

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 September 2013

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

Decision (including any steps ordered)

1. The complainant has requested the number of cases that HM Revenue & Customs ("HMRC") have where harassment has persisted and been focused on one individual.
2. The Commissioner's decision is that HMRC has correctly applied section 12 of the FOIA to this request for information. He has also considered the advice and assistance that was required and has concluded that HMRC provided an explanation to the complainant as to why it could not help him in this way and therefore complied with its obligations under section 16(1). The Commissioner requires no further steps to be taken.

Request and response

3. On 25 October 2012 the complainant wrote to HMRC and requested information in the following terms:
"How many other cases do you have in HMRC where harassment has persisted for so long and been focused on one individual, i.e., over 26 years."
4. HMRC responded on 8 November 2012 and confirmed that it may hold information that fell within the description specified in the request.
5. However, it estimated that the cost of complying with the request would exceed the appropriate limit of £600. Therefore it stated that it would not process the request further as under section 12 of the FOIA it was not obliged to comply with the request.

6. Following an internal review HMRC wrote to the complainant on 12 February 2013. It confirmed its original response was correct. It was satisfied that the time taken to comply with the request would exceed the fees limit and the section 12(1) exemption was correctly applied to the request. HMRC was also satisfied that it could not help the complainant to narrow his request in order to bring it within the fees limit.

Scope of the case

7. The complainant contacted the Commissioner on 27 February 2013 to complain about HMRC's decision not to release the requested information.

Reasons for decision

Section 12 – cost of compliance

8. Section 12(1) of the FOIA states that a public authority does not have to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate cost limit.
9. The appropriate limit is set out in the FOI and Data Protection (Appropriate Limit and Fees) Regulations 2004. In performing its calculation, a public authority may take into account the cost of determining whether it holds the requested information plus the cost of locating, retrieving and extracting it. The appropriate limit for central government is set at £600. This must be calculated at the rate of £25 per hour, providing an effective time limit of 24 hours. This represents the estimated cost of one person spending 3.5 working days determining whether HMRC holds the information.
10. On 12 August 2013 HMRC responded to specific questions relating to this complaint case. HMRC explained that it carried out a sampling exercise for the purpose of this response and by extrapolating the results have arrived at the estimate (estimated time in hours):

Determining	1.0
Locating	1.0
Retrieving	2.0
Extracting	440.0

11. HMRC explained that several customer facing areas could receive complaints of harassment similar to that described in the request. Each

of these business areas records complaints on the Enterprise Complaints and Correspondence System ("ECCS"). Access to this system is restricted so that each team can only review complaints relating to their own business area. Only the national ECCS team can access all the data held for all of HMRC.

12. HMRC also explained how in order to determine, locate, retrieve and extract the information it would need to contact the ECCS Representative in each business area, as well as the central complaints team, and explain the type of search required for this exercise. HMRC also advised how the ECCS Representative would need to run a report to identify complaints recorded under Staff Conduct or Discipline case categories, and provide the information in a suitable format from which to analyse the data.
13. HMRC clarified that in order to extract the information to comply with the request, it would have to review a large number of paper and electronic records held across its business streams.
14. HMRC explained that it was not easy to identify complaints about harassment. It explained that where allegations were recorded in correspondence, notes of telephone calls or in meeting notes it could not say for sure whether all had been recorded as complaints. Whether it was recorded as a complaint would depend on the context of the allegation and on the receiving officer's judgement. Therefore, not all allegations of harassment would be recorded as a complaint at all.
15. It went on to explain that only when an allegation of harassment has been passed to a complaints team for investigation would the complaint be recorded in a format that would enable it to extract statistical information. When a complaint is recorded on ECCS it is allocated to a case category. It explained that these categories are common to all of HMRC and are as follows: Communication, Delay, Discrimination, Loss/Damage, Misleading advice, Mistake/Error, Policy/Legislation, Process/System, Security Incident, and Staff Conduct.
16. It pointed out that none of the categories specified harassment. It also explained that complaints are recorded depending on the complaints officer's view of the primary reason for the complaint. This means if a complaint is about more than one issue, for example, delay and a mistake or error by HMRC, it will only be recorded under one case category.
17. In terms of this particular request, it explained that this meant that not all allegations of harassment will be picked up by interrogating the ECCS system. Therefore, in order to verify the number of complaints relating to Harassment, it would have to manually check the detail of every

complaint regardless of its case category, in order to determine whether it fell under the scope of this request.

18. HMRC did inform the Commissioner that it carried out a sampling exercise only on allegations of harassment captured to the ECCS system for one business stream. A report identified all the closed Staff Conduct complaints for the past year amounted to 120 cases. HMRC stated the report took approximately 1 hour to run.
19. HMRC explained that for each case sampled it opened the ECCS record, reviewed the complaint description and complaint correspondence in order to make a judgement as to whether the complaint could be considered an allegation of harassment. The results were then recorded.
20. HMRC informed the Commissioner that the sampling officer reviewed 13 cases in two hours, an average of 9.23 minutes for each case reviewed.
21. HMRC also explained that the national ECCS Service Team had also confirmed that the total number of complaints classified as 'Staff Conduct' for all ECCS business areas for the past year had totalled 2868 cases.
22. Therefore, it explained, a full review of all 120 Staff Conduct cases recorded by Local Compliance (ECCS) over one year would take approximately 18.5 hours:

$$120 \text{ cases} \times 9.23 \text{ minutes} = 1107 \text{ minutes} = 18.46 \text{ hours}$$

To review all cases across HMRC, 2,868 cases, recorded under the category 'Staff Conduct' would take approximately 441 hours:

$$2868 \text{ cases} \times 9.23 \text{ minutes} = 26472 \text{ minutes} = 441 \text{ hours.}$$

23. HMRC stated that if it carried out this exercise in full, it would not provide accurate information about all allegations of harassment.
24. HMRC advised that if the terms of the request specified harassment as the cause of the complaint, any data would have to be extracted and such an exercise would exceed the costs limit.
25. HMRC explained that it is unable to refine the request. Any search of the system would require the type of manual review described above and it could not confirm that all the information had been located. It also stated that it is not possible to search the narrative part of the database using 'harassment' as a keyword.
26. Taking the above factors into account, the Commissioner considers that HMRC has explained how it has calculated its estimate. In this respect

he notes that it has explained its search strategy, including the sampling exercise. The Commissioner is satisfied that the estimate is reasonable in the circumstances of this case. He therefore considers HMRC correctly applied section 12(1) to the request.

Section 16 – advice and assistance

27. The Commissioner considers that when a public authority refuses a request under section 12 of the FOIA, 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.
28. In this case, the Commissioner notes that although HMRC was satisfied that there was no scope for the complainant to narrow his request, it did provide an explanation as to why it could not help him in this way. It also explained to the complainant how complaints were classified and that a manual exercise would be required to extract the information he described.
29. The Commissioner is therefore satisfied that HMRC has attempted to assist the complainant and he does not consider there to have been any breach of section 16.

Right of appeal

30. 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

31. 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.
32. 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
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