

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 1 April 2008

Public Authority: Her Majesty's Revenue & Customs
Address: 100 Parliament Street
London
SW1A 2BQ

Summary

The complainant requested from HM Revenue & Customs the files of a group of companies, a pension fund and a trust of which he was once a director and trustee. This information has been withheld under section 44 of the Act (prohibitions on disclosure). The public authority has said that the relevant statutory prohibition is section 18(1) of the Commissioners for Revenue & Customs Act 2005. The Commissioner has considered the complaint and is satisfied that any information that the public authority holds, which falls within the scope of the request, is covered by the statutory prohibition and that the section 44 exemption applies. However the Commissioner has found that the public authority breached section 17(1) of the Act by failing to issue a refusal notice within 20 working days and also breached section 17(1) of the Act by failing to adequately explain to the complainant why his request was being refused.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant has made several requests to the public authority for information regarding his own tax affairs and the tax affairs of a group of companies, a pension fund and a trust fund with which he was once involved; from hereon in referred to as the companies and trusts. On 13 December 2005 the complainant asked for information he believed to be held in the public authority's files regarding the companies and trusts.

3. The public authority acknowledged the request on 7 February 2006. Due to the fact that the public authority had been dealing with the complainant for a considerable length of time regarding issues arising out of his involvement with the companies and trusts, the public authority failed to deal with the complainant's letter as a request for information under the Act.
4. The complainant contacted the Commissioner on 24 July 2006 to inform him that he had not received a response to his request for information regarding the companies and trusts. As a result of this the Commissioner contacted the public authority to remind it of its obligation to respond to all requests for information within 20 working days. The Commissioner said that it appeared that the complainant had requested this information in his letter of 13 December 2005 although it is possible that he requested this information in more clearly defined terms in other correspondence.
5. The public authority responded to the complainant's request for information regarding the companies and trusts on 31 October 2006. It said that it believed that it had provided the complainant with all of the information it could without breaching its duty of confidentiality. In this letter the public authority had explained to the complainant when responding to another issue, which is not considered as part of this decision notice, that it has a statutory duty of confidentiality under section 18(1) of the Commissioners for Revenue & Customs Act 2005 (CRCA 2005). It said that the effect of this legislation is to prohibit disclosure of information about its functions. It added that where information held in relation to its functions would disclose the identity of other persons then the information would be exempt under section 44 of the Act by virtue of section 23(1) CRCA 2005.
6. In this letter the public authority also dealt with various other matters concerned with the complainant's tax affairs. The public authority responded to requests the complainant had made under the Data Protection Act 1998 and requests made as part of the public authority's normal course of business.
7. On 7 December 2006 the complainant wrote to the public authority to say that he was dissatisfied with the response he received to his request. He also clarified the nature of the information he was seeking. He explained that he wanted investigation reports which the public authority had supposedly produced as a result of alleged fraud involving the companies and trusts.
8. The public authority had invited the complainant to request an internal review if he was dissatisfied with the handling of his request. The complainant did not request an internal review and instead approached the Commissioner with his complaint. The Commissioner exercised his discretion and considered the complaint even though the complainant had not exhausted the public authority's complaints procedure in this particular issue.

The Investigation

Scope of the case

9. The complainant made his initial complaint to the Commissioner on 24 July 2006, as mentioned above. The complainant informed the Commissioner that he had not received a response to several requests for information including his request of 13 December 2005. In line with his procedures the Commissioner wrote to the public authority to remind it of its duty to respond to requests for information within 20 working days.
10. The complainant approached the Commissioner again on 8 December 2006. The complainant said that he was dissatisfied with the response he received to his request for information regarding the companies and trusts. The complainant specifically asked the Commissioner to consider the public authority's decision to refuse to disclose to him information regarding the companies and trusts.
11. In this complaint and in his earlier complaint, as well as in other correspondence, the complainant has said that he is also dissatisfied with responses he has received to other requests for information. These include his request for a copy of notes from an interview he attended in June 1992 and a request for a copy of a file including details of subject access requests he has made to the public authority, referred to by the complainant and the public authority as "the establishment file". The Commissioner has not considered these requests as part of this decision notice. The Commissioner considers these requests to be requests for personal data of which the complainant is the data subject and that therefore they should be dealt with under the Data Protection Act 1998. The Commissioner has considered these requests as part of a separate investigation under that legislation.
12. For the avoidance of any doubt, the only matter which the Commissioner will consider as part of this decision notice is the public authority's decision to withhold information regarding the companies and trusts.

Chronology

13. On 9 November 2007 the Commissioner contacted the public authority with details of the complaint. The Commissioner said that it appeared to him that the public authority had refused the request under section 44 of the Act by virtue of section 18(1) CRCA 2005. In light of this the Commissioner asked the public authority to respond to the following points:
 - Section 18(1) of the CRCA 2005 states that HMRC may not disclose information which is held in connection with a function of Revenue and Customs. The Commissioner asked the public authority to confirm which function the information requested by the complainant is held in connection with.
 - Section 18(2) of the CRCA 2005 sets out the circumstances in which section

18(1) does not apply. The Commissioner asked the public authority to explain whether any of these circumstances, as set in sub-sections a) – h), were relevant to the information requested by the complainant.

- Section 23 of the CRCA 2005 provides that information is exempt under section 44 of the Act if its disclosure would specify the identity of the person to whom the information relates or would enable the identity of such a person to be deduced. The Commissioner asked the public authority to confirm whether this applies to the information requested by the complainant and which person or persons would be identified were this information to be disclosed.
14. The Commissioner also asked the public authority to clarify what information it was withholding from the complainant and invited it to provide him with any further representations it wished to make in support of its decision to withhold the information.
 15. The public authority responded to the Commissioner on 13 December 2007. It explained that the information it held, falling within the scope of the complainant's requests, was very limited. It said that it did hold some notes about the enquiry into the companies and trusts but that the actual files are not available. It explained that the companies ceased trading many years ago and that under its normal weeding procedures it would only have kept the papers for around six years. It added that the papers would have been held in local tax offices and that the public authority's local offices were re-organised and merged in the last ten to fifteen years. The public authority said that it had not instigated a search for the files relating to the companies and trusts but, given the age of the papers and the reorganisations, it suspected that any search would be very expensive in terms of staff time and would be unlikely to be productive. It added that, in the absence of any authority (from the persons to which the information relates) it would not be able to disclose to the complainant any information that might be found.
 16. The public authority provided the Commissioner with further information regarding its view of the interaction between section 18(1) CRCA and section 44 of the Act. It said that it believed that the effect of section 18(1) CRCA is to remove entirely its customer information from the freedom of information regime and that it believed that section 18(2) CRCA was not relevant when considering disclosure under the Act.
 17. It said that the effect of section 23(1) CRCA is that provided that disclosure would reveal the identity of the "person" (whether directly or indirectly) then it is exempt from disclosure under the Act. It added that for the purposes of section 23 CRCA "person" includes "both natural persons and legal entities such as companies, trusts, pension schemes and the like".
 18. It said that section 18(2) is irrelevant as far as the Act is concerned and that it believed that this was the intention of Parliament when the legislation was drafted. The public authority referred to a debate recorded in Hansard when the passage of the bill was being discussed.

19. In conclusion, the public authority said that none of the exceptions in section 18(2) may be relied upon. It said that the only relevant prohibition is section 18(1), the effect of which is to remove its customers' information entirely from FOI legislation. It went on to say that because its customers' information is removed entirely from FOI it will need to treat requests for this information as "business as usual".

Findings of fact

20. The companies and trusts ceased trading some considerable time ago.
21. The public authority holds notes about an enquiry into the companies and trusts.
22. The public authority has not conducted a search for the files relating to the companies and trusts.

Analysis

23. A full text of the relevant statutes referred to in this section is contained within the legal annex.

Procedural matters

24. The complainant made his initial request to the public authority on 13 December 2005. The public authority responded on 31 October 2006 after the intervention of the Commissioner. In doing so the public authority failed to respond to the request within 20 working days as required by section 10 of the Act.
25. Whilst it appeared to the Commissioner that the public authority, in its letter of 31 October 2006, was refusing the request under section 44 of the Act, the Commissioner feels that the public authority failed to make it sufficiently clear to the complainant on what grounds the request was being refused.

Exemption

26. The public authority has said that the information it holds regarding the companies and trusts is exempt from disclosure under section 44 of the Act. Section 44 provides for an exemption from the Act where disclosure is prohibited under any other law or enactment. The public authority has said that the relevant statutory prohibition is section 18(1) of the Commissioner's for Revenue & Customs Act 2005.
27. Section 18(1) CRCA 2005 prohibits disclosure of information held in connection with a function of Revenue and Customs. However section 23 of that Act is also relevant as it makes specific reference to freedom of information. Section 23 provides that where section 18(1) applies to any requested information, then that information will be exempt from disclosure under section 44 of the FOI Act if disclosure would reveal the identity of the person to which the information relates,

- or would allow their identity to be deduced. In order for the public authority to rely on the statutory prohibition it would need to demonstrate that the requested information is held in connection with a function of Revenue and Customs and that disclosure of the information would reveal the identity of the person(s) to which the information relates. The Commissioner is of the view that the public authority would also need to show that the 'gateways to disclosure' in sub-sections a) to h) of section 18(2) do not apply.
28. The public authority declined to say what function of Revenue and Customs the requested information was held in connection with. Instead it said that the effect of section 18(1) CRCA 2005 'is to remove our customers' information entirely from the scope of FOI'. The public authority said that it believed that section 18(2) CRCA 2005 was irrelevant to requests under the Act and so also declined to consider whether any of the 'gateways to disclosure' in section 18(2) would allow for disclosure in this instance.
 29. The Commissioner does not necessarily agree with the public authority's interpretation of the statutory prohibition. The Commissioner feels that the public authority must show that any information withheld under section 18(1) CRCA is held in connection with a function of Revenue and Customs and that none of the sub-sections in section 18(2) CRCA apply. Nevertheless, the Commissioner has considered the nature of the requested information and is of the opinion that the public authority would hold this information in connection with its collection and management of revenue function. Having fully considered the sub-sections in section 18(2) he is of the opinion that none of these would allow for disclosure in this instance. Subsection 18(2)(h) in particular provides that section 1 does not apply to disclosure which is made with the consent of each person to whom the information relates. It is clear that consent has not been given in this case and the subsection does not require the public authority to seek consent.
 30. Section 23(1) CRCA 2005 refers specifically to disclosure under the Act, and provides that section 44 only applies where the disclosure of information prohibited from disclosure under section 18(1) CRCA 2005 would identify the person to which the information relates or would allow their identity to be deduced. The complainant has argued that the companies and trusts are not persons and therefore the statutory prohibition does not apply. However it is important to note that "person" in this context has the same meaning as in schedule 1 of the Interpretation Act 1978 which provides that "person" includes "a body of persons corporate or incorporate" and this would include companies. The Commissioner is satisfied that the information held by the public authority would identify one or more of the companies and Trusts and therefore accepts that section 23(1) CRCA 2005 applies in this case.
 31. The complainant has argued that because of his involvement with the companies and trust there should be no barrier to him receiving the information. The complainant has specifically argued that he held the position of director in one or more of the companies and was a trustee of the trust. However, as long the information is covered by the statutory prohibition in section 18(1) CRCA 2005 it will be exempt from disclosure under section 44 of the Act. The identity of the person making the request is irrelevant.

32. The Commissioner is satisfied that any information held by the public authority, falling within the scope of the complainant's request for information regarding the companies and trusts, is covered by the statutory prohibition on disclosure in section 18(1) CRCA 2005. Therefore, the Commissioner accepts that the exemption in section 44 of the Act applies in this case.
33. The public authority has said that it holds very little information falling within the scope of the complainant's request. It has said that it holds some notes relating to, what it referred to as, the "enquiry" into the companies and trusts and the Commissioner is of the opinion that this information falls within the scope of the complainant's request. It has said that it has not conducted a search for the actual company files relating to the companies and trusts because it believes that these files have most likely been destroyed. The Commissioner has not required the public authority to carry out a search for these documents as he is satisfied that any information that may be found would be covered by the statutory prohibition. Moreover, he agrees with the public authority that any search for the documents would be unlikely to be unsuccessful given the age of the documents and the fact that the companies and trusts ceased trading some years ago.
34. Section 44 is an absolute exemption and therefore the Commissioner has not undertaken an assessment of the public interest test.

The Decision

35. The Commissioner's decision is that the public authority dealt with the request in accordance within the Act by refusing to disclose any information falling within the scope of the complainant's request under section 44 of the Act.
36. The Commissioner has also decided that the public authority breached section 17(1) of the Act by failing to issue the complainant with a refusal notice within 20 working days of receiving the request and by failing to fully explain why the request was being refused.

Steps Required

37. The Commissioner requires no steps to be taken.

Right of Appeal

38. Either party has the right to appeal against this Decision Notice to the Information 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

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

Dated the 1st day of April 2008

Signed

**Anne Jones
Assistant Commissioner**

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

Legal Annex

Freedom of Information Act 2000

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.”

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.

Section 44(1) provides that –

“Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

(a) is prohibited by or under any enactment,

(b) is incompatible with any Community obligation, or

(c) would constitute or be punishable as a contempt of court.”

Commissioners for Revenue and Customs Act 2005

Section 18(1) provides that –

“Revenue and Customs officials may not disclose information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs.”

Section 18(2) provides that –

“But subsection (1) does not apply to a disclosure—

(a) which—

(i) is made for the purposes of a function of the Revenue and Customs, and

(ii) does not contravene any restriction imposed by the Commissioners,

(b) which is made in accordance with section 20 or 21,

(c) which is made for the purposes of civil proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Revenue and Customs have functions,

(d) which is made for the purposes of a criminal investigation or criminal proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Revenue and Customs have functions,

(e) which is made in pursuance of an order of a court,

(f) which is made to Her Majesty's Inspectors of Constabulary, the Scottish inspectors or the Northern Ireland inspectors for the purpose of an inspection by virtue of section 27,

(g) which is made to the Independent Police Complaints Commission, or a person acting on its behalf, for the purpose of the exercise of a function by virtue of section 28, or

(h) which is made with the consent of each person to whom the information relates.”

Section 23 provides that –

(1) Revenue and customs information relating to a person, the disclosure of which is prohibited by section 18(1), is exempt information by virtue of section 44(1)(a) of the Freedom of Information Act [2000 \(c. 36\)](#) (prohibitions on disclosure) if its disclosure—

(a) would specify the identity of the person to whom the information relates, or

(b) would enable the identity of such a person to be deduced.

(2) Except as specified in subsection (1), information the disclosure of which is prohibited by section 18(1) is not exempt information for the purposes of section 44(1)(a) of the Freedom of Information Act 2000.