

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 January 2016

Public Authority: Her Majesty's Revenue and Customs
Address: 100 Parliament Street
London
SW1A 2BQ

Decision (including any steps ordered)

1. The complainant has requested copies of complaints made against the Adjudicator's Office. The Adjudicator's Office is administratively part of Her Majesty's Revenue and Customs (HMRC). It refused the request for information, relying on FOIA section 44 – prohibitions on disclosure.
2. During the course of the Commissioner's investigation, HMRC disclosed some information falling within the scope of the request. The Commissioner notes however that this information was disclosed outside of the statutory time limit for response and accordingly HMRC has breached section 10 of the FOIA. The Commissioner's decision is that HMRC (and therefore The Adjudicator's Office) was entitled to rely on section 44(1)(a) to refuse to disclose the remainder of the information falling within the scope of this request.
3. No steps are required.

Request and response

4. On 30 April 2015, the complainant wrote to the Adjudicator's Office and requested information in the following terms:

"Please supply me with a copy of the 63 complaints made against the Adjudicator's office. Which are made reference to in the Adjudicator's report for 2014.

I am not interested in personnel details, ie names and addresses. These can be blacked out"

5. The Adjudicator's Office responded on 1 June 2015 and stated that it was administratively part of HMRC. As such, the Adjudicator's Office then set out its reliance on FOIA section 44(1)(a) in order to refuse the request. It further explained that the relevant enactment for doing so was The Commissioners for Revenue and Customs Act 2005 (CRCA).
6. On 13 June 2015, following advice from the Adjudicator's Office, the complainant wrote to HMRC and requested an internal review of the decision reached by the Adjudicator's Office.
7. Following an internal review, the Adjudicator's Office wrote to the complainant on 14 July 2015. It upheld its original position. Outside of the FOIA, the Adjudicator's Office provided information regarding the broader nature and outcome of the complaints. It set out again that it could not provide much detail due to customer confidentiality.

Scope of the case

8. The complainant contacted the Commissioner on 7 August 2015 to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of the case is to determine whether section 44(1)(a) was correctly applied to the request.

Background

10. The complainant has expressed concern that the Adjudicator's Office is described as independent but that it is in fact covered by HMRC.
11. In its initial response to the complainant, the Adjudicator's Office set out that it was administratively part of HMRC. The complainant has questioned its independence.
12. In a scoping letter to the complainant, the Commissioner set out that the Adjudicator's Office is not a public authority in its own right for the purposes of the FOIA and comes under the auspices of HMRC.

13. Prior to the Freedom of Information (Removal of References to Public Authorities) Order 2010¹, the Adjudicator's Office was, for the purposes of the FOIA, a public authority in its own right. Since the introduction of this legislation on 1 October 2010, the Adjudicator's Office has come under the ambit of HMRC for FOIA purposes.
14. The Commissioner notes the complainant's assertion that either the Adjudicator's Office is independent or it is not. However, the Commissioner accepts that the position regarding its administrative functions was set out adequately in its initial response. In its internal review response, the Adjudicator's Office further set out, outside of the FOIA, that the Adjudicator herself is an arm's length complaints handler who is not employed by any of the departments she adjudicates for; nor is she part of the management structure of any of those departments. The Adjudicator's Office is however a unit of HMRC and the officials there are HMRC employees.

Reasons for decision

15. 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 obligation, 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 paragraphs (a) to (c) of subsection (1)."

16. 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".

17. Section 18(2)(a)(i) CRCA states:

"But subsection (1) does not apply to a disclosure which is made for the purposes of a function of the Revenue and Customs...."

¹ <http://www.legislation.gov.uk/ukxi/2010/939/schedule/made>

18. Section 23 CRCA states amongst other things:

"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(10(a) of the Freedom of Information Act 2000."

19. The complainant has requested copies of complaints made against the Adjudicator's Office which are referred to in its own report. HMRC has provided the Commissioner with a sample of the 63 complaints for his consideration in the context of the complaint. It has also provided detail of the nature of all 63 complaints.

20. Of the 63 complaints, 21 relate to the Adjudicator's Office's handling of complaints about complainants' dealings with HMRC in respect of their tax credit claims; 39 were about the Adjudicator's Office's handling of complaints relating to complainants dealings with HMRC in respect of their business or personal tax affairs; 2 complaints were about the complainants' dealings with HMRC in respect of its Valuation Office functions and the remaining complaint did not arise out of dealings with HMRC and was a general query rather than a complaint but was recorded as one of the 63 complaints. This one complaint was disclosed to the requester during the course of this investigation.

21. In considering the sample provided, the Commissioner took into account that the request highlighted that names and addresses could be redacted. The Commissioner has therefore considered whether the content of the requested information would specify the identity of any 'person' or would enable the identity of any 'person' to be deduced. The complaints relate to the personal and business affairs of those making the complaints and, in some cases, include attachments and enclosures. Given the nature of these complaints, it is the Commissioner's position that disclosure without names and addresses would still either specify the identity of a 'person' or would enable the identity of persons involved to be deduced.

22. HMRC has asserted in its submission to the Commissioner that as part of its general management function, it has set up complaints processes in order to provide robust governance and assurance to customers; the independent adjudication service is the third tier of HMRC's complaint process.
23. The Adjudicator's Office set out in its initial response to the complainant that even if names and addresses were redacted from the complaints, their nature is such that the complaints would still include details of every complainant's dealings with HMRC and therefore disclosure would breach its duty of confidentiality under section 18(1) of the CRCA.
24. In his correspondence with HMRC and the Adjudicator's Office, the complainant referred to section 18(2) CRCA and suggested that the provisions of section 18(2) CRCA would either enable or require the disclosure of the complaints letters to him under the FOIA.
25. HMRC refutes this assertion. It has stated that whilst its customer information is excluded from the FOIA regime, HMRC may disclose information, outside of that regime, if one of the conditions set out in section 18(2) or 18(3) of the CRCA applies. HMRC has further set out that its statutory duty of confidentiality (at section 18(1) CRCA) actually removes the possibility of any disclosure of the requested information on a discretionary basis.
26. The Commissioner accepts that the withheld information comprises complaints made to the Adjudicator's Office which have been made by individuals in respect of their own personal dealings with HMRC. Accordingly, the Commissioner accepts that the correspondence requested by the complainant is held by HMRC in connection with its functions. From the sample viewed by the Commissioner it is evident that the content relates to personal dealings with HMRC.
27. The Commissioner accepts that disclosure of information under the FOIA is not a function of HMRC as set out in section 5 CRCA. It is therefore not a function envisaged by section 18(2)(a)(i). The Commissioner further accepts that the exceptions at sections 18(2) and (3) should be disregarded (for the purposes of responding to a request under the FOIA) in any event by virtue of the amendment contained in section 19(4) of the Borders Citizenship and Immigration Act 2009. What this therefore means is that access to customer specific information is excluded from the FOIA. In this case the customers concerned are those detailed in the complaints submitted to the Adjudicator's Office and the information is customer specific.

28. Based on all of the evidence before him, the Commissioner's position is that HMRC was entitled to rely on the exemption at section 44(1)(a) FOIA to refuse the complainant's request for information.

Right of appeal

29. 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

30. 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.
31. 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
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