

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 23 October 2012

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

### Decision (including any steps ordered)

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1. The complainant requested information about Inland Revenue advice concerning tax liabilities of the Sovereign and the Duke and Duchy of Cornwall. HMRC withheld the information under s44(1)(a), s42(1) and s35(1)(c) FOIA.
2. The Commissioner's decision is that the information is exempt from disclosure under s44(1)(a).
3. The Commissioner requires no steps to be taken.

### Request and response

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4. On 19 February 2012 the complainant requested the following information:

*"Sir David Allen and Mr Strudwick both on behalf of the Inland Revenue gave evidence to a select committee of the House of Commons in 1971/72 that the advice the Revenue had received was that the Crown Estates Act 1862 section 8 meant the Sovereign was liable to tax on property and thus the sovereign was not liable to income tax, for example. Please advise that date of the advice received which gave that view, who gave the advice i.e. was it the Government Law Officers and when that advice was last reviewed. The liability of the Duke and Duchy of Cornwall is based on a Law Officers Opinion of 1913. Please advise when last that advice was reviewed and by whom."*

5. On 16 March 2012 HMRC neither confirmed nor denied that it held the information and it was exempted under s44(2) FOIA.
6. The complainant appealed and on 17 April 2012 HMRC's internal review upheld the exemption.

### Scope of the case

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7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant submitted that the assertion by HMRC of neither confirmation nor denial was specious as it was a matter of public record that the information was held.
8. The Commissioner asked HMRC to explain how information recorded as being held could be reconciled with neither denying nor confirming that it was held.
9. HMRC conceded that as the information was known to be held after a lawful disclosure then the exemption at s44(2) did not apply. It submitted instead that the request should have been refused under s44(1). HMRC also submitted that the information was exempt from disclosure under s42(1) (Legal professional privilege) and s35(1)(c) (Formulation of government policy).
10. This decision notice addresses the withholding of the information under the revised exemptions submitted by HMRC.

### Reasons for decision

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11. Section 44(1)(a) FOIA states that information is exempt if its disclosure by the public authority holding it is prohibited by any enactment.
12. HMRC is bound by a statutory duty of confidentiality set out in s18(1) of the Commissioners for Revenue and Customs Act 2005 (CRCA). This states that HMRC cannot disclose information which is held by HMRC in connection with any of its functions. One of its functions is the assessment and collection of tax.
13. Section 23 CRCA states that information prohibited from disclosure by s18(1) is exempt by virtue of s44(1)(a) FOIA "*... if its disclosure (would) specify the identity of the person to whom the information relates, or enable the identity of such a person to be deduced.*"

14. The Commissioner considers that even if reference to the Sovereign or Duke of Cornwall might not in this instance need to appear in any actual response, the titles are stated in the request which is directly linked. Therefore the information cannot be disclosed without revealing the identities to which the advice relates.
15. The information would enable the identities of the persons concerned to be deduced and it also relates to a function of HMRC. Therefore the information is caught by s23 CRCA and the duty of confidentiality at s18(1) CRCA. Consequently the exemption at s44(1)(a) FOIA applies.
16. The exemption at s44(1)(a) FOIA is absolute and therefore not subject to the public interest test.
17. As the exemption at s44(1)(a) FOIA is engaged the Commissioner has not proceeded to consider the exemptions at s42(1)(a) and s35(1)(c) FOIA that have been submitted by HMRC.

## Right of appeal

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18. 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)

19. 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.
20. 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** .....

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