



Information Commissioner's Office
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Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 12 July 2006

Public Authority: Her Majesty's Revenue and Customs
Address: Room 2/66
2nd Floor, 100 Parliament Street
London
SW1A 2BQ

Information Requested

"The total combined income declared to the Inland Revenue by the UK's top 50/100 earners in 2003/4 and the total combined amount of tax paid by the UK's top 50/100 earners in 2003/4"

Summary Decision and Action Required

The Commissioner's decision in this matter is that the public authority has not dealt with the complainant's request in accordance with Part I of the Act in that it has not provided an adequate level of advice and assistance to the complainant.

The Commissioner therefore requires the public authority to explain to the complainant why its systems do not permit the calculation of the requested sums in order to assist the complainant in modifying or rephrasing his request.

1. Freedom of Information Act 2000 (the 'Act') – Application for a Decision and the Duty of the Commissioner

1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the complainant's request for information made to the public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').

1.2 Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure, or**
- the application is frivolous or vexatious, or**
- the application has been subject to undue delay, or**
- the application has been withdrawn or abandoned,**

the Commissioner is under a duty to make a decision.



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1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

2. The Complaint

2.1 The complainant has advised that on 4 January 2005 the following information was requested from the public authority in accordance with section 1 of the Act:

- a) *what was the total combined income declared to the Inland Revenue by the UK's top 50 earners in 2003/4?*
- b) *what was the total combined amount of tax paid by the UK's top 50 earners in 2003/4?*
- c) *what was the income declared to the Inland Revenue of each of the UK's top earners in 2003/4?*
- d) *what was the amount of tax paid by each of the UK's top 50 earners in 2003/4?"*

2.2 On 4 February 2005 the public authority advised the complainant that at the time of his request comprehensive information on personal incomes and liabilities for 2003-4 was not centrally available because the deadline for submitting a Self-Assessment Return for the 2003-4 tax year had only just passed. It explained that it was therefore substituting the 2002/3 tax year in its deliberations. It said that enquiries had been made as to whether the requested information was held in the form requested and, if so, whether that could be made available.

2.3 As a result of its internal inquiries it concluded that it did not hold parts a) and b) of the information requested because *"no such aggregate analysis has been compiled. As such there is no information which can be made available under the terms of FOI"*. It then went on to explain that if such a summary had been available, it would have been withheld under the exemptions in Section 29 (Prejudice to the Economic Interests of the United Kingdom), Section 40(2) (Breach of one of the Data Protection Principles) and Section 44 (Statutory Prohibition – in this case the prohibition being the statutory duty of confidence in Section 182 of the Finance Act 1989).

It argued that parts c) and d) of the information request related to identifiable customers and would therefore also be exempt under Section 40(2) and Section 44.

2.4 The complainant requested a review of all parts of this refusal on 9 March 2005. However, his request for a review focused on the public authority's refusal to provide parts a) and b) of his request and on the exemptions it had cited. He modified his request in respect of parts a) and b) and referred to the *"Top 50/100"* in both cases. He acknowledged the public authority's point that there may be



potential for identification where individual sums are released but disputed that this would be the case for aggregate figures.

2.5 The public authority sent the outcome of its review to the complainant on 5 May 2005. Also focusing on parts a) and b) of the request as modified by the complainant, it upheld its initial refusal and cited two reasons for doing so.

1. It does not hold the information and is not obliged to create it.
2. It would not produce these figures for release because of "*their potentially disclosive nature*". It argued that given the great deal of publicly available information about individual incomes it would be possible to identify very many people in the top 50 and hence in the top 100. It also stressed its obligation to protect taxpayer confidentiality.

2.6 The complainant was dissatisfied with this response and made a complaint to the Commissioner on 10 May 2005. He has focused his complaint on the public authority's decision to withhold parts a) and b) of his request. He commented that although the information requested may not be held exactly in the format requested the public authority must hold "*information of the description specified in the request*" (this is a direct quote from Section 1 of the Act).

3. Relevant Statutory Obligations under the Act

3.1 **Section 1(1)** provides 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."

This entitlement is subject to a number of exemptions which are found in Part II of the Act.

3.2 **Section 16** provides that –

"(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case."



4. Review of the case

4.1 The Commissioner clarified with the complainant that he was seeking access to the information described in parts a) and b) of his request. The complainant also advised that he would be willing to broaden the scope of his request to the Top 500 earners in order to counter the possibility of identifying individuals from an aggregated figure. He also stated that information of this kind was routinely released in the United States. The Commissioner commented that the US tax regime and its privacy and freedom of information regimes do not necessarily read across to the UK but invited further comment from the complainant on this point. No further comment on this point was provided nor was further evidence provided.

4.2 The Commissioner made initial telephone enquiries to the public authority and discussed the points raised in the Authority's review of its refusal including its analysis of applicable exemptions. The Commissioner also asked the public authority how difficult it would be to retrieve and compile income and taxation information relating to the UK's top earners. The public authority advised verbally that it would make enquiries of its strategic partners on this point.

4.3 The Commissioner followed up his telephone enquiries with a letter reiterating questions and points raised in that telephone conversation. The following questions were asked:

“1. Assuming [the complainant] would be satisfied with a record of the total combined amount of income declared to the Inland Revenue by the UK's top 50 earners in 2002/3 and a record of the total combined amount of tax paid by the UK's top 50 earners in 2002/3, how difficult would it be to retrieve that information from your records? I recognise that you need to liaise with strategic partners on this point.

2. Please provide more detail to illustrate your view that individuals could be identified from combined Top 50 figures were they to be available fairly readily upon request.

3. If you are concerned that individuals could be identified from combined Top 50 figures, please provide your thoughts on what size figures could arguably be disclosed without the risk of individuals being identified, e.g., Top 100/200/500

4. Would HMCR no longer seek to rely on the Section 44 and Section 29 exemptions?

5. If you seek to rely on Section 29, please expand on the public interest arguments for and against disclosure of this information.”

4.4 The public authority replied by asserting that it had made clear to the complainant that it did not hold the requested information. It added that prior to responding to the complainant's request it had searched its records and established that the statistics requested were not held. It reiterated that complete information on



personal income tax liabilities was not available at the time of the complainant's request because the filing deadline for that year's self-assessment had not yet been reached. It explained that to provide the information in question for the previous year would have required the generation of new statistics following a detailed analysis of the information that was held and that to do so would go beyond the public authority's obligations under the Act.

- 4.5 The public authority then outlined steps it had taken to comply with its obligations under Section 16 of the Act. It asserted that it had done this by explaining that comprehensive information on personal incomes and tax liabilities for 2003-4 were not available at the time. It had also advised the complainant about what figures were available and referred him to page 103 of its annual report for 2004 <http://www.hmrc.gov.uk/pdfs/report2004.pdf> where latest figures were available under heads of duty rather than split into underlying analysis of types or classes of taxpayer. The public authority also stated that it had provide an explanation of which exemptions were potentially applicable in order to be helpful to the complainant.
- 4.6 The Commissioner requested further information about its assertion that it would have to generate new statistics following a detailed analysis of the information that it did hold. To assist the public authority in preparing a response, the Commissioner outlined an of a simple information management system where data held on that system could be manipulated fairly easily to respond to a request for aggregated information even though aggregated information was not routinely generated. Acknowledging that the public authority's systems were likely to be far more sophisticated than the simplistic scenario he had outlined, the Commissioner recommended that the public authority might wish to contrast the reality of its systems with this scenario in order to demonstrate more clearly the basis for its assertion that it did not hold the requested information.
- 4.7 In its response, the public authority advised that, in theory, within its systems were building blocks which would enable them to create aggregated totals and a ranked list. However, in its view, the compilation of a ranked list from those building blocks and the aggregation of those ranked figures would involve the creation of new information.
- 4.8 The public authority then explained its systems in more detail. It provided examples of separate systems used for the range of tax regimes in operation. Changes, it explained, were made to thousands of records each day and that its business systems contained records for several million cases. It explained that it has no business reason to rank one case against another either for national aggregates or for any and that a suitable database need to be created to perform this exercise. To do so, it argued, would exceed its obligations under the Act.



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- 4.9 Having considered the public authority's arguments, the Commissioner accepted that it did not hold the requested information. The Commissioner then considered whether the public authority had conformed with the recommendations of the Section 45 Code of Practice (the "Code") as specified in Section 16 (2) (see 3.2 above).
- 4.10 The Commissioner recognises that the public authority's explanation of likely applicable exemptions (see 2.3 above) is an attempt to manage the complainant's expectations. The Commissioner considers this to be a reasonable approach where the explanation is given in conjunction with further explanatory information of sufficient detail to assist the requester. However, without this additional explanatory information, the impression is given that any information relating to this subject is exempt information.

- 4.11 Paragraph 11 of the Code states:

"In seeking to clarify what is sought, public authorities should bear in mind that applicants cannot reasonably be expected to possess identifiers such as a file reference number, or a description of a particular record, unless this information is made available by the authority for the use of applicants"

- 4.12 In the Commissioner's view, the public authority should have provided a more detailed explanation of its systems similar to the explanation provided to the Commissioner in the course of correspondence on this case. That said, it should be noted that paragraph 12 of the Code recognises that there are limits to the obligation to provide advice and assistance:

"If, following the provision of such assistance, the applicant still fails to describe the information requested in a way which would enable the authority to identify and locate it, the authority is not expected to seek further clarification. The authority should disclose any information relating to the application which has been successfully identified and found for which it does not propose to claim an exemption. It should also explain to the applicant why it cannot take the request any further and provide details of the authority's complaints procedure and the applicant's rights under section 50 of the Act (see "[Complaints Procedure](#)" in section VI [of the Code])."

The Code can be accessed in its entirety via the Department for Constitutional Affairs' website <http://www.dca.gov.uk/foi/reference/impref/codepafunc.htm#partII>



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5. The Commissioner's Decision

5.1 The Commissioner is satisfied that the requested information is not held by the public authority. However, the Commissioner is not satisfied with the level of advice and assistance provided by the public authority to the complainant.

6. Action Required

6.1 In the light of the matters set out above, the Commissioner requires the public authority to comply with its obligations under Section 16 of the Act in respect of the complainant's request. The public authority should offer advice and assistance to the complainant by explaining to him why its systems do not permit the creation of the aggregated figures that he has requested. The public authority is required to provide this explanation to the complainant within 35 days of the date on which this Notice is served.

7. Right of Appeal

7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 12th day of July 2006

Signed

Phil Boyd
Assistant Commissioner

Information Commissioner's Office
Wycliffe House
Water Lane, Wilmslow, SK9 5AF