

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 September 2014

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

Decision (including any steps ordered)

1. The complainant requested information relating to the employment records of a named person. The public authority neither confirmed nor denied whether it held the information requested on the basis of section 44(2) FOIA.
2. The Commissioner's decision is that the public authority was entitled to neither confirm nor deny whether it held the information requested on the basis of section 44(2).
3. No steps are required.

Request and response

4. Although the request was properly made under FOIA on 27 November 2013, the complainant had originally written to the public authority on 26 September 2013 in the following terms:

'.....I am completing my family history and would like to know the following work record of a close relative. [Named Person] BORN 1906 in LANCASTER DIED 10TH December 1953 Age 47 [sic]. A qualified Teacher he taught from 1926 at ARDwick municipal School.....until its closure in July 1952 [sic]. But from 1943 until 1949 there is a gap of six years.

His address from 1934 until his death. [Address redacted] st moss side m/c....'

5. The request above was made directly to the public authority's Records Retrieval Service which deals with requests for employment histories on a business as usual basis. This resulted in a number of exchanges between the complainant and the Records Retrieval team.
6. On 27 November 2013 the complainant made the following request through the public authority's *FOI Online Portal* which is dedicated to requests for information under FOIA:

'Requesting information on; [Named Person], D.O.B 3RD February, 1906 @ [Address redacted] Lancaster. Died on 10th December 1953.'
7. The public authority responded on 29 November 2013. It refused to confirm or deny whether it held any information within the scope of the request on the basis of the exemption at section 44(2) FOIA.
8. On 18 December 2013 the complainant requested an internal review of the public authority's decision above. She queried the authority's response in view of her previous exchanges with the Records Retrieval team.¹ She also disagreed that confirming or denying whether the information requested was held by the authority would lead to the identification of [Named Person] because, in her own words; *'...I have prior knowledge of the identity of [Named Person] and in fact identified that individual to HMRC rather than HMRC identifying him to me.'*
9. Following an internal review the public authority wrote to the complainant on 17 April 2014.² It clarified the position in relation to her exchanges with the Records Retrieval team and upheld the original decision in relation to the exemption at section 44(2) FOIA.
10. The Commissioner should mention at this stage that any responses provided by the Records Retrieval Service team to the complainant in connection with the request of 26 September 2013 is outside the remit of his jurisdiction under section 50 FOIA because those responses would not have been issued to the complainant under the terms of FOIA. The Records Retrieval team would have taken the identity of the complainant into account before responding. The FOIA is however applicant blind and

¹ The Commissioner cannot go into details of the exchanges between the complainant and the Records Retrieval team as to do otherwise would defeat the purpose of the exemption at section 44(2).

² The lengthy delay in issuing the internal review was due to the confusion that arose as result of the complainant's correspondence with both the FOI team and the Records Retrieval Service team during the relevant period.

the subsequent responses issued by the public authority to the complainant under FOIA clearly reflect that fact. Therefore, the Commissioner did not take into account any of the responses issued to the complainant by the Records Retrieval Service team during the course of his investigation because they do not constitute FOIA responses. To be clear, the Commissioner has only referred to the request of 26 September 2013 in order to provide some context to the subsequent request of 27 November 2013 and to his findings further below.

Scope of the case

11. The complainant contacted the Commissioner on 7 April 2014³ to complain about the way her request for information had been handled.
12. During the course of the investigation, she informed the Commissioner that she did not request *details of [Named Person]'s employment records from 1943 to 1949*. Rather, she wanted to know where [Named Person] *worked from 1943 to 1949*.
13. The scope of the Commissioner's investigation therefore, was to determine whether the public authority was entitled to rely on section 44(2) to neither confirm nor deny whether it held any information about *where [Named Person] worked from 1943 to 1949*.

Reasons for decision

Section 44(2)(a)

14. Section 1(1) FOIA provides two rights to applicants. They are:
 - a) The right to be informed in writing by the public authority whether or not it holds the information requested by the applicant, and
 - b) If so, the right to have that information communicated.
 15. Both these rights are subject to exemptions in FOIA.
-

³ This was initially to complain about the fact the authority had yet to complete its internal review. After the review had been completed, she asked the Commissioner for a decision on the application of section 44(2) by the authority.

16. The right in section 1(1)(a) is commonly referred to as a public authority's "duty to confirm or deny" whether it holds information.
17. Section 44 of FOIA (prohibitions on disclosure) states:

(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 EU obligation, or*
 - (c) would 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).
18. As can be seen from the above, a public authority is, by virtue of the provisions in section 44(2), excluded from confirming or denying whether it holds information requested by an applicant if to do otherwise (ie to issue a confirmation or denial) is prohibited by or under any enactment, is incompatible with any EU obligation, or would be punishable as a contempt of court.
19. The exemptions at section 44 are absolute. This means that they are not subject to a public interest test. Once it is determined that any of the exemptions is engaged, a public authority is not required to consider whether there is a public interest in confirming or denying whether it holds the information requested or in disclosing the information held (in the case of section 44(1)(a)).
20. The public authority submitted that to confirm or deny whether it holds the information requested by the applicant would itself reveal information considered exempt from disclosure on the basis of section 44(1)(a). It explained that sections 18(1) and 23(1) of the Commissioners for Revenue and Customs Act 2005 (CRCA) prohibit the authority from disclosing any information held in connection with a function of HM Revenue and Customs under FOIA.

Commissioner's findings

21. Section 18(1) CRCA states:

'Revenue and Customs officials may not disclose information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs.'

22. The Commissioner is satisfied that the requested information if held, would be held by the public authority in connection with its functions. The places where [Named Person] was employed from 1943 to 1949 (which would form part of his employment records) if held by the public authority, would be held in connection with its function to assess and collect tax.

23. Although there are exceptions to section 18(1) contained in sections 18(2) and (3) CRCA, section 23 CRCA was amended by section 19(4) of the Borders, Citizenship and Immigration Act 2009 to make clear that sections 18(2) and (3) are to be disregarded when considering disclosure of revenue and customs information relating to a person under FOIA.

24. Notwithstanding the above, section 23(1) CRCA states:

'Revenue and customs information relating to a person, the disclosure of which is prohibited by section 18(1), is exempt information by virtue of section 44(1)(a) of the Freedom of Information Act 2000.....if its disclosure

(a) would specify the identity of the person to whom the information relates, or

(b) would enable the identity of such a person to be deduced.

(2) Except as specified in subsection (1), information the disclosure of which is prohibited by section 18(1) is not exempt information for the purposes of section 44(1)(a) of the Freedom of Information Act 2000.'

25. Therefore, information prohibited from disclosure by virtue of section 18(1) CRCA (in this case, on the basis that if held, it would be held by the authority in connection with its functions) is exempt information by virtue of section 44(1)(a) FOIA only if its disclosure would identify a 'person'.

26. It is clear that confirming or denying whether the information requested by the complainant is held by the public authority would identify [Named Person]. The request clearly mentions [Named Person] and his residential addresses in the relevant period.

27. The Commissioner finds that confirming or denying whether the information requested is held by the public authority would reveal information which if held by the authority, would be held in connection

with its functions to assess and collect tax. He also finds that confirming or denying whether the information requested is held would reveal the identity of [Named Person].

28. In view of the above, the Commissioner finds that the public authority was entitled to rely on section 44(2) FOIA as the basis for neither confirming nor denying whether it held any information within the scope of the request.
29. The Commissioner would like to add for the benefit of the complainant that, generally, exemptions under FOIA apply irrespective of an applicant's reasons for making a request or of any prior knowledge they might have in relation to the subject matter of the request. For example, in this case, it is immaterial that the complainant actually knows the identity of [Named Person]. The public authority has to respond in the same way it would if anyone else had made the request. FOIA is not a private information access regime. It is meant to provide the public access to information (subject to certain exemptions) regardless of who made the request and these disclosures constitute information provided to the 'public domain'. Therefore, the public authority has to provide a response which is not just for the benefit of the applicant, but also for the benefit of the public at large.

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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

Alexander Ganotis
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF