

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 7 November 2012

**Public Authority:** Civil Service Commissioner  
**Address:** G/8  
1 Horse Guards Road  
London  
SW1A 2HQ

#### Decision (including any steps ordered)

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1. The complainant has requested information from the Civil Service Commissioner (CSC) which shows that Her Majesty's Revenue and Customs (HMRC) was authorised to use public funds to charge and convict a former employee with having extreme political views.
2. The Information Commissioner's (the Commissioner) decision is that CSC does not hold any recorded information within the scope of the request.
3. The Commissioner does not require any steps to be taken.

#### Request and response

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4. On 19 March 2012, the complainant wrote to CSC and requested information in the following terms:

*"[HMRC] have misused public funds to charge and convict an Asian employee of having 'extreme political views' for heckling the British National Party at a peaceful protest in Burnley. This is a breach of the Civil Service Code under Chapter 7 which states, "You must use resources only for the authorised public purposes for which they are provided."*

*Despite this, the Civil Service Commissioners have concluded that HMRC have not committed a breach under the Civil Service Code for*

*misusing public funds in such a way. As such, under the Freedom of Information Act I request the following. All information the Civil Service Commission holds which shows HMRC were authorised to use public funds to charge and convict an Asian employee of having 'extreme political views' for heckling the British National Party at a peaceful protest in Burnley."*

5. CSC responded on 30 March 2012 and stated that it did not hold any information relevant to the request.
6. Following an internal review CSC wrote to the complainant on 4 April 2012 and upheld the decision in the original response.

### **Scope of the case**

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7. The Commissioner considers the scope of the case to determine whether CSC handled the request in accordance with the FOIA. Specifically, whether it was correct to say it did not hold any relevant information.

### **Reasons for decision**

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#### **Method to the Commissioner's investigation**

8. Section 1(1) of the FOIA provides that:

*"Any person making a request for information to a public authority is entitled -*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him."*

9. The Commissioner is investigating a separate complaint between the two parties (case reference FS50451470). For that case, CSC submitted all correspondence they hold relating to the complainant. The Commissioner has reviewed these in the course of making his decision.
10. These documents comprise of communications between CSC and the complainant, submissions from the complainant to CSC regarding his dispute with HMRC, and correspondence related to the complainant's previous FOI requests to CSC.
11. There are no documents that show CSC investigated HMRC due to concerns raised by the complainant. The complainant has stated to the

Commissioner that he believes some form of investigation has taken place, but CSC disputes this.

12. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, in accordance with a number of Information Tribunal decisions, applies the civil standard of on the balance of probabilities.
13. In order to determine such complaints the Commissioner must therefore decide whether, at the time of a request, on the balance of probabilities a public authority held any information which falls within the scope of the request.
14. Therefore the Commissioner intends to use the balance of probabilities to determine whether CSC holds any further relevant information beyond the documents that were submitted in relation to case FS50451470.

### **Purpose of CSC**

15. CSC has two specific functions:
  - To ensure that recruitment of civil servants is based on merit and not prejudiced in any fashion, and
  - To hear complaints by civil servants under the Civil Service Code (the Code). The Code comprises four key values – honesty, integrity, impartiality & objectivity.
16. CSC also makes clear, both on its website and in the Code, that it does not cover human resources issues or matters regarding personnel management<sup>1</sup>.

### **Information obtained outside of complainant's submissions**

17. The request has arisen from a grievance the complainant has with his former employers, HMRC, who terminated his contract after going through a disciplinary procedure. The complainant raised some of the issues that arose from the disciplinary procedure to CSC, stating there had been a breach of the Code. Included in this was the issue over "extreme political views" mentioned in the request.

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<sup>1</sup> <http://resources.civilservice.gov.uk/wp-content/uploads/2011/09/civil-service-code-2010.pdf>

18. As the complainant believes HMRC breached the Code, he is convinced that CSC has conducted some form of an investigation into the issues he raised.
19. However, in the internal review CSC addressed this issue:

“When a complaint under the Civil Service Code is received, the Commission must first satisfy itself that the issues raised really fall within the scope of the Code and that it is something the Commission is able to investigate. The Commission found the matters you raised were not covered by the Code and were therefore outside its remit to investigate.”
20. The Commissioner accepts CSC’s view that the information submitted by the complainant “does not include any evidence to indicate that he was subject to anything other than internal grievance and disciplinary processes”. As CSC does not investigate personnel management issues, it follows that they have not conducted an investigation into this complaint.
21. Further, in response to a question from the Commissioner, CSC stated:

“Whether or not HMRC would be required to gain authorisation from a separate body to use resources to bring disciplinary action against an employee is not information that we have either sought or been provided with.”
22. The complainant has not submitted any evidence which contradicts these statements. That is, any evidence to support his view that CSC did conduct an investigation into HMRC based upon the complainant’s assertion that there had been a breach of the Code.
23. The Commissioner accepts that an investigation has not been conducted into HMRC’s affairs, so he considers it highly unlikely that CSC have obtained any information directly from HMRC which is relevant to the scope of the request.

### **Information in the complainant’s submissions**

24. CSC has confirmed that it retains all documents sent by the complainant about the complaint against HMRC. As previously mentioned, CSC has sent the Commissioner all of the documents submitted by the complainant in relation to his complaint against HMRC.
25. In order to determine whether CSC holds any relevant information the Commissioner reviewed the information submitted by CSC, and does not consider it to show that HMRC sought or gained authorisation from a

third party to bring about the disciplinary action against the complainant.

26. Further, the Commissioner accepts CSC's view that the information submitted by the complainant "does not include any evidence to indicate that he was subject to anything other than internal grievance and disciplinary processes", which would not require any external authorisation.
27. Therefore, the Commissioner is satisfied that CSC does not hold any information which shows HMRC were "authorised" to "charge and convict an Asian employee of having 'extreme political views' for heckling the British National Party at a peaceful protest in Burnley".

### **Summary**

28. As the Commissioner has not found any evidence submitted by CSC which falls within the scope of the request, and that on the balance of probabilities it is unlikely that any further information was obtained through an investigation, the Commissioner's decision is that CSC correctly complied with the FOIA in this case.

## 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 .....**

**Alexander Ganotis**  
**Group Manager, Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**