

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 September 2012

Public Authority: HM Revenue & Customs
Address: Millbank Tower
25th Floor
21/24 Millbank
London
SW1P 4XL

Decision (including any steps ordered)

1. The complainant has requested information from HM Revenue & Customs ("HMRC") relating to responses it sent to requests made under the FOIA and when those were delivered within certain timescales. HMRC refused to deal with this request, stating that to comply would exceed the cost limit under section 12 of the FOIA.
2. The Commissioner's decision is that HMRC has correctly applied section 12(1) to the request. However, he finds that HMRC breached section 1 of the FOIA by not confirming that it held information which was relevant to the request within the statutory time for compliance.
3. The Commissioner does not require HMRC to take any steps.

Requests and responses

4. On 20 January 2012, the complainant wrote to HMRC and requested information in the following terms:
"In each of the two years ended 31 March 2011 and from 1 April 2011 to the current date how many Freedom of Information Act requests were delivered to the requestor (of the request being received as defined in the FoI 2000) within each of the following periods 10 working days 15 working days 20 working days over 20 working days."
5. HMRC responded on 16 February 2012 and denied holding the information requested.

6. The complainant requested an internal review on 15 May 2012. HMRC wrote to the complainant and provided the results of its internal review on 14 June 2012. It explained that to comply with the request would exceed the appropriate limit and applied section 12(1) of the FOIA.
7. HMRC suggested to the applicant that he may wish to refine his request by specifying a smaller time period, or those sent via email or fax. It also suggested that it may be able to provide information where requests were made via the whatdotheyknow.com website.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. Specifically, he complained that HMRC had not provided the information requested.
9. The Commissioner's investigation therefore focused on whether HMRC handled the request in compliance with the FOIA.

Reasons for decision

Objective meaning

10. HMRC responded to the complainant's request by stating that it was not possible to establish when a response was physically delivered to a requester.
11. The complainant has informed the Commissioner that he regarded a response to a FOIA request as being recorded as delivered three working days after the response was sent, if sent by second class mail. He has further explained to the Commissioner that this is based on Royal Mail's service standards for second class post.
12. The Commissioner considers that the complainant's reading of the request in regard to when a response may be regarded as being delivered is not an objective one. The Commissioner has referred to Royal Mail's service standards and has noted that it states it aims to deliver second class post *within* three working days, including Saturday and that delivery by any particular date is not guaranteed. He is also aware that there is information in the public domain which indicates it is possible for second class post to be delivered on the next working day after posting.

13. However, the Commissioner has noted that in its internal review HMRC accepted the complainant's meaning of his request in regard to trackable responses.

Section 12(1)

14. Section 12(1) states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
15. When considering whether section 12(1) applies, the authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Regulations").
16. Paragraph 4(3) of the Regulations states:

"In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in -

(a) determining whether it holds the information,

(b) locating the information, or a document which may contain the information,

(c) retrieving the information, or a document which may contain the information, and

(d) extracting the information from a document containing it."

17. The Regulations state that the appropriate cost limit is £600 for central government, legislative bodies and the armed forces, and £450 for all other public authorities. As HMRC is a central government department, the cost limit in its case is £600, which is equivalent to 24 hours' work.
18. Section 12 of the FOIA makes it clear that a public authority only has to estimate whether the cost of complying with a request would exceed the appropriate limit. It is not required to provide a precise calculation.

HMRC's estimate

19. HMRC provided evidence to the Commissioner detailing why it considered the section 12 limit would be exceeded in complying with the request. It informed him that in order to provide the information that it held in respect of the request, HMRC would first need to establish how responses were sent to FOIA requests.

20. HMRC has explained that its records focus on the date a response to a FOIA request was issued rather than the date it was received by the requester. It explained that whilst it would record information on when some responses were delivered (for example those sent via email, fax, or tracked delivery), it would not hold information for other responses where they were sent via post – unless there was some other information held on its records that would indicate when the response had been received. HMRC further explained that it was able to carry out an analysis of when responses were issued to requests but that information on when they were received by requesters was not able to be extracted in the same way.
21. HMRC stated that in 2010 and 2011 it issued 3,108 responses to requests within 20 working days. It further stated that it responded to 284 requests within 20 working days via the whatdotheyknow.com website. HMRC said that for the requests sent from this website it would be able to easily identify when the response was delivered to the requester.
22. However, it summarised that this left 2,824 requests where HMRC would need to check individual electronic records on its computer system to establish the method of issue for each response. It explained that at a conservative estimate of one minute per record it would take it over 47 hours to do this. This would be in excess of the 24 hour cost limit.
23. The Commissioner considers that HMRC's estimate is a reasonable one and that section 12(1) has been applied correctly.

Sections 16 and 1

24. Section 16(1) imposes an obligation on a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the section 45 Code of Practice in relation to the provision of advice and assistance in that case.
25. Whenever the cost limit has been applied correctly, the Commissioner must consider whether it would be possible for the public authority to provide advice and assistance to enable the complainant to obtain information without attracting the costs limit, in accordance with paragraph 14 of the Code.
26. The Commissioner notes that HMRC provided advice and assistance to the applicant in regard to a possible refined request within its internal review. The Commissioner therefore considers that HMRC has discharged its responsibility to provide reasonable assistance to the

complainant in respect of his request and that no further action is required.

27. However, in its internal review HMRC explained that it did hold some relevant information within the scope of the request, if not the total number for each time period. The Commissioner considers that HMRC should have informed the complainant that it held some information relevant to his request. As it did not do so within the statutory time for compliance this was a breach of section 1 of the FOIA.

Right of appeal

28. 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

29. 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.
30. 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
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Wilmslow
Cheshire
SK9 5AF**