

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 July 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 about court cases where a named receiver was appointed. The public authority advised that to comply with the request would exceed the appropriate cost limit. The Commissioner accepts the public authority's position and does not require it to take any steps.

Request and response

2. On 4 September 2012, the complainant wrote to the public authority and requested information in the following terms:

"i would like to ask for freedom of information re [name removed], [court appointments]

i v been informed that i have the right because its a public record , to be given if asked the case names and the courts details of all the cases the above receiver was appointed over from 2000 to date, im doing this request as iv been asked to , im not sure if its worded correctly and i would ask that im told if i need to use other wording, the cases will be listed in the court records within your legal departments".

3. The public authority responded on 2 October 2012. It advised that to ascertain whether or not it held any information would exceed the appropriate limit. It further explained that, even were it able to collate any information, this would be further exempt by virtue of the Commissioners for Revenue and Customs Act 2005 (the "CRCA") which would prevent it from disclosing individual case names and details.

4. Following an internal review the public authority wrote to the complainant on 1 February 2013. It maintained its position.
5. During the course of the Commissioner's investigation the public authority confirmed that it was relying on section 12(1).

Scope of the case

6. The complainant contacted the Commissioner on 1 February 2013 to complain about the public authority's citing of the cost limit.

Reasons for decision

Section 12 – cost of compliance

7. Section 12(1) of the FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit".

8. The Fees Regulations set an hourly rate at £25 per hour for all public authorities, with the appropriate limit for the public authority in question set at £600. This equates to 24 hours of work. When producing an estimate for how long it would take to comply with a request a public authority can consider the time taken in:
 - (a) determining whether it holds the information,
 - (b) locating the information, or a document which may contain the information,
 - (c) retrieving the information, or a document which may contain the information, and
 - (d) extracting the information from a document containing it.

9. In its refusal the public authority advised the complainant:

"I can confirm that HMRC holds information that falls within the description specified in your request, namely case files which would contain details of appointed receivers. However, we estimate that the cost of complying with your request would exceed the appropriate limit..."

I would explain that this Department does not record this type of information centrally and that we would need to inspect all of the potential cases in the time period concerned. Even for a recent

period this would involve approaching several branches and inspecting both manual and computer records.

Additionally I should say that HMRC has a duty of confidentiality in section 18(1) Commissioners for Revenue and Customs Act 2005 (CRCA) which says we may not disclose information held for a function of HMRC. Where information covered by section 18(1) relates to an identifiable person, which includes companies, section 23(1) CRCA applies section 44(1)(a) FOIA. Therefore, even if we were able to collate some information on individual receivers, we would not be able to disclose individual case names and details to you, and this would apply even if they were already in the public domain”.

10. In its internal review it added:

“In our reply ... we cited the fees limit of £600 under section 12(1) FOIA and sought to provide some advice and assistance in respect of our duty of confidentiality were you able to narrow your request, ie, we would not be able to provide to you the requested case names and court details of all of the cases of the receiver [name removed]...”

You have asked for information dating back to 2000. HMRC was created in April 2005 from the former departments of HM Customs & Excise and the Inland Revenue. According to our records retention policies few records are required to be retained beyond a period of 6 years. I have checked with the relevant teams within HMRC and I am content that to establish whether or not HMRC holds information within the scope of your request would involve those teams undertaking a case by case search which would take significantly more than 24 hours”.

11. The Commissioner asked the public authority to provide a detailed and reasonable estimate of the time that would be taken and the costs that would be incurred by providing the information falling within the scope of the request. He also asked it to provide an explanation as to how it had investigated, assessed and calculated those costs.

12. Following further inquiries, it advised the Commissioner as follows:

“I have been in contact with 4 separate and distinct business teams within HMRC. I am now able to confirm that HMRC does not hold any central register of cases that involve High Court appointed receivers. I am satisfied that our teams in Special Investigations (SI), Debt Management & Banking (DMB), and Solicitors Office do not hold any records that would assist the applicant.

The only other team, Criminal Investigations (CI), does have access to searchable records. There is just one system that could be interrogated and that is a database owned by the Home Office and shared with other law enforcement agencies.

I am advised that there are approximately 2500 cases that are HMRC cases going back as far 2000. The database did not come into being until 2004 so there is no guarantee that all cases pre 1/04/2004 are actually on it. Also not all of these cases will have or have had a receiver appointed.

A search of the database can produce a list of HMRC cases for which a receiver is/was appointed ,but again no guarantees as in some cases the receiver details may not have been input.

This search could take about one hour, up to a maximum of two.

Having obtained that list it would need to be reviewed to see which receiver was appointed and if that receiver was appointed by the High Court. If the particular receiver the applicant is interested in was named then some details could be collated at this point. However if only the name of the firm was recorded, then the case papers would need to be looked at individually to check who was actually appointed. This will take time depending on how old the case is”.

13. The public authority provided the Commissioner with details of the retention schedule to evidence how long information would be kept on the database identified above. This confirmed its assertion that:

“... the default position in the absence of specific guidance is to retain for 6 years plus current year so given the date of request, October 2012, we would potentially hold information going as far back as 2006. Anything older... would only still be held if it fell into the criteria for a second retention review.”

14. The public authority went on to provide an estimate without conducting an actual search. However, as he did not consider the estimate to be adequate, the Commissioner asked if it could carry out the initial searches, as detailed above, to properly ascertain whether or not it would be able to retrieve any information within the appropriate limit.
15. The public authority went on to provide the following details, advising that the initial search had taken 90 minutes to conduct :

“1) How files held and where

I am advised that all closed case files (subject to our retention and destruction policies) are held in storage either in the investigating office or in HMRC storage facilities at (redacted). For open cases there should be an electronic file held by the investigating officer... 38 of the 184 cases were identified as not being connected with [named party] so we have now established that the remaining 146 are broken down as 31 closed and 115 open.

2) Conducting a typical search of paper records for closed cases

As the list is national and not held centrally we would need to establish at which storage facility the papers are held.

As a starting point, we would approach the named case officer but if he/she has since moved on, then we would track down someone else who could help.

There are 31 closed cases so potentially 31 requests/phone calls to be made to the named case officer: bare minimum allow 5 mins each (155) mins to get details of where papers held).

Make requests for the case papers (by email or telephone) 31 x 10 mins = 310 mins.

Include time to locate and retrieve files in storage- 31 x 20 mins = 620

Examining papers once received to identify the receiver appointed 31 x 15 = 465 mins

3) Conducting a typical search of computer records - open cases

Easier to establish but would still involve approaching the case officer for name of the receiver appointed - so 115 computer records to be interrogated allow 5 mins per case 115 x 5 = 575

Total timings 90 (initial search)

+ items at 2) 155 + 310 + 620 + 465 = 1640 (27.3 hours)

+ items at 3) 575 (9.5 hours) = 2215 (36.8 hours)".

16. The Commissioner's decision in respect of whether section 12 applies is based on this estimate. In considering the response given by the public authority, the Commissioner has been mindful of the First-Tier Tribunal judgment in *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency*, which stated that a reasonable estimate is one that is "sensible, realistic and supported by cogent evidence".
17. The Commissioner considers this to be a reasonable cost estimate. The public authority has clearly identified the number of cases it will need to consider and he is satisfied with the approach taken. For this reason, he

concludes that to comply with the request would go beyond the appropriate limit and it can be properly refused under section 12 of the Act.

Section 16 – advice and assistance

18. Section 16 of the Act states that:

"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it".

19. The Commissioner considers that when a public authority refuses a request under section 12 of the Act, section 16 obliges it to provide the applicant with suggestions for how the request can be reduced so that compliance would not exceed the appropriate cost limit.

20. In this case, the Commissioner notes that the public authority did explain to the complainant that, even if it were able to locate any information within the appropriate limit, it would be otherwise absolutely exempt from disclosure under the FOIA by virtue of the CRCA, a position which the Commissioner accepts as being highly likely. Furthermore, it did suggest a possible alternative source to the complainant, although it is not known whether this has been of assistance to him.

21. The Commissioner is therefore satisfied that the public authority has attempted to assist the complainant and he does not consider there to have been any breach of section 16.

Other matters

22. Although they do not form part of this decision notice the Commissioner wishes to highlight the following matters of concern.

Internal review

23. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his 'Good Practice Guidance No 5', the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner has decided that a reasonable time for

completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.

24. The Commissioner does not consider this case to be 'exceptional', so is concerned that it took over 40 working days for an internal review to be completed.

Right of appeal

25. 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

26. 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.
27. 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

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