

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 12 June 2014

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

#### Decision (including any steps ordered)

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1. The complainant requested information concerning the exemption of Swiss bank account holders from prosecution for possible tax evasion in exchange for disclosure. HMRC withheld the information under s44(1)(a) FOIA.
2. The Commissioner's decision is that the information is exempt from disclosure under s44(1)(a).
3. The Commissioner requires no steps to be taken.

#### Request and response

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4. On 7 August 2013 the complainant made the following request:

*"... In connection with the deal signed by former HMRC employee Dave Hartnett with the State of Switzerland in August 2011 exempting those with bank accounts in that country from prosecution for possible tax evasion charges, in exchange for disclosure [...] please disclose the content of any enquiries raised by HMRC on the possible illegality of the funds subject matter of such disclosures."*

5. On 4 September 2013 HMRC withheld the information under s44(1)(a) FOIA.
6. On 5 September 2013 the complainant requested an internal review.

7. On 18 November 2013 the complainant was informed that HMRC's internal review had upheld the exemption at s44(1)(a).

### **Scope of the case**

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8. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. This decision notice addresses the withholding of the information under s44(1)(a) FOIA.

### **Reasons for decision**

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10. Section 44(1)(a) FOIA states that information is exempt if its disclosure by the public authority holding it is prohibited by any enactment.
11. HMRC is bound by a statutory duty of confidentiality set out in s18(1) of the Commissioners for Revenue and Customs Act 2005 (CRCA). This states that HMRC cannot disclose information which is held by HMRC in connection with any of its functions. One of its functions is the assessment and collection of tax.
12. Section 23 CRCA states that information prohibited from disclosure by s18(1) is exempt by virtue of s44(1)(a) FOIA "*... if its disclosure (would) specify the identity of the person to whom the information relates, or enable the identity of such a person to be deduced.*"
14. The information determined as being within scope of the request comprises letters sent by HMRC to holders of Swiss bank accounts in response to approaches from those individuals. In order to ascertain the appropriateness of the exemption the Commissioner requested copies of these from HMRC.
15. HMRC provided him with copies on 14 March 2014. Upon his examination of the letters the Commissioner is satisfied that should they be released into the public domain the recipients or their agents would recognise that they related to their affairs.
16. The Commissioner's examination also determined that owing to the letters being specific to each account holder rather than generic correspondence, redaction would render them meaningless and fail to address the specific requirements of the request.
13. The unredacted information would enable the identities of the persons concerned to be deduced and also relates to a function of HMRC.

Therefore the information is caught by s23 CRCA and the duty of confidentiality at s18(1) CRCA. Consequently the exemption at s44(1)(a) FOIA applies.

14. The exemption at s44(1)(a) FOIA is absolute and not subject to the public interest test.

## Right of appeal

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15. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

16. 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.
17. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**