Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 November 2012

Public Authority: Her Majesty's Revenue and Customers
Address: 100 Parliament Street
London,
SW1A 2BQ

Decision (including any steps ordered)

1. The complainant has requested information relating to the number of staff disciplined or dismissed for 'heckling' the British National Party.

2. The Commissioner's decision is that Her Majesty's Revenue and Customs (HMRC) does not hold the requested information.

3. The Commissioner does not require the public authority to take any further steps.

Request and response

4. On 20 November 2011, the complainant wrote to HMRC and requested information in the following terms:

1. How many staff faced internal grievance procedures for heckling the British National Party (BNP) at a lawful protest in Burnley, after their details appeared on the Neo Nazi hate site Redwatch within the last 10 years?

2. How many were found guilty?

3. How many were sacked within six months of all HMRC internal investigations/appeals ending?

4. How many were Asian?

5. HMRC responded on 15 December 2011. It cited section 12(2) of the FOIA as its basis for doing so (the cost to comply would exceed the appropriate cost limit).

6. The complainant refined his request on 19 December 2011 and asked for the above information in relation to the years 2004-2008, and only those involving staff based at the Tax Credit Office in Preston.

7. HMRC responded on 18 January 2012 and stated that it couldn't confirm or deny if it held the requested information because it would still exceed the appropriate fees limit to ascertain if it did hold the information which was the subject to the refined request. It also went on to say that this should not be taken as an indication as to whether the information is or is not held. However it also added that even if the request was narrowed to a point that it didn't exceed the cost limit it is possible that they may still not be able to confirm or deny if it was held or that if it was held it would be exempt under section 40 (2).

8. Following an internal review HMRC wrote to the complainant on 9 March 2012. It confirmed that in relation to the original request of 20 November 2011 it considered it had correctly applied section 12(2) of the FOIA as it would exceed the costs limit to determine if the information requested was held. It did not however refer to the revised request of 19 December 2011.

9. Following intervention by the Commissioner, HMRC have amended its position and states that in relation to the revised request of 19 December 2011 it does not hold the information requested. This was confirmed to the complainant by the HMRC in its letter of 28 September 2012.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant is of the opinion that some information relating to his refined request is held by HMRC.

11. The Commissioner considers the scope of this complaint to be to determine if HMRC holds any information which was the subject of the complainant's refined request of 19 December 2011.

Reasons for decision

12. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case to have that information communicated to him.

13. The standard of proof that the Commissioner has applied in determining whether HMRC does hold information relevant to the complainant's request is the civil standard of the balance of probabilities.

14. Where HMRC has correctly stated that it does not hold information falling within the scope of the refined request, the Commissioner will conclude that the authority has complied with the requirements of section 1(1)(a).

15. HMRC have stated that the relevant business team have undertaken a further search to identify the specific information requested.

16. HMRC explained that central records began in the year 2007-2008. However, responsibility for handling grievance cases lies within the business streams.

17. HMRC advised that files are kept on shelves in the following order

- Personnel files – staff identification number
- HRS files (employment tribunal, grievance, discipline etc.) in numerical year order i.e. 001/2012, 002/2012 etc.
- Files for former staff are stored separately from files of current employees.

18. HMRC further described the searches carried out to ascertain if any information relating to the complainant's request could be located. In relation to part 1 of the request the keywords used were "grievance" and "private conduct".

19. Had any information been located with these searches a further check of each file would have been carried out to identify information relating to part 2 of the request.

20. A further search would then be made under the key words "discipline" and "private conduct".

21. Again if information had been located a search of the files would have been carried out to identify if any further information was held in relation to parts 3 and 4 of the request.

22. HMRC confirmed that it has carried out all reasonable searches under all combinations of search terms using key words given in the text of the request.

23. On the basis that nothing was identified using those searches, HMRC concludes that the information specifically described in the request is not held.

24. The Commissioner notes that it can be difficult for a public authority to "prove" that it does not hold any information on a particular subject. Having reviewed the evidence, the Commissioner is satisfied that HMRC conducted a thorough and extensive search for the relevant information.

25. The Commissioner considers that, on the balance of probabilities, the requested information is not held by HMRC. Therefore HMRC have complied with section 1(1)(a) of the FOIA in advising that it did not hold the information.

Right of appeal

26. 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

27. 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.

28. 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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Information Commissioner's Office
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Wilmslow
Cheshire
SK9 5AF