

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 12 March 2012

**Public Authority:** HM Revenue and Customs  
**Address:** 100 Parliament Street  
London  
SW1A 2BQ

### Decision (including any steps ordered)

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1. The complainant has requested information from HM Revenue and Customs (HMRC) about a named company concerning dividends, remuneration and benefits received by its directors. HMRC stated that the information, if held, would be exempt under section 44(1)(a) of the FOIA and explained that the duty to confirm or deny whether the information is held does not arise under section 44(2).
2. The Commissioner's decision is that HMRC was correct to refuse to confirm or deny that it holds the requested information under section 44(2) of the FOIA.

### Request and response

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3. On 4 November 2011, the complainant wrote to HMRC and requested information in the following terms:

*'In the last three calendar years:*

- *How many directors received, and how many did not receive any remuneration from the company.*
- *How many directors received, and how many did not receive any dividend payments from the company.*

- *How many directors received, and how many did not receive any benefit from the company other than remuneration.*
  - *Whether the company paid for any service for any directors or other persons, such as a conference with paid meals, dinner at a restaurant and or any excursions/trips.*
  - *Whether any donations or gifts or whether any money was given to Camden Council or the Police as indicated above.'*
4. HMRC responded on 10 November 2011. It stated that the information, if held, would be exempt under section 44(1)(a) of the FOIA and explained that the duty to confirm or deny whether the information is held does not arise under section 44(2).
  5. Following an internal review HMRC wrote to the complainant on 19 December 2011. It upheld its application of section 44(2) to the requested information.

### **Scope of the case**

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6. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
7. During the investigation, the Commissioner asked HMRC to clarify its response. It was not clear to the Commissioner why HMRC considered that it could not confirm or deny whether it holds the information requested at bullet points 1 to 3 (regarding the number of directors who received remuneration, dividend payments and benefits).
8. HMRC explained its position and clarified its reasons for applying section 44(2) to the whole request.
9. The scope of this case is therefore concerned with HMRC's application of section 44(2) of the FOIA to this information request.

### **Reasons for decision**

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10. Section 44(1)(a) of the FOIA states that information is exempt from disclosure if it is prohibited by any enactment. Section 44(2) of the FOIA states that the duty to confirm or deny does not arise if the confirmation or denial is likewise prohibited by enactment.

11. The enactment in this case is the Commissioners of Revenue and Customs Act 2005 (the CRCA). Section 18(1) of the CRCA states that HMRC officials may not disclose information which is held by HMRC in connection with one of its functions.
12. Section 19 of the CRCA makes it a criminal offence for any member of staff to disclose such information.
13. HMRC has explained that the information, if held, would be held in connection with its function of assessing and collecting tax and/or duty. The Commissioner is satisfied that the information, if held, would be held in connection with a function of HMRC.
14. Section 23 of the CRCA states that information prohibited from disclosure by section 18(1), is exempt by virtue of section 44(1)(a) of the FOIA if its disclosure would specify the identity of the person to whom it relates or would enable the identity of such a person to be deduced.
15. HMRC has explained that for the purposes of section 18 a person includes both natural persons and legal entities.
16. The complainant has argued that the company's name could be redacted from the response. However, even if the company's name did not appear in the response, the fact remains that the requested information (if held) would relate to company and could be linked to it. The company is named in the request and it is therefore not possible to disclose the requested information without revealing information about it.
17. The complainant has also argued that because section 18(3) of CRCA states that section 18(1) is subject to any other enactment permitting disclosure, the information should be released under the FOIA. However section 44(1)(a) of the FOIA allows a public authority to refuse to disclose information if its disclosure is prohibited by any enactment.
18. The Commissioner is satisfied that if HMRC holds the requested information, it would be possible to identify the person and entity to whom it relates. The Commissioner is therefore satisfied that on the basis of the interaction of section 18(1) and 23 of the CRCA, the requested information, if held, would be exempt by virtue of section 44(1)(a).
19. Section 44(2) of the FOIA provides that the duty to confirm or deny that information is held does not apply if the confirmation or denial itself would be prohibited by enactment.

20. In this case the Commissioner is satisfied that confirming or denying the requested information is held would reveal to the public something about the tax status and affairs of the company and directors who are related to that information.
21. Confirming or denying that information is held would therefore fall within sections 18(1) and 23 of the CRCA and thus by virtue of sections 44(1)(a) and 44(2) of the FOIA the duty to confirm or deny contained at section 1(1)(a) of the FOIA does not apply.
22. The Commissioner is therefore satisfied that HMRC is correct to refuse to confirm or deny whether it holds the requested information under section 44(2) of the FOIA.

## Right of appeal

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23. 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)

24. 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.
25. 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** .....

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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