

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 March 2013

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

Decision (including any steps ordered)

1. The complainant has requested information relating to a particular investigation and coverage of the business of [named company]. HMRC refused to confirm or deny whether or not the requested information was held under section 44(2) of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner's decision is that HMRC was correct to neither confirm or deny whether the requested information was held under section 44(2) FOIA.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 3 August 2012, the complainant wrote to HMRC and requested information in the following terms:

"Please identify and provide copies of:

1. all written communications between HMRC or anyone acting or purporting to act on behalf of HMRC and Times Newspapers Limited relating to the investigation and coverage by Times Newspapers Limited of the business of [named company] or any associated entity, including (without limitation) communications containing statements about that business attributed to HMRC in articles published in *The Times* on 20, 21, 22 and 23 June 2012.

2. any written note, memorandum, log or record of telephone

calls (including calls placed but not completed) or other electronic communications between HMRC or anyone acting or purporting to act on behalf of HMRC and any journalist (whether staff or freelance) relating to the investigation and coverage referred to above, and

3. all written communications and any note, memorandum, log or record of meetings, telephone calls or other electronic communications within HMRC relating to the formulation and approval of any statement or response, or other communication as referred to in 2 above, made by HMRC in connection with the investigation and coverage referred to above.

We would prefer to receive the requested information in electronic form."

5. HMRC responded on 29 August 2012. It refused to confirm or deny whether it held the requested information under section 44(2) FOIA.
6. Following an internal review HMRC wrote to the complainant on 10 October 2012. It upheld its original response.

Scope of the case

7. The complainant contacted the Commissioner on 8 November 2012 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether HMRC was correct to neither confirm or deny whether the requested information was held in this case under section 44(2) FOIA.

Reasons for decision

9. Section 44 FOIA provides that

"(1) 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,
- (b) is incompatible with any Community obligation, or
- (c) would constitute or be punishable as a contempt of court.

- (2) The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1)."
10. HMRC has explained that section 44(1)(a) exempts information from disclosure if its disclosure is prohibited by any other enactment or rule of law. Section 18(1) of the Commissioners for Revenue and Customs Act 2005 (CRCA) provides that Revenue and Customs officials may not disclose information that it is held by HMRC in connection with one of its functions. The information requested in this case, if held, would be held in connection with HMRC's functions of assessing and collecting tax. It said that any communications with the press in relation to tax matters are held for its functions in respect of the care and management of the tax system.
 11. HMRC went on to explain that section 23(1) CRCA further provides that where information falling in section 18(1) relates to a 'person' who is identified or who could be identified the exemption in section 44(1)(a) FOIA applies. 'Person' includes both living persons and legal entities. HMRC said that taken together, if it were held, the above removes information about HMRC's customers from the right of access under FOIA.
 12. Section 44(2) of FOIA provides that the duty to confirm or deny whether information is held does not apply if the confirmation or denial itself would fall within the provisions of section 44(1). HMRC has argued that if it disclosed whether it held information falling within the scope of the request it would be revealing something about the affairs of the company named in the request. This would fall within section 44(1)(a) and hence section 44(2) exempts HMRC from the duty to confirm or deny.
 13. HMRC has acknowledged that section 18(2) and 18(3) CRCA sets aside the duty of confidentiality established by section 18(1) in some circumstances. However it made reference to the following amendment to section 23 of the CRCA under the Borders, Citizenship and Immigration Act 2009:

http://www.opsi.gov.uk/acts/acts2009/pdf/ukpga_20090011_en.pdf

19 Application of statutory provisions

*(4) In section 23 of the Commissioners for Revenue and Customs Act 2005 (c. 11)(freedom of information), after subsection (1) insert—
“(1A) Subsections (2) and (3) of section 18 are to be disregarded in determining for the purposes of subsection (1) of this section whether the disclosure of revenue and customs information relating to a person*

is prohibited by subsection (1) of that section.”

14. HMRC said that if a request for information is considered under the FOIA, the exceptions in section 18(2) and (3) are not taken into consideration. The absolute prohibition against disclosure contained in section 18(1) is the only relevant provision in this regard, if the requested information were held.
15. Upon consideration of the submissions provided by HMRC, the Commissioner considers that if the requested information were held it would relate to HMRC's functions for assessing and collecting tax. Furthermore if it were held it would identify the company and individuals linked to that company. The Commissioner also does not consider that, if the information were held, there would be any relevant gateways to disclosure. Finally the Commissioner considers that by even confirming or denying whether the requested information is held, would in itself disclose information relating to the business of the named company and its associated businesses. The Commissioner therefore considers that section 44(2) FOIA was correctly applied in this case.

Right of appeal

16. 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

17. 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.
18. 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
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF