

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 June 2015

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

Decision (including any steps ordered)

1. The complainant has requested information about child tax credit applications for the years 2012-2013 and 2013-2014. HMRC has refused the request citing section 12 of the FOIA – cost of compliance exceeds the appropriate limit. The Commissioner's decision is that HMRC has correctly engaged section 12. However, he notes that HMRC failed to provide a response citing section 12 within the statutory time limit of 20 working days and therefore has breached section 17(5) of the FOIA. The Commissioner does not require HMRC to take any further steps.

Request and response

2. On 30 November 2014, the complainant wrote to HMRC and requested information in the following terms:

"For the Tax Year 2012 – 2013

- a) *The Total number of claims for **Child Tax Credit** (both New and Renewals)*
- b) *The number of amendments to circumstances received (I.E change of employment, change in child care arrangements, etc.).*
- c) *The number of adjustments implemented (as a result of **b**) where the payments increased.*
- d) *The number of adjustments implemented (as a result of **b**) where the payments decreased.*

- e) *The Total number of claimants who received an overpayment in this period.*
- f) *The Total number of claimants who received an underpayment in this period.*
- g) *The TOTAL number of **Child Tax Credit** disputes received in this period.*
- h) *The number of disputes received in this period which **HMRC Tax Credits** attributed to flawed information being provided by the claimant*
- i) *The number of disputes received in this period which **HMRC Tax Credits** acknowledged were due to information being incorrectly handled by **HMRC Tax Credits**.*
- j) *The number of disputes which were rejected, in favour of **HMRC Tax Credits**.*
- k) *The number of disputes that were found to be in favour of the claimant.*
- l) *The number of disputes that **HMRC Tax Credits** are aware of that have been referred to **The Adjudicators Office**.*
- m) *The number of disputes that **HMRC Tax Credits** are aware of that have been referred to **The Parliamentary & Health Ombudsman**.*

For the Tax Year 2013 – 2014

- a) *The Total number of claims for **Child Tax Credit** (both New and Renewals)*
- b) *The number of amendments to circumstances received (I.E change of employment, change in child care arrangements, etc.).*
- c) *The number of adjustments implemented (as a result of **b**) where the payments increased.*
- d) *The number of adjustments implemented (as a result of **b**) where the payments decreased.*
- e) *The Total number of claimants who received an overpayment in this period.*

- f) The Total number of claimants who received an underpayment in this period.*
- g) The TOTAL number of **Child Tax Credit** disputes received in this period.*
- h) The number of disputes received in this period which **HMRC Tax Credits** attributed to flawed information being provided by the claimant.*
- i) The number of disputes received in this period which **HMRC Tax Credits** acknowledged were due to information being incorrectly handled by **HMRC Tax Credits***
- j) The number of disputes which were rejected, in favour of **HMRC Tax Credits**.*
- k) The number of disputes that were found to be in favour of the claimant.*
- l) The number of disputes that **HMRC Tax Credits** are aware of that have been referred to **The Adjudicators Office**.*
- m) The number of disputes that **HMRC Tax Credits** are aware of that have been referred to **The Parliamentary & Health Ombudsman.**"*
3. On 16 January 2015 HMRC responded.
 4. It refused to provide the requested information. It cited the following exemption as its basis for doing so: section 12 – cost of compliance exceeds appropriate limit.
 5. HMRC provided some readily available information outside of the FOIA.
 6. The complainant requested an internal review on 29 January 2015. HMRC sent the outcome of its internal review on 13 February 2015. It upheld its original position and addressed the issue of the delay in responding to the request for information.

Scope of the case

7. The complainant contacted the Commissioner on 19 January 2015 to complain about the way his request for information had been handled.

8. The Commissioner considers the scope of the investigation is to determine whether or not HMRC has correctly engaged section 12 of the FOIA.

Reasons for decision

Section 12 – Cost of compliance exceeds appropriate limit

9. Section 12 (1) of FOIA states that:

“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”.

10. In other words, section 12 of FOIA provides an exemption from a public authority's obligation to comply with a request for information where the cost of compliance is estimated to exceed the appropriate limit.
11. This limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government departments 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, meaning that section 12(1) effectively imposes a time limit of 24 hours in this case.
12. 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.
13. The four activities are sequential, covering the public authority's retrieval process of the information.

Would Compliance exceed the appropriate limit?

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. In its submission to the Commissioner, HMRC explained that in response to the request it had consulted the organisation's statisticians who were able to confirm what data HMRC collated and published and confirmed which parts of that published information would satisfy parts of the request. That information was supplied to the complainant. With regard to the 2013/14 data it was confirmed that no data was yet available for publication. Publication of data for the tax year 2013/14 was scheduled for the end of May 2015.
16. In addition, HMRC sought to establish if the (remaining) specific information could be collated in, or extracted from, management information (MI). The level of detail requested by the complainant meant that information falling within the scope of the request could only be retrieved and extracted by looking at individual claimant records.
17. A sample check then established that a minimum of one minute would be required to examine a single record to determine whether or not it contained relevant information regarding any change of circumstance/dispute. Once it was established that a particular record fell within the scope of the request, further time would be required to interrogate that record in terms of the various parts of the request.
18. HMRC stated in its submission to the Commissioner that this would mean that over four million records would need to be checked solely for the tax year 2012/13. In order to identify relevant records, it would therefore take a minimum of four million minutes or approximately 67,000 hours at £25 per hour which would equate to an approximate cost of £1,675,000; this figure significantly exceeds the appropriate cost limit of £600 or 24 hours.
19. The fact that each of over four million records would need to be checked was set out to the complainant in HMRC's initial response. It also provided the information that it would take one minute to check for each record.
20. HMRC explained to the Commissioner that this estimate was based on the quickest method of gathering the information requested.
21. The Commissioner is satisfied that in the particular circumstances of this case, HMRC was correct to rely on section 12 to refuse the request. Whilst he accepts that some information falling within the scope of the request has been provided by HMRC on a discretionary basis, and that some information was to be published by HMRC in May 2015, he also accepts that section 12 applies to the entire request. This is because all aspects of the request relate to the same overriding subject; therefore section 12 can be applied to the whole scope of the request by virtue of compliance with individual aspects exceeding the appropriate limit.

Section 16 – Duty to provide advice and assistance

22. Section 16 states:

- (1) *“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.*
- (2) *Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.”*

23. It is HMRC’s position that it fulfilled its obligation under section 16 by explaining to the complainant why section 12 was engaged and by providing links, on a discretionary basis, to the published information on its website providing data which would answer questions a, e and f of the request as it relates to the tax year 2012/13. Furthermore, HMRC advised the complainant, from the outset, that given the large amount of records which would need to be checked, it could see no scope for further refining the request.

24. Whilst the Commissioner will often conclude that a public authority should explore with a complainant ways in which a request can be refined, the very specific nature of this request coupled with the level of detail requested, suggest that HMRC was correct in its assessment about refining the request.

25. Therefore the Commissioner is satisfied that HMRC adequately discharged its duties under section 16 in relation to this request.

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 123 4504
Fax: 0870 739 5836
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