

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 August 2014

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

Decision (including any steps ordered)

1. The complainant has requested information about tax credit overpayments. HM Revenue and Customs (HMRC) refused the request relying on the exemption at section 12 FOIA – the cost of compliance exceeds the appropriate limit.
2. The Commissioner's decision is that HMRC has correctly applied section 12. He does not require HMRC to take any steps.

Request and response

3. On 29 January 2014 the complainant wrote to HMRC and requested information in the following terms:

"Under the FOI Act, I request the following information for the period up to 1 December 2013.

1. *The number of cases where PAYE tax codes have been changed to recover alleged Tax Credit Overpayments.*
2. *The total value of alleged overpaid Tax Credit payments in respect of the above.*
3. *The number of cases where PAYE tax codes have been changed to recover alleged Tax Credit overpayments, which have been referred to the Adjudicator's Office. This comprises ongoing and concluded cases.*
4. *The total value, in respect of 3 above.*

5. *The number of cases where HMRC has had to refund money recovered through PAYE tax code changes, following successful appeals to the Adjudicator's Office.*
 6. *The total value in respect of 5 above."*
4. On 20 February 2014 HMRC responded. It refused to provide the requested information. It cited the following exemption as its basis for doing so: Section 12 – cost of compliance exceeds the appropriate limit. HMRC suggested that the complainant may wish to narrow the scope of his request and stated that it may be able to provide some information that is within the scope of parts (1) and (2) of the request.
5. On 26 February 2014 the complainant submitted a refined request for information of the following description:

"Under the FOI Act, I request the following information for the period up to 31 December 2013.
 1. *The number of case where PAYE tax codes have been changed to recover alleged Tax Credit over payments, which have been referred to the Adjudicator?s Office. This comprises ongoing and concluded cases.*
 2. *The total value, in respect of the above"*.
6. On 12 March 2014 HMRC responded and sought to rely on FOIA section 12 – cost of compliance exceeds the appropriate limit. HMRC also advised that it did not see any scope for further refining the request because identifying which cases had been referred to the Adjudicator's office would mean checking every case where the PAYE code had been changed in order to confirm whether or not it had been referred to the Adjudicator.
7. The complainant requested an internal review on 15 March 2014. HMRC responded on 10 April 2014 and upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 15 April 2014 to complain about the way his request for information had been handled. Specifically he stated that he accepted that his original request might have exceeded the cost limit, but he was not prepared to accept that his refined request exceeded the cost limit. He stated that his refined request, which was in fact questions 3 and 4 of his original request, actually comprised less information than points 1 and 2 of his original request.

9. The Commissioner considers the scope of his investigation is to determine whether HMRC has correctly applied section 12 to the request for information dated 26 February 2014.

Reasons for decision

10. Section 12 of FOIA states:

"(1) 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.

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit."

11. Therefore, section 12 provides an exemption from a public authority's duty to comply with a request for information where the cost of compliance is estimated to exceed the appropriate limit.
12. The limit, which is set in the Freedom of Information and Data Protection (appropriate limit and fees) Regulations 2004, is £600 for central government and £450 for all other public authorities. The fees regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour. As a central government department, HMRC's cost limit is £600 which equates to 24 hours at £25 per hour.
13. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
- determining whether it holds the information;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it and
 - extracting the information from a document containing it.
14. Section 12 explicitly states that public authorities are only required to estimate the cost of compliance with a request, not give a precise calculation. In the Commissioner's view, an estimate for the purposes of

section 12 has to be 'reasonable': he expects it to be sensible, realistic and supported by cogent evidence.

15. HMRC explained to the complainant, in its response dated 12 March 2014, that the appropriate limit of £600, which it said represents 3.5 working days, would be exceeded in complying with the request.
16. In responding to the Commissioner regarding its application of section 12, HMRC has explained that it estimates that there are 733 tax credit cases where PAYE codes had been altered in order to recover overpayments and therefore which could potentially contain the information requested on 26 February 2014. HMRC said it would be required to look at paper files held for each of these cases manually and identify those which had been referred to the adjudicator.
17. A sampling exercise was carried out. In the space of one hour HMRC was able to look at 22 cases; therefore each case took an average of 2.72 minutes to consider. On this basis it estimated that to look at all 733 cases would take 1994 minutes, or 33.23 hours.
18. HMRC also contacted colleagues at the adjudicator's office who advised that the information could not be retrieved from their databases and that they would need to extract the information from paper files.
19. Following his initial request dated 29 January 2014, the complainant was advised by HMRC that he may wish to narrow the scope of his request and that it may be possible to provide some information that falls within the scope of parts (1) and (2) of his original request.
20. The revised request dated 26 February 2014, which is under consideration in this decision notice, covered points (3) and (4) of the original request.
21. HMRC confirmed to the Commissioner that because the complainant's request sought information about cases referred to the adjudicator's office, it was unable to suggest any other way in which the request could be refined further.
22. The Commissioner accepts that in order to retrieve the requested information, HMRC would have to assess the content of 733 cases in order to identify those which had been referred to the adjudicator. He accepts that the sampling exercise has adequately demonstrated that the cost of complying with this request would exceed the limit of £600 or 24 hours.

23. The Commissioner therefore finds that HMRC has correctly applied the exemption at section 12 FOIA.

Other matters

24. In the Commissioner's view HMRC failed, in its response to the complainant, to meet its section 16 duty to provide appropriate advice and assistance about how he may refine his request. This is because it did not provide a detailed estimate of the actual work required in complying with the requests. Although HMRC advised the complainant that it would have to check every case where PAYE tax codes had been changed to identify those cases which had been referred to the adjudicator, it did not give the complainant any indication of the number of cases nor time involved in that exercise. Although such a detailed explanation is not a statutory requirement, it is the Commissioner's position that it is beneficial for a public authority to provide a detailed estimate in order to enable the requestor to assess the reasonableness of the estimate.
25. The Commissioner notes that the response to the request for an internal review provided a more detailed explanation but still did not, in his view, provide sufficient detail to allow the complainant to assess whether the estimate was reasonable. Providing the complainant with an idea of the numbers of cases involved would have been the 'cogent evidence' which may have allowed a greater understanding of the work involved. However, the Commissioner notes that the issuing of this Decision Notice provides the complainant with more detailed information about the work involved in complying with the requests.

Right of appeal

26. 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

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

27. 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.
28. 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