

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 September 2015

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

Decision (including any steps ordered)

1. The complainant has requested information from HM Revenue and Customs (HMRC) about its calculation of losses sustained by a partnership. HMRC stated that the information, if held, would be exempt under section 44(1)(a) of the FOIA and explained that the duty to confirm or deny whether the information is held does not arise under section 44(2).
2. The Commissioner's decision is that HMRC was correct to refuse to confirm or deny that it holds the requested information under section 44(2)(a) of the FOIA.

Background

3. The complainant received a tax demand for a specified amount of money from HMRC. The demand stated that the figure was based on an estimate that some of the losses claimed by a partnership were not allowable for the purposes of income tax relief.

Request and response

4. On 4 February 2015, the complainant requested information of the following description:

- "All the facts, assumptions, inferences and calculations from which the figure of 30% referred to in your letter (to me) of 21 January 2015 are derived."
5. HRMC responded on 2 March 2015. It stated that that by virtue of section 44(2) of the FOIA (read together with section 23(1) of the Commissioners for Revenue Customs Act 2005) it could neither confirm nor deny it held the requested information.
 6. Following an internal review HRMC wrote to the complainant on 24 March 2015 and stated that it upheld its original decision.

Scope of the case

7. The complainant contacted the Commissioner on 17 April 2015 to complain about the way his request for information had been handled.

Reasons for decision

8. Section 1(1) of FOIA provides that:
 - Any person making a request for information to a public authority is entitled:
 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request,
 - and
 - (b) if that is the case, to have that information communicated to him.
9. Section 44(1)(a) of the FOIA states that information is exempt from the disclosure if it is prohibited by any enactment. Section 44(2) of the FOIA states that the duty to confirm or deny does not arise if the confirmation or denial is likewise prohibited by any enactment.
10. The enactment in this case is the Commissioners of Revenue and Customs Act 2005 (the CRCA). Section 18(1) of the CRCA states that HMRC officials may not disclose information which is held by HMRC in connection with one of its functions.
11. Section 19 of the CRCA makes it a criminal offence for any member of staff to disclose such information.

12. HMRC has explained that the information, if held, would be held in connection with its function of assessing and collecting tax and/or duty. The Commissioner is satisfied that the information, if held, would be held in connection with a function of HMRC.
13. Section 23 of the CRCA states that information prohibited from disclosure by section 18(1), is exempt by virtue of section 44(1)(a) of the FOIA if its disclosure would specify the identity of the person to whom it relates or would enable the identity of such a person to be deduced.
14. Regarding section 23 of the CRCA the complainant says as follows
 - "Confirmation or denial is not prohibited by section 18(1) or 23 (1) because neither statement would relate to a person nor, still more obviously, would it specify anybody's identity or permit it to be deduced
15. The Commissioner is satisfied that if HMRC holds the requested information, it would be possible to identify the person and entity to whom it relates. The complainant is plainly seeking information about a "legal" person. The Commissioner is therefore satisfied that on the basis of the interaction of section 18(1) and 23 of the CRCA, the requested information, if held, would be exempt by virtue of section 44(1)(a).
16. Confirming or denying that the requested information (about a "person") is held would therefore fall within sections 18(1) and 23 of the CRCA. This is because issuing a confirmation or denial in response to a request relating to a specified *person's* tax affairs would inevitably specify the identity of the person or enable their identity to be deduced by the general public (including the complainant, by virtue of the specific request to which the response would relate). It would therefore also confirm whether HMRC holds information relevant to its functions in relation to that person.
17. Thus, by virtue of section 44(2)(a) of the FOIA, the duty to confirm or deny contained in section 1(1)(a) of the FOIA does not apply.
18. The Commissioner is therefore satisfied that HMRC is correct to refuse to confirm or deny whether it holds the requested information under section 44(2)(a) of the FOIA.

Right of appeal

19. 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

20. 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.
21. 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