

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 February 2013

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

Decision (including any steps ordered)

1. The complainant has requested information, notably a case decision log, from HM Revenue and Customs (HMRC). HMRC stated that it would exceed the cost limit to confirm whether or not it holds the requested information (section 12(2)).
2. The Commissioner's decision is that HMRC correctly applied section 12(2) to the request. He requires no steps to be taken.

Request and response

3. On 3 November 2011 the complainant made a number of requests for information to HMRC. The following request for information under FOIA is the subject of this complaint:

"Your Reference: Operation Visit

My question is:

1. *Does HMRC hold a Case Decision Log (CDL), or a copy of it, for Operation Visit?*
2. *If so, does the CDL or copy record the identity of the disclosure officer?*
3. *If HMRC does not currently hold the CDL, or a copy of it, who does?*
4. *Does the CDL or copy record my name as the disclosure officer?"*

4. The complainant referred to a number of named individuals he considered may have knowledge of the information. He also offered advice to HMRC as to when and where he considered the requested information could have been recorded.
5. Following further correspondence about the request, HMRC responded on 30 March 2012. It advised that, having consulted the named individuals, those individuals do not hold the requested information. HMRC advised however, that, having made further enquiries, it does hold information relevant to Operation Visit. However, it neither confirmed nor denied that the requested information is held within HMRC, citing section 12(2) on the basis that it would exceed the cost limit to ascertain whether or not it holds the information specific to the request. HMRC also explained that it did not see any scope for narrowing the request so that it did not exceed the limit.
6. HMRC provided an internal review on 1 August 2012 in which it upheld its original position with respect to section 12(2).

Scope of the case

7. Having contacted the Commissioner in March 2012 about this matter, describing it as a 'probable complaint', the complainant subsequently contacted the Commissioner on 6 August 2012 to complain about the way his request for information had been handled.
8. The complainant told the Commissioner that the request in this case concerns:

"how public money has been and is being spent".
9. By way of background, he explained that the request was made in relation to a joint HMRC/MPS (Metropolitan Police Service) investigation which he described as 'unfocused' and 'wasting public money'.
10. The Commissioner understands that the primary purpose of a CDL (case decision log) is to provide an accurate, contemporaneous record of all significant decisions made during an operation.
11. Summarising his complaint, the complainant told the Commissioner:

"It is not right that the UK's tax collection agency continue to be able to conduct itself in this way with public funds without there being any transparency at all being possible in order to ensure that there can be no future repetition of such behaviour".

12. The Commissioner considers the scope of his investigation to be HMRC's citing of section 12(2).

Reasons for decision

Section 12 Exemption where cost of compliance exceeds appropriate limit

13. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if it estimates that the cost of complying would exceed the appropriate cost limit.
14. Subsection 12(2) states that section 12(1) does not exempt the public authority from its obligation at section 1(1)(a) to confirm or deny whether the requested information is held, unless the estimated cost of complying with that duty alone would exceed the appropriate limit. However, where a public authority estimates that to confirm whether or not the requested information is held would exceed the appropriate limit then, under section 12(2) of FOIA, it does not have to deal with the substance of the request.
15. In this case, HMRC estimates that it would exceed the appropriate limit to confirm whether or not the requested information is held. In other words, it is citing section 12(2).
16. The appropriate limit in this case is £600, as laid out in section 3(2) of the Fees Regulations. This must be calculated at the rate of £25 per hour, providing an effective time limit of 24 hours.
17. HMRC told the complainant that the information it holds in relation to Operation Visit is contained in a large number of boxes. It explained that to establish whether the specific requested information is held would require the contents of each box to be reviewed in order to locate and retrieve any information within the scope of his request.
18. The complainant clearly expected HMRC to be able to identify the specific box relevant to his request. However, HMRC told the complainant:

"Since the schedule did not make reference to the CDL, we were not able to identify a specific box for searching.....The fact that our schedules do not appear to record the location of a CDL for Operation Visit means that we could only establish the position with certainty by looking through all the relevant records".

HMRC's estimate

19. When estimating whether confirming or denying whether it holds the requested information would exceed the appropriate limit, a public authority may take into account the costs it reasonably expects to incur in determining whether it holds the information. The estimate must be reasonable in the circumstances of the case.
20. During the course of his investigation, HMRC explained the nature of the searches, both physical and electronic, that it had conducted in relation to the request. For example, it told the Commissioner that, at the time of the request, it identified over 100 banker boxes likely to include the requested information. It explained that the majority of the records contained in the boxes had been scanned in the past. However, keyword searches on the scanned records had not produced any reference to the Visit CDL. It told the Commissioner:

"We cannot say with absolute certainty that all the records contained in the boxes have been scanned. No physical search of the boxes has been carried out".
21. It estimated that it would take at least an hour to review all the documents in each of the boxes. On the basis that that would take 100 hours, it concluded that it would exceed the fees limit to establish whether it holds the requested information.
22. In this case, the Commissioner is satisfied that HMRC has explained how it has calculated its estimate. In this respect he notes that it has explained its search strategy, including which members of staff have been contacted and the fact that searches have been conducted. He is also satisfied that it has explained the number of boxes that need to be reviewed, why it needs to review the contents of those boxes and how long it would take, per box, to determine whether the requested information is held.
23. On the evidence he has seen, the Commissioner is satisfied that the estimate is reasonable in the circumstances of this case. He therefore considers HMRC correctly applied section 12(2) to the request.

Right of appeal

24. 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

25. 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.
26. 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

Jon Manners
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