

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 4 February 2010

Public Authority: HMRC
Address: 100 Parliament Street
London
SW1A 2BG

Summary

The complainant requested information about how the Amendment to the Memorandum of Understanding on Royal Taxation was initiated by HMRC. HMRC refused to disclose the information by virtue of section 44(1)(a) of the Freedom of Information 2000 Act ("the Act"). The public authority argued that section 23(1) of the Commissioners for Revenue and Customs Act 2005 (CRCA) gave it an absolute exemption. The Commissioner finds that the statutory bar was correctly applied and agrees with the public authority's reliance on section 44(1)(a). The Commissioner requires no steps to be taken.

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.

Background

2. The original Memorandum of Understanding on Royal Taxation (MOU) which was appended to the Report of the Royal Trustees of 5 February 1993 sets out the arrangements under which Her Majesty the Queen voluntarily pays tax on her income and capital gains. A copy of this report has previously been released under the Act, and the amendment to the MOU is also publicly available.

The Request

3. On 15 June 2009 the complainant submitted the following request:
“With reference to the Amendment to the Memorandum of Understanding on Royal Taxation that the Chancellor announced to the House of Commons on 22 April 2009, please disclose how this proposal came to be initiated in HMRC.”
4. On 13 July 2009 HMRC issued a refusal notice citing section 44.
5. On 14 July 2009 the complainant requested an internal review.
6. On 11 August 2009 HMRC provided the outcome of the internal review. HMRC explained that it was relying on section 44(1)(a) to withhold the requested information. HMRC answered the points raised by the complainant in the request for review.

The Investigation

Scope of the case

7. On 22 August 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

HMRC’s application of section 44 to withhold the information he had requested.

Chronology

8. On 30 November 2009 HMRC wrote to the Commissioner in response to an initial letter of notification that a complaint had been received. HMRC gave an explanation of its application of the exemption found in section 44 along with copies of several supporting documents.

Analysis

Exemptions

Section 44 – prohibition on disclosure

HMRC’s position

9. **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.”*

10. HMRC has claimed that the relevant exemption is section 44(1)(a) and that disclosure of information would be subject to the statutory prohibition in section 23(1) of the Commissioners for Revenue and Customs Act 2005 ('CRCA').
11. Section 23(1) of the CRCA provides that information relating to a person, the disclosure of which is prohibited by 18(1), is exempt information for the purposes of section 44(1)(a) of the Act if its disclosure would specify the identity of the person to whom the information relates, or would enable the identity to be deduced. HMRC has highlighted the fact that paragraph 32 of the original MOU states:

“In relation to anything done in respect of this voluntary arrangement The Queen and The Prince of Wales shall be entitled to full privacy and confidentiality in the same way as any other taxpayer; but this shall not preclude any exchange of information between the Treasury and Inland Revenue which is necessary for the proper implementation of these arrangements.”

In this case, given that the request is about a specific policy which relates solely to identifiable persons, namely members of the Royal Family, the information would clearly identify them and therefore the exemption applies.

12. As Section 23(1) works by reference to section 18(1) it is necessary to consider how the prohibition in that section works. Section 18(1) of the CRCA provides that HMRC officials may not disclose information which is held by HMRC in connection with one of its functions. HMRC has explained that if it were to release the requested information it would be breaching section 18(1) of the CRCA. The requested information is information that would be held for the purpose of assessing and collecting tax or duty.
13. HMRC has suggested that the clear intention of Parliament was to remove information from the right of access under the Act as shown by the following statement made by the then Paymaster General, Dawn Primarolo on the introduction of section 23 of the CRCA, which followed concerns expressed during the passage of the bill through Parliament that information HMRC held about taxpayers might be disclosed under the Act:

“Taxpayer confidentiality remains of paramount importance in the new department. As I have said, for that reason, the Bill ensures that information connected with a taxpayer is not disclosable under the Freedom of Information Act. That was always the intention, but the new clause puts that beyond doubt – that information will not be disclosable under the Act. However, much of the information that Her Majesty’s Revenue and Customs will hold is not taxpayer confidential – for example, information about the department’s internal

processes. The new clause identifies that such information will be subject to the Freedom of Information Act. Therefore, if a person requests information that it is not taxpayer confidential, that request will be considered under the Act'.

14. HMRC accepts that, generally speaking, legislative policy is not covered the exemption contained at section 44 and is potentially disclosable under the Act. However the specific policy in this case relates to members of the Royal Family. Even if the names of the individuals were redacted from the information held, the identities could be deduced because the policy is specific to these individuals.

The Complainant's position

15. In correspondence with the Commissioner the complainant highlighted a number of reasons why in his opinion HMRC has incorrectly refused to provide the information requested.
16. The complainant believed that the information he was requesting was not about the operational work of HMRC but about the initiatives used in changing the legal framework. He felt that the information he had requested was not sufficient to engage the exception contained at section 18(1) of the CRCA which would prevent HMRC from relying on sections 44(1)(a) of the Act.

The Commissioner's position

17. The Commissioner is satisfied that it would be possible to identify the individuals to whom the information relates because the specific policy involved relates solely to identifiable individuals, the Commissioner considers that because the information is clearly related to the Royal Family, it would not be feasible to redact the identity of the individuals as it would still be possible to deduce their identities and therefore s23(1)(b) of the CRCA in conjunction with s44 FOIA would mean a redacted version of the information is also exempt.
18. The Commissioner is satisfied that HMRC is prohibited from disclosing the requested information by s18(1) of the CRCA and that there are no relevant exceptions that apply to this prohibition. In view of this and the fact the disclosure of the requested information would specify the identity of the person(s) to whom that information relates, s23(1)(a) of CRCA applies and therefore the Commissioner finds that the information is exempt by s44(1)(a) FOIA.
19. Section 44 is an absolute exemption and therefore the Commissioner has not undertaken an assessment of the public interest test.

The Decision

20. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

21. The Commissioner requires no steps to be taken.

Right of Appeal

22. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

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 4th day of February 2010

Signed

**Gerrard Tracey
Assistant Commissioner**

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

Legal Annex

Prohibitions on disclosure.

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.”

Section 44(2) provides that –

“The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).”

Commissioners for Revenue and Customs Act 2005

Section 18 Confidentiality

(1) 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.

(2) 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.

(3) Subsection (1) is subject to any other enactment permitting disclosure.

(4) In this section—

(a) a reference to Revenue and Customs officials is a reference to any person who is or was—

(i) a Commissioner,

(ii) an officer of Revenue and Customs,

(iii) a person acting on behalf of the Commissioners or an officer of Revenue and Customs, or

(iv) a member of a committee established by the Commissioners,

(b) a reference to the Revenue and Customs has the same meaning as in section 17,

(c) a reference to a function of the Revenue and Customs is a reference to a function of—

(i) the Commissioners, or

(ii) an officer of Revenue and Customs,

(d) a reference to the Scottish inspectors or the Northern Ireland inspectors has the same meaning as in section 27, and

(e) a reference to an enactment does not include—

(i) an Act of the Scottish Parliament or an instrument made under such an Act, or

(ii) an Act of the Northern Ireland Assembly or an instrument made under such an Act

23 Freedom of information

(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.

(3) In subsection (1) “revenue and customs information relating to a person” has the same meaning as in section 19.