclose the information under the terms of Section 27 of the 1997 Act. It was of their view that to give the information

1. would “disclose positions taken or to be taken for the purposes of any negotiation”; and
2. that the request “is not on behalf of the public but a specific private interest for a client in a consultative capacity”.

The Commissioner in overturning the decision of the Town Council ordered that full disclosure should be made. The Commissioner was of the view that there is a strong public interest to be served through full disclosure. This public interest requirement is provided for under Section 21 of the Act and it outweighs any advantage that might arise from non-disclosure. In addition, the Commissioner held that in accordance with Section 8 of the Act, the identity of the requester is irrelevant as is the purpose for seeking the information. She said;

“the reasons given by or attributed to a requester in seeking information, are not to be taken into account by the decision maker”.

This is a particularly strong decision by the Commissioner. It may be of considerable benefit in trying to find out the true position in relation to public bodies, including local authorities and semi-state companies, and their considerable involvement in all aspects of the property market. After all, the public has a right to know the details surrounding how their money is used. The property valuer, as a member of the public, equally has a right to this information. Indeed it may be argued that it is part of the valuers duty of care to the client to obtain this information where relevant. Access to it will assist in arriving at a clearer view as to market conditions because public bodies can have a considerable impact on the local property market in many situations. While the Commissioners decision is to be welcomed, be aware that all valuation reports or any other form of advice, given to a public body will be open to public inspection.

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