

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 January 2012

**Public Authority:** HMRC

**Address:** 100 Parliament Street  
London  
SW1A 2BQ

### Decision (including any steps ordered)

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1. The complainant requested information from Her Majesty's Revenue and Customs (HMRC) regarding the conduct of a named HMRC officer. HMRC refused to confirm or deny that it holds the requested information under section 40(5)(b)(i) of the FOIA.
2. The Information Commissioner's decision is that HMRC was correct to apply section 40(5)(b)(i) of the FOIA to this request.

### Request and response

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3. On 9 June 2011, the complainant wrote to HMRC and requested information in the following terms:
  - *'copies of correspondence between you and any other officer regarding the conduct of [name one redacted];*
  - *copies of all communications which you have had with [name one redacted] / [name two redacted];*
  - *copy of any report which you have made to [name three redacted] regarding [name one redacted]'s conduct;*

- *indication as to whether or not any internal action has been taken by the Commissioners against [name one redacted]. You are to treat these requests as having made under the Freedom of Information Act'*
4. HMRC responded on 17 June 2011. It stated that it could neither confirm nor deny that it held the requested information. It explained that under section 40(5)(b)(i) of the FOIA it was not required to do so if this would in itself disclose personal information and contravene any of the data protection principles as set out in the Data Protection Act 1998 (the DPA).
  5. Following an internal review HMRC wrote to the complainant on 16 August 2011. It upheld the application of section 40(5)(b)(i) to the information request.

### **Scope of the case**

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6. The complainant contacted the Information Commissioner (the Commissioner) to complain about the way his request for information had been handled. He argued that it was in the wider public interest that the requested personal data should be disclosed.
7. This case is therefore concerned with HMRC's application of section 40(5)(b)(i) to this information request.

### **Reasons for decision**

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8. Section 1(1)(a) of the FOIA states that any person making a request for information is entitled to be informed by the public authority if it holds that information.
9. However, in relation to a request regarding the personal data of a third party, section 40(5)(b)(i) excludes a public authority from complying with the duty imposed by section 1(1)(a) if complying with that duty would contravene any of the data protection principles or section 10 of the DPA or would do so if the exemptions in section 33A(1) of that Act were disregarded.
10. In this case, HMRC has argued that to confirm or deny whether the requested information is held would not be fair and would therefore contravene the first data protection principle.

11. Personal data is defined under section 1(1) of the DPA as data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of the data controller or is likely to come into the possession of the data controller.
12. Whether or not a complaint has been received about an individual is clearly the personal data of that individual. The nature of this request therefore means that HMRC's response in accordance with the duty under section 1(1)(a) would inevitably disclose personal data of a named individual.
13. In line with the provisions of section 40(5)(b)(i), the Commissioner has therefore considered whether or not confirming or denying whether a complaint had been made about a named individual would contravene the first data protection principle.

**Would complying with section 1(1)(a) contravene the first data protection principle?**

14. The first principle of the DPA states that personal data must be processed fairly and lawfully.
15. In considering whether it would be unfair to confirm or deny that a complaint had been received, the Commissioner has taken the following factors into account:
  - the consequences of disclosure;
  - the data subject's reasonable expectations of what would happen to their personal data; and
  - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.

**Consequences of disclosure**

16. Disclosure of information under the FOIA constitutes disclosure to the world at large. It is clear that confirmation of whether complaints have been made against an individual is not information which should, in many cases, be in the public domain. Its disclosure may be distressing to the individual concerned.

### **Reasonable expectations**

17. It is therefore apparent that complaints information is personal and confidential and that the individual concerned would reasonably expect such information not to be made available to the public at large.
18. Disclosing whether or not an individual is the subject of a complaint would reveal information relating to their performance at work. The Commissioner is satisfied that HMRC staff would have a reasonable expectation of privacy and would not expect the public to have access to information which discloses whether or not such a complaint has been made about them.
19. HMRC has confirmed that consent has not been obtained for disclosure of the information requested.

### **The balance between the rights and freedoms of the data subject and the legitimate interests of the public**

20. The complainant (a solicitor) has argued that it is in the legitimate interests of the public for this specific personal data to be disclosed. He does not consider that his client has been treated fairly by the HMRC official and he considers it is in the public interest to find out what internal action has been taken against the official to ensure that he does not treat other taxable persons in the same manner.
21. However, information concerning complaints is clearly private and personal to the individual concerned and would not normally be provided to third parties.
22. HMRC has explained that it is accountable to its customers for any errors or mistakes that may be made by members of its staff. It has robust internal procedures in place to deal with such incidents should they arise and it is also subject to scrutiny by bodies such as the Adjudicator's Office and the Parliamentary and Health Service Ombudsman.
23. The Commissioner considers that the public has a legitimate interest in knowing that public money has not been wasted by the officers of HMRC. However he does not consider that disclosure of complaints information about one individual satisfies this interest; rather it is the existing regulatory mechanisms which ensure that standards are maintained and that appropriate steps are taken when complaints are received.

24. The Commissioner is therefore satisfied that confirming or denying whether or not a complaint had been made against a named individual would be unwarranted by reason of prejudice to the rights, freedoms and legitimate interests of the individual in question.
25. In reaching this conclusion, the Commissioner has followed a number of previous decision notices with regard to information requests concerning complaints about third parties (case reference FS50372823, FS50309515 and FS50305631). HMRC also cited the decision notice for the case reference FS50086498 in support of its position.
26. In each of these cases, the Commissioner considered that confirming or denying whether the requested complaints information was held would constitute an unfair disclosure of personal data.

### **Conclusion**

27. The Commissioner does not consider that the legitimate interests of the public in knowing whether a complaint had been received against a particular officer of HMRC outweigh the legitimate interests of that individual. There is no expectation that such information would be disclosed to the public and consent for disclosure has not been obtained. HMRC has internal mechanisms in place to deal with complaints and is subject to scrutiny by bodies such as the Adjudicator's Office and the Parliamentary and Health Service Ombudsman.
28. The Commissioner considers that it would be unfair to either confirm or deny whether the requested information is held. He is therefore satisfied that any response provided in this regard, in line with the provision of section 1(1)(a) would contravene the fairness element of the first data protection principle.

## Right of appeal

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29. 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: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

30. 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.
31. 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 .....**

**Faye Spencer**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**