

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 December 2012

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

Decision (including any steps ordered)

The complainant has requested information relating to the policy and enforcement of the National Minimum Wage in the entertainment industry. HMRC disclosed some information to the complainant, however it refused to disclose the remainder, citing the exemption under section 44(1) of FOIA as a basis for non-disclosure. The complainant asked the Commissioner to consider whether the information could be disclosed to him in an anonymised format. The Commissioner's decision is that HMRC has correctly applied the exemption under section 44(1)(a) of FOIA to the withheld information and that the information would be meaningless if identifying details were redacted from it. The Commissioner requires no steps to be taken.

Request and response

1. On 9 February 2012, the complainant wrote to HMRC and requested information in the following terms:

"Please send me all the information bundles held by HMRC relating to the policy and enforcement of the National Minimum Wage in the entertainment industry sector (including, but not limited to, film, television and theatre) from 1st January 2003 to the present. For the avoidance of doubt, I am not requesting any information regarding the tax affairs of legal persons and where the information held on the NMW relates to identifiable legal persons, whether individuals or organisations, I am happy for the information identifying them to be anonymised."

2. HMRC responded on 6 March 2012. It provided some information in response to the complainant's request, however it stated that it was not able to provide the complainant with any information in respect of

complaints received and subsequent enforcement action that may have been taken specifically for the TV and film industry.

3. Following an internal review HMRC wrote to the complainant on 4 May 2012. It provided some further information in response to some queries which the complainant had raised in his internal review request regarding the information already provided to him. The internal review response re-iterated that HMRC could not provide the complainant with any specific information in respect of complaints and enforcement action concerning the TV and film industry. It added the following statement:-

"The information NMW have received on the entertainment industry has largely been unsolicited third party information in the form of copies of adverts for short term work opportunities from websites such as Mandy.com. This information has been reviewed and either acted upon or destroyed in line with HMRC policy on third party information. Information on specific enquiries into companies engaged in the TV & Film Production could be collated, however, this information relates to specific employers and, under our statutory duty of confidentiality, we could not release it."

4. The complainant then complained to the Commissioner on 2 July 2012.

Scope of the case

5. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically asked the Commissioner to consider whether the information which HMRC refused to disclose to him ("the withheld information") could be disclosed with all identifying details redacted from it.
6. When the Commissioner wrote to HMRC asking whether the withheld information could be disclosed to the complainant in an anonymised format, HMRC replied, making a late claim that the exemption under section 44(1) of FOIA (disclosure prohibited by or under any enactment applied to the withheld information and that anonymising the information would leave very little able to be disclosed, which would in any case be meaningless. The Commissioner must now consider this exemption.
7. The Commissioner has considered whether HMRC has applied section 44(1) of FOIA correctly to the withheld information. He has also considered whether redacting identifying details from the information would render it meaningless.

Reasons for decision

Section 44(1) of FOIA states that:

8. Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it –
 - a) is prohibited by or under any enactment
9. HMRC has explained that HMRC has a statutory duty of confidentiality under section 18(1) of the Commissioners Revenue and Customs Act 2005 (CRCA).
10. Section 18(1) of CRCA prohibits Revenue and Customs officials from disclosing information held by the Revenue and Customs in connection with a Revenue and Customs' function. Section 18(2) sets out the exceptions to the prohibitions on disclosure of information. Section 18(3) states the prohibition in section 18(1) is subject to any other enactment permitting disclosure.
11. Section 23(1) states Revenue and Customs information relating to a person, the disclosure of which is prohibited by section 18(1), is exempt information by virtue of section 44(1)(a) of the Freedom of Information Act if its disclosure would specify the identity of the person to whom the information relates or would enable the identity of such a person to be deduced. Section 23(2) makes clear that information not falling within section 23(1) is not exempt.
12. Sections 23(3) and 19(2) of CRCA provide that "revenue and customs information relating to a person" means information about, acquired as a result of, or held in connection with the exercise of a function of the Revenue and Customs in respect of the person, but it does not include information about internal administrative arrangements of Her Majesty's Revenue and Customs (whether relating to Commissioners, officers or others).
13. Section 23(1A) was added by section 19(4) of the Borders, Citizenship and Immigration Act 2009. It states subsections 18(2) and 18(3) are to be disregarded in determining for the purposes of section 23(1) whether disclosure of customs and revenue information relating to a person is prohibited by section 18(1).

14. HMRC has explained that the requested information was held in connection with its function to assess and collect tax. The Commissioner is satisfied the withheld information is information held by HMRC in connection with one of its functions, namely the collection and management of revenue including taxes. Therefore in the Commissioner's view the withheld information comes within the scope of section 18(1) of CRCA.
15. However, as noted above, for the purposes of the Freedom of Information Act, section 23(1) of CRCA makes clear that information will only be exempt under section 44(1)(a) of the Act if it is information "relating to a person" and disclosure would specify the identity of the person to whom the information relates or would enable the identity of such a person to be deduced. Therefore, the issue in the present case is whether disclosure of the withheld information, "relates to a person" within the meaning of section 19(2) and would specify the identity of the (legal) person to whom the information relates *or* would enable the identity of such a person to be deduced.
16. HMRC has provided the Commissioner with a sample of the withheld information. It explained that section 23(1)(a) was applicable because the disclosure specifies the identity of the persons to whom the information relates.
17. Upon considering HMRC's submissions and the withheld information provided the Commissioner considers that the withheld information relates to a person and that disclosure would enable the identity of that person to be deduced in accordance with section 23(1)(a). Therefore the Commissioner is satisfied that section 44(1)(a) of FOIA has been correctly applied.

Could identifying details be redacted from the withheld information?

18. The Commissioner has considered whether it would be possible to disclose the withheld information in an anonymised format, i.e redact any details which could lead to the identification of individuals.
19. HMRC has stated that it believes redaction of identifying details from the withheld information would leave very little information and would render it meaningless. The Commissioner, having perused a sample of the withheld information, agrees with HMRC on this point.

Right of appeal

20. 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

21. 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.
22. 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
Water Lane
Wilmslow
Cheshire
SK9 5AF