

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 10 April 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 has requested information regarding a trust and the people responsible for running it. HM Revenue & Customs (HMRC) refused to either confirm or deny if the information was held on the basis of section 44(2) of the FOIA, by virtue of section 18(1) of the Commissioners for Revenue and Customs Act 2005.
2. The Commissioner's decision is that HMRC has correctly applied section 44(2) to neither confirm nor deny if the requested information is held. He requires no steps to be taken.

#### Request and response

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3. On 7 August 2013, the complainant wrote to HMRC and requested information regarding a trust. The complainant had been seeking information on the identities of the past and present trustees/administrators. To assist with this the complainant provided a list of names and last known addresses for individuals he believed may have been administrators or trustees at some point. His request within this correspondence has been identified as being as follows:

*"I am not asking for information on the assets of the trust. I am looking to identify those who are running the trust.*

*My inquiry now is different from my last enquiry. Then I was following the rules for a four-trustee trust. Where it is obligatory by law that ex trustees are replaced by replacement trustees. Then I was looking for*

*names from the tax office. The later trustees could have been professional people or organizations, who could be difficult to track.*

*Now, I am following the rule for a three-trustee trust. With three trustees it is not obligatory by law to replace the original and earlier trustees with replacement trustees. While the trust is running the original trustees would eventually have to be replaced by later generations of administrators.*

*I suspect that all will trusts with three trustees; carry a particular clause. Loosely it states – remaining in the hands of my trustees their heirs, executors or administrators. Such a clause indicates who the later administrators of a trust would be.*

*If any of the names I have sent you this time turn up, especially if two or more seem to connect that will confirm the trust set up by [information redacted]*

*It is the identities of the administrators that I want confirmed.*

*This is not a will it is a trust, so there is no time limit for anyone of the original remaindermen to step forward and make a claim.”*

4. HMRC did not respond to this request but explained to the Commissioner it had no record of receiving it. Consequently HMRC considered the request and responded on 23 October 2013. It stated that it could neither confirm nor deny if it held the information as doing so would reveal something about the person, company or body. As such HMRC explained it was relying on section 44(2) of the FOIA.
5. Following an internal review HMRC wrote to the complainant on 13 December 2013. It stated that it upheld its use of section 44(2) of the FOIA and identified the relevant enactment as being section 23(1) of the Commissioners for Revenue and Customs Act 2005 (CRCA).

## **Scope of the case**

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6. The complainant contacted the Commissioner on 26 December 2013 after his renewed request to complain about the way his request for information had been handled.
7. The Commissioner considers the scope of his investigation to be to determine if HMRC has correctly applied the provisions of section 44(2) of the FOIA to neither confirm nor deny if it holds the requested information.

## Reasons for decision

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8. Section 44 of the FOIA states 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 obligations, 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 the paragraphs (a) to (c) of subsection (1)."*

9. 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 CRCA provides that Revenue & Customs officials may not disclose information that 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 one of HMRCs functions of assessing and collecting tax.

10. HMRC also explained that it considered that the information, if held would also related to an identifiable person, given that the request specifically asked for the identities of administrators, and therefore section 44(1)(a) of the FOIA applied. The Commissioner is aware that 'person' in the context of the CRCA includes both persons and legal entities and section 23(1) of the CRCA provides that where information falling within section 18(1) relates to a person who is identified or could be identified then section 44(1)(a) of the FOIA applies.

11. Section 44(2) of the 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 a person or legal entity. This would fall within section 44(1)(a) and therefore section 44(2) exempts HMRC from the duty to confirm or deny if the information is held.

12. The Commissioner has considered the submissions provided by HMRC alongside previous decisions of the Information Tribunal<sup>1</sup> on the application of the section 44 by virtue of section 18(1) of the CRCA and recent decision notices<sup>2</sup> on this issue.
13. For the purposes of establishing if section 18(1) of the CRCA provides a statutory prohibition on disclosure the Commissioner must consider if the requested information, were it held, is covered by section 23(1) of the CRCA. To do this he must consider if the information, if it is held, would relate to one of HMRCs functions for assessing and collecting tax and if the information relates to a person who is identified or could be identified from the information.
14. Upon consideration of the submissions, the Commissioner considers that the requested information, if held, would fall within the scope of section 18(1) of the CRCA because it would have been acquired as a result of, or held in connection with, the exercise of HMRCs taxation functions in respect of the trustees and/or administrators of the trust.
15. The Commissioner is also satisfied that if the information were held it would identify the trustees and/or administrators, particularly as the request specifically asked for the disclosure of identities. Therefore, he is satisfied that the requested information, if held, meets the requirements of section 23(1) of the CRCA.
16. In his previous considerations of the application of section 18(1) of the CRCA, the Commissioner has considered whether sections 18(2) and 18(3) set aside the duty of confidentiality established by section 18(1). Following an amendment to section 23 of the CRCA contained in the Borders, Citizenship and Immigration Act 2009<sup>3</sup> which stated:

*(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."*

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<sup>1</sup> Allison v ICO EA/2007/0087 and PriceWaterhouseCoopers v IC EA/2009/0049

<sup>2</sup> FS50492420, FS50501024, FS50470320 & FS50456942

1. <sup>3</sup> [http://www.opsi.gov.uk/acts/acts2009/pdf/ukpga\\_20090011\\_en.pdf](http://www.opsi.gov.uk/acts/acts2009/pdf/ukpga_20090011_en.pdf)

HMRC has previously argued that if a request for information is considered under the FOIA the exceptions in sections 18(2) and (3) are not taken into consideration and the absolute prohibition against disclosure contained in section 18(1) is the only relevant provision. The Commissioner accepts this position and therefore considers that if the requested information were held section 18(1) is the only relevant provision and this would be met if the information were held.

17. Finally the Commissioner considers that even confirming or denying whether the requested information is held, would in itself disclose information relating to the person or legal entity. The Commissioner therefore considers that section 44(2) FOIA was correctly applied in this case to neither confirm nor deny if the requested information was held.

## Right of appeal

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18. 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)

19. 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.
20. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
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