

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 April 2013

Public Authority: Her Majesty's Revenue & Customs

Address: 100 Parliament Street,
London,
SW1A 2BQ

Decision (including any steps ordered)

1. The complainant has requested information relating to a problem which occurred with National Insurance contributions following the installation of a new electronic system.
2. The Commissioner's decision is that Her Majesty's Revenue & Customs (HMRC) has correctly applied section 12(1) of the FOIA. However, the Commissioner also finds that HMRC has breached section 10(1) of the FOIA by not responding to the request within the statutory time frame.
3. The Commissioner does not require any steps to be taken as a result of this decision notice.

Background

4. HMRC installed a new NPS (National Insurance and PAYE service) computer system in the summer of 2009, with the aim of improving the operation of PAYE. The NPS brings together all a taxpayer's records and so makes sure that allowances and tax rates are operated correctly across all employment or pension income sources.
5. The NPS has the ability to perform automated end-of-year reconciliations and send out calculation forms, P800, to those taxpayers who have under or over payments of tax for that year.
6. HMRC explained to the Commissioner that it undertakes an annual exercise to contact customers who have been identified as having a potential gap in their National Insurance (NI) contributions record. The individuals are picked up following a data matching exercise where the

information submitted by employers at the end of the tax year is matched to the employee's NI record.

7. The individuals contacted as part of this exercise will either have not paid, nor not been credited with, sufficient NI contributions in the year. Because of the shortfall, that year will not count towards the individual's entitlement to, for example, basic State Pension and some bereavement benefits.
8. HMRC then contacts the individual to explain how they can make up any shortfall through voluntary payments. These letters are not a demand for payment, but rather an advisory note to enable the individual to reach a decision about whether or not they need to take further action to bring their NI records up to date.
9. There are many reasons why an individual might have a gap in their NI contributions record. It may be that data had not been submitted by the employer, or the wrong reference number had been provided so the data could not be matched to the correct record, or the person may have been unemployed and not claiming benefits, or living abroad or their income was below the lower earnings limit.
10. The only way HMRC can record the reasons why an individual may have a gap in their NI contributions would be by contacting them and verifying their circumstances or employment status during the period in question.

Request and response

On 2 October 2009, the complainant wrote to HMRC and requested information in the following terms:

"As a citizen of this country, what I am asking for, in the public interest, is information in an exact and detailed form as possible, about the problems encountered by HM Revenue & Customs during and after the introduction of the new electronic system."

- a) *How many employers were affected?*
- b) *How many employees were affected?*
- c) *How many employees were written to informing them that there was a gap or shortfall in the National Insurance contributions when in fact there was not?*

- d) *Why didn't HM Revenue & Customs endeavour to resolve the problems referred to direct with employers rather than employees?*
- e) *Why were letters still being sent out to employees advising them of a possible gap or shortfall in their National Insurance contributions up to (at least) 2 years after these problems manifested themselves?*
- f) *Why, when HM Revenue & Customs were contacted by employees who informed them that, as far as they were aware, there was no gap or shortfall in their National Insurance contributions did HM Revenue & Customs insist that a detailed form or other such information be completed by the employee and returned to HM Revenue & Customs? And further, why did HM Revenue & Customs inform employees that, if this information was not provided, the employee would not have the gap or shortfall in his/her National Insurance contributions reinstated?*
- g) *Why did HM Revenue & Customs ignore employees' requests to contact their employer in order to resolve the matter?*
- h) *Despite the problems with the new system why weren't HM Revenue & Customs able to check their database?*
- i) *Why wasn't a 'fail-safe' programme incorporated into the new system?*
- j) *Was the new system thoroughly tested before introduction?*
- k) *Claire Loane's letter of 5 March 2009 goes some way to answering some of these questions but it does not give a full answer. It also raises questions. In the ninth paragraph of her letter she states 'HMRC's system does not know in advance the reason for a gap in their NI account. It cannot therefore be selective and suppress the issue of the letters for those who possibly don't need one'. This appears to be a fundamental failing with the new system. Does this mean that there is a definite possibility that letters will continue to be sent out by HM Revenue & Customs to employees informing them that there is a gap or shortfall in their National Insurance contributions when in fact there is not?*
- l) *Most importantly, can HM Revenue & Customs provide me with an assurance that those employees who have been written to and advised that there is a gap or shortfall in their National Insurance contributions when there is not and, for whatever reason, have not replied, have had their contributions reinstated?*
- m) *What affect have these problems had on manpower and cost?*
- n) *Was a crisis management team appointed to help resolve these problems?*

o) Has a Report been requested by, or submitted to, the Director?

11. HMRC responded on 11 June 2012. It apologised for the long delay in replying and refused to provide the requested information citing section 12 of the FOIA.
12. In his request for internal review the complainant stated that the response had focused on the reasons why an individual may have a gap in their NI contributions, but had ignored the major issue that he raised of those informed by HMRC that they had a gap or shortfall in their contributions when in fact they **did not** and related issues following on from this.
13. The complainant further stated that clearly millions of records are not going to be searched. Equally clearly what is needed is for this matter to be taken up with the Director and senior staff responsible for NI contributions. This should entail no additional costs if carried out within their normal duties and responsibilities in ensuring the smooth and efficient running of their department.
14. The complainant considered that the response had narrowly focussed on one point, effectively blocking answers to the other points raised, many of which he felt could be answered by the Director and his team without the need to trawl through files.
15. Following an internal review on 25 July 2012 HMRC wrote to the complainant maintaining its original position.

Scope of the case

16. The complainant contacted the Commissioner on 3 August 2012 to complain about the way his request for information had been handled.
17. The complainant stated that if there were major problems associated with the introduction of a new computer system at HMRC, as seems likely, then it follows that there should have been some form of investigative report into this matter.
18. He further asked if it was possible, in the first instance, to provide details of any investigative report if, in fact, such a report was prepared or, if not, to ask the Director of HMRC to reply in detail through the Commissioner to each individual point he had raised.
19. The Commissioner considers the scope of this case to be to determine if HMRC has correctly applied section 12 of the FOIA to the requested information. He will also consider the timeliness of the response.

Reasons for decision

20. Section 12 of the FOIA provides that a public authority is not obliged to comply with a request if the cost of doing so would exceed the appropriate cost limit. This limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees regulations) at £600 for central government bodies. The fees regulations also state that the cost of a request must be calculated at the rate of £25 per hour, meaning that section 12 effectively provides a time limit of 24 hours.
21. The tasks that can be taken into account when calculating a fees estimate are specified in the fees regulations as follows:
- Determining whether the requested information is held
 - Locating that information
 - Retrieving the information
 - Extracting the information
22. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.
23. In its response to the Commissioner, HMRC explained that it had refused the request under section 12(1) of the FOIA. Point C of the complainant's request asked:
- How many employees were written to informing them that there was a gap or shortfall in their National Insurance contributions when in fact there was not?"*
24. HMRC explained that the only way it could verify 'there was not' a gap in an employee's record would be by checking their records to see if the reason for the gap had been recorded. Therefore, it identified the information in scope of the requests as relating to the reasons for any gaps in an individual's NI record where the taxpayer had been an employee and, for some reason, the employer's information had not been noted in the employee's NI record.
25. It further explained that in order to establish the reasons for a gap in an individual's NI contributions record it would need to review many millions of customer records from HMRC's systems.

26. HMRC stated that although it did not comply with the request as it would exceed the appropriate limit to do so, in order to discharge its section 16 duty it provided to the complainant:
- An explanation as to why the request could not be narrowed to come within the costs limit and why;
 - Descriptions of some of the difference circumstances in which a person would have a gap in their NI contributions record;
 - Web-links to HMRC guidance explaining what an individual should do when it has written to them about a potential gap in their NI record.
27. HMRC confirmed that in order to comply with the request it would need to review over one million individual records where a potential gap had been identified. Even if the scope was reduced to one particular individual, HMRC stated it would still not be able to comply with the request within the appropriate costs limit.
28. HMRC explained that it would need to review each individual record to establish whether the person was an employee and the reason for any gap in their NI contributions records, if it had been noted. Not all gaps arise because of an error on the employer's part. There may be a 'legitimate gap' if, say, the individual took time out (a sabbatical for example) and decided not to make voluntary NI contribution payments at the time.
29. HMRC confirmed that it did not undertake a sampling exercise in order to determine its estimate of the time needed to comply with the request. However, it stated that even it were able to check one record per minute, it would only be able to check 1440 records before the appropriate costs limit was exceeded:
- searching/reviewing one record per minute x 24 hours = 1440
- This calculation does not take into account those records where HMRC would need to contact the individual to verify the reason for any gap in their NI contribution record.
30. The Commissioner has considered the response provided by the HMRC. Having considered all the relevant evidence, the Commissioner is satisfied that the HMRC's estimate that it would take more than 24 hours work to answer point C of the request is based on a reasonable assessment of the activities that are allowed by Regulation 4(3) of the Fees Regulations. He accepts the estimate in this case and therefore finds that HMRC applied section 12(1) correctly to the entire request.

Other matters

31. Section 10(1) of the FOIA states that on receipt of a request for information a public authority should respond to the applicant within 20 working days.
32. In this case HMRC acknowledged receipt of the request on 9 November 2009 and stated it had passed the request to its Freedom of information Operations Unit.
33. In its response dated 11 June 2012 HMRC apologises for the substantial delay in its response but offers no explanation as to why this may have occurred.
34. The Commissioner has therefore recorded a breach of section 10(1) of the FOIA.

Right of appeal

35. 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

36. 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.
37. 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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