

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 May 2012

Public Authority: Her Majesty's Revenue and Customs

Address: 100 Parliament Street
SW1A 2BQ

Decision (including any steps ordered)

1. The complainant has requested copies of Her Majesty's Revenue and Customs's (HMRC) skeleton arguments for 6 specific cases in relation to which judgements have been given. HMRC refused to disclose this information under section 44(1)(a) of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner's decision is that HMRC has correctly applied section 44(1)(a) to withhold the requested information.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 20 September 2012, the complainant wrote to HMRC and requested information in the following terms:

"...we request copies of the skeleton arguments (or other written submissions filed at court) of HMRC in the following cases where judgement has been given:

- FII Group Litigation Order v Inland Revenue Commissioners (Case C-446/04)
- Test Claimants in the FII Group Litigation v HMRC [2008] EWHC 2893 (Ch)
- Test Claimants in the FII Group Litigation v HMRC [2010] EWCA Civ 103
- The Prudential Insurance Company Limited and Others v The Commissioners for Her Majesty's Revenue & Customs [2010] EWHC 2811 (Ch)
- HMRC v Marks & Spencer [2010] UKUT 213

- Commissioners for Her Majesty's Revenue & Customs v Marks and Spencer plc [2010] EWHC 2215 (Ch)"
5. HMRC responded on 18 October 2011. It refused to disclose the information requested on the basis of the exemption contained in section 44(1)(a) FOIA.
 6. Following an internal review HMRC wrote to the complainant on 16 December 2011. It upheld its original decision.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The Complainant asked the Commissioner to consider whether section 44(1)(a) FOIA had been applied correctly in this case.
8. The Commissioner will therefore consider whether section 44(1)(a) was correctly applied to withhold the requested information.

Reasons for decision

9. Section 44(1)(a) of FOIA states 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
10. HMRC has explained that HMRC has a statutory duty of confidentiality under section 18(1) of the Commissioners Revenue and Customs Act 2005 (CRCA).
 11. Section 18(1) of CRCA prohibits Revenue and Customs officials from disclosing information held by the Revenue and Customs in connection with a Revenue and Customs' function. Section 18(2) sets out the exceptions to the prohibitions on disclosure of information. Section 18(3) states the prohibition in section 18(1) is subject to any other enactment permitting disclosure.
 12. Section 23(1) states 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 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. Section 23(2) makes clear that information not falling within section 23(1) is not exempt.
13. Sections 23(3) and 19(2) of CRCA provide that “revenue and customs information relating to a person” means information about, acquired as a result of, or held in connection with the exercise of a function of the Revenue and Customs in respect of the person, but it does not include information about internal administrative arrangements of Her Majesty’s Revenue and Customs (whether relating to Commissioners, officers or others).
 14. Section 23(1A) was added by section 19(4) of the Borders, Citizenship and Immigration Act 2009. It states subsections 18(2) and 18(3) are to be disregarded in determining for the purposes of section 23(1) whether disclosure of customs and revenue information relating to a person is prohibited by section 18(1).
 15. HMRC has explained that the requested information was held in connection with its function to assess and collect tax. The Commissioner is satisfied the withheld information is information held by HMRC in connection with one of its functions, namely the collection and management of revenue including taxes. Therefore in the Commissioner’s view the withheld information comes within the scope of section 18(1) of CRCA.
 16. However, as noted above, for the purposes of the Freedom of Information Act, section 23(1) of CRCA makes clear that information will only be exempt under section 44(1)(a) of the Act if it is information “relating to a person” and 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. Therefore, the issue in the present case is whether disclosure of the withheld information, “relates to a person” within the meaning of section 19(2) and would specify the identity of the (legal) person to whom the information relates *or* would enable the identity of such a person to be deduced.
 17. HMRC has provided the Commissioner with a sample of the withheld information. It explained that section 23(1)(a) was applicable because the disclosure specifies the identity of the person to whom the information relates.
 18. Upon considering HMRC’s submissions and the withheld information provided the Commissioner considers that the withheld information relates to a person and that disclosure would enable the identity of that person to be deduced in accordance with section 23(1)(a). Therefore

the Commissioner is satisfied that section 44 (1)(a) has been correctly applied.

Right of appeal

19. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

20. 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.
21. 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

Pamela Clements
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