

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 November 2012

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

Decision (including any steps ordered)

1. The complainant has requested direct dial telephone numbers of managers responsible for specific teams dealing with tax credits.
2. The Commissioner's decision is that Her Majesty's Revenue & Customs (HMRC) has incorrectly applied sections 40(2) and 21 of the FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the information requested
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 30 April 2012, the complainant wrote to HMRC and requested information in the following terms:

"Please provide the full name and direct telephone number of the person/manager in charge of the Tax Credit International Complex Team. Please also provide the above details for the UK Complex Team and the Appeals Team"
6. HMRC responded on 3 May 2012. It stated that tax credit customers are asked in the first instance to refer all their tax credit enquiries to its

helpline number. When a claim is being dealt with by its specialist teams such as those mentioned in the request, a customer is provided with the direct number of the caseworker dealing with that claim.

7. HMRC further stated that the Director with responsibility for Benefits and Credits, including tax credits is Paul Gerrard.
8. Following an internal review HMRC wrote to the complainant on 28 June 2012. It maintained its original position and cited section 21 and section 40(2) of the FOIA as its basis for doing so.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
10. The complainant did not consider that the information was personal data and subsequently exempt. He further stated that the links provided to the HMRC website did not provide the information he had requested, and therefore the section 21 exemption could not be used either.
11. The Commissioner considers the scope of this case to be to consider, firstly, if HMRC has correctly applied section 40(2) of the FOIA. He will then go on to consider section 21 if required.

Reasons for decision

12. Section 40(2) of the FOIA applies to information which is the personal data of an individual other than the applicant, where disclosure of the information would breach any of the data protection principles of section 10 of the Data Protection Act 1998 (the DPA). The DPA defines personal data as

“Personal data” means data which relate to a living individual who can be identified—

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.”

13. The Commissioner has issued guidance on this matter http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Practical_application/section_40_requests_for_personal_data_about_employees.ashx.
14. The complainant has requested the name and direct dial telephone numbers of managers of specific teams at the HMRC. As set out in the DPA this information clearly relates to an identifiable individual.
15. In its response to the Commissioner HMRC stated that it was its view that section 40(2) applied to personal information about junior staff. It further explained that in its view junior staff were staff below Senior Civil Service (SCS) level, who are not public facing. HMRC felt that these staff would have a reasonable expectation that their name and telephone details should not appear in the public domain.
16. HMRC stated that the process by which it operates ensures that general customers have access to information via its helpline number. Where more specific help or advice is needed in connection with an enquiry or complaint the customer will receive contact details via a letter from HMRC. This process ensures the customer is able to get in touch with the right person.
17. When a request is for personal data about a public authority's employee it is exempt under section 40(2) and section 40(3)(a)(i) if it would contravene any of the data protection principles to disclose it. The principle that is most likely to be relevant is the first principle; the processing (in this case the disclosure) must be fair. If disclosure would not be fair, then it would contravene the first DPA principle and the information is exempt under section 40(2). Therefore the first question to answer in deciding whether employee information is exempt under section 40(2) is, would it be fair to disclose it?
18. There are a number of factors that indicate whether disclosure would be fair, including whether it is sensitive personal data, the consequences of disclosure, the employees' reasonable expectations and the balance between their rights and any legitimate public interest in disclosure.

Consequences of disclosure

19. Disclosure is unlikely to be fair if it would have unjustified adverse effects on the employees concerned. HMRC has not provided any reasons as to what adverse effects may be experienced by the employees.

Reasonable expectations

20. HMRC has argued that 'junior' staff would have a reasonable expectation that their name and telephone details should not appear in the public domain.
21. It is reasonable to expect that a public authority would disclose more information relating to senior employees than more junior ones. However, the terms 'senior' and 'junior' are relative. It is not possible to set an absolute level across the public sector below which personal information will not be released; it is always necessary to consider the nature of the information and the responsibilities of the employees in question.
22. HMRC should be mindful of the public perception that a 'manager' is likely to be in a senior role, regardless of the internal grading system of the public authority.
23. Having considered the information requested, and the fact that the team managers are likely to be involved in the decision making process of claims or complaints, it is the Commissioner's view that HMRC's argument that these individuals are 'junior' staff in this context does not carry any significant weight.

Does the information relate to the employee in their professional role or to them as individuals?

24. The Commissioner's guidance on section 40 suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private life.
25. The fact that a person holds a particular post is information about their working life, rather than their private life. It is the Commissioner's view that the requested information relates to the professional role of the individuals.
26. In the absence of any detailed arguments from HMRC the Commissioner is not satisfied that providing the requested information would contravene any of the data protection principles.
27. Consequently the Commissioner does not consider HMRC has correctly applied section 40(2) of the FOIA.

Section 21

28. Section 21 of the FOIA states that information which is reasonably accessible to the complainant by other means, is exempt information.

29. The HMRC has provided two links to its website, one for its complaints procedure and one provides contact information for Tax Credits.
30. The link for Tax Credits provides the helpline telephone number and postal address. It is not possible to obtain the details of the managers that the complainant is seeking from these links.
31. Consequently, it is the Commissioner's view that the information requested is not accessible by any other means and therefore HMRC has not correctly applied section 21 of the FOIA.

Right of appeal

32. 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

33. 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.
34. 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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