

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 August 2022

Public Authority: Her Majesty's Revenue & Customs

Address: 100 Parliament Street

London

SW1A 2BQ

Decision (including any steps ordered)

1. The complainant has requested information from HM Revenue & Customs ("HMRC") in relation to their previous requests for information regarding the Pharmacy Early Payment Scheme. HMRC refused to disclose the requested information, citing section 44(1) of FOIA as a basis for non-disclosure.
2. The Commissioner's decision is that HMRC has correctly applied section 44(1)(a) of FOIA to the requested information.
3. The Commissioner therefore requires no steps to be taken.

Request and response

4. On 24 April 2021, the complainant wrote to HMRC and requested information in the following terms:

"Please provide all internal correspondence relating to my requests for information about the Pharmacy Early Payment Scheme." The complainant clarified that this referred to media enquiries.

5. On 18 May 2021 HMRC responded. It relied on the exemption as set out at section 44 (2) of FOIA to refuse to confirm or deny whether it held the information requested by the complainant.
6. The complainant requested an internal review, a response to which was provided by HMRC on 24 June 2021. Upon internal review, HMRC had changed its stance on 'neither confirm nor deny' (NCND) as the reviewer confirmed that information was held by HMRC within the scope of the complainant's request, however it could not be disclosed under section 44(1)(a) of FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 12 July 2021 to complain about the way their request for information had been handled.
8. The Commissioner has considered HMRC's handling of the complainant's request, in particular its application of the exemption as set out at section 44(1)(a) of FOIA.

Reasons for decision

Section 44 – Prohibitions on disclosure

9. Section 44 is an absolute exemption. This means that if information is covered by any of the subsections of section 44 it is exempt from disclosure. It is not subject to a public interest test.
10. 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

Commissioners for Revenue and Customs Act (CRCA)

11. 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.'

12. Section 23 of the above Act provides:

Freedom of information:

- (1) 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 (prohibitions on disclosure) 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.
- (1A) Subsections (2) and (3) of section 18 are to be disregarded in determining for the purposes of subsection (1) of this section whether the disclosure of revenue and customs information relating to a person is prohibited by subsection (1) of that section.
- (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.
- (3) In subsection (1) 'revenue and customs information relating to a person' has the same meaning as in section 19.

Section 19 - Wrongful disclosure

13. 19 (1)- A person commits an offence if he contravenes section 18(1) or (2A) or 20(9) by disclosing revenue and customs information relating to a person whose identity—
 - (a) is specified in the disclosure, or
 - (b) can be deduced from it.
- (2) In subsection (1) 'revenue and customs information relating to a person' means information about, acquired as a result of, or held in connection with the exercise of a function of the Revenue and Customs (within the meaning given by section 18(4)(c)) in respect of the person; but it does not include information about internal administrative arrangements of Her Majesty's Revenue and Customs (whether relating to Commissioners, officers or others).

14. CRCA sets out a number of functions of the Commissioners and officers of Her Majesty's Revenue and Customs. Section 5(1)(a) will suffice as an example. This provides that 'The Commissioners shall be responsible ... for the collection and management of revenue.'
15. Section 9(1) CRCA provides: Ancillary powers: (1) The Commissioners may do anything which they think- (a) necessary or expedient in connection with the exercise of their functions, or (b) incidental or conducive to the exercise of their functions.
16. The word 'function' is defined in section 51(2)(a):

(2) In this Act- (a) 'function' means any power or duty (including a power or duty that is ancillary to another power or duty), and (b) a reference to the functions of the Commissioners or of officers of Revenue and Customs is a reference to the functions conferred- (i) by or by virtue of this Act, or (ii) by or by virtue of any enactment passed or made after the commencement of this Act.
17. In other words, when CRCA refers to functions, that includes powers relevant to those functions.
18. The complainant's request sought copies of correspondence relating to a media enquiry made by a person whose identity would be specified in any disclosure due to the wording of the complainant's request. As disclosure of that information would identify the person to which the information relates, and HMRC considers that the information is held in connection with a function of the Revenue and Customs, HMRC considers that the requirements of section 23 CRCA are met and the exemption at section 44(1)(a) is engaged.

The complainant's view

19. The complainant considers that discussion of a response to a media enquiry is part of the internal administrative arrangements of HMRC as set out in section 19(2) CRCA and as such is not a statutory function of HMRC under the CRCA.

HMRC's view

20. HMRC considers all information held by it on this matter to be held in connection with an exercise of its functions as set out at section 5 of the CRCA in respect of the complainant and to therefore fall within the definition of '*revenue and customs information relating to a person*'.
21. HMRC also considers that disclosure of the requested information would specify the identity of a person or persons.

The Commissioner's analysis

22. 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.'
23. According to section 19(2) above, information about the internal administrative arrangements of HMRC is not included in the definition of 'revenue and customs information relating to a person.'
24. The Commissioner has considered the definition of 'internal administrative arrangements' and has concluded that, in general, the phrase refers to the internal organisation of HMRC and its officers. It may include administrative processes, however it would, in the Commissioner's opinion, not include decisions made by HMRC in connection with revenue and customs information.
25. The Commissioner considers that responding to a media enquiry in general, i.e. writing out to the enquirer, time limits for response, getting the response signed off etc may constitute part of such internal administrative arrangements, as there will likely be a set internal administrative process which presumably is followed each time there is a press enquiry.
26. However, the discussion involving exactly how to respond to such an enquiry, in the Commissioner's view does not count as information about internal administrative arrangements, as this involves a decision made by HMRC in connection with information it holds, i.e. what to disclose in response to the press enquiry. The information contained in the internal correspondence discussing what should and should not be disclosed, and how to respond to the enquiry in general, would therefore be information held by HMRC in connection with its functions. Specifically, the Commissioner considers that information discussed in response to a media enquiry regarding the Pharmacy Early Payment Scheme is held in connection with a function of HMRC as the scheme enables pharmacy contractors to receive in advance their monthly payment for dispensing prescriptions. This would relate to HMRC's function as set out in section 5 CRCA – the collection and management of revenue.
27. Therefore the information falls under section 18(1) CRCA and is prohibited from disclosure.
28. The next matter to consider is whether section 23(1) CRCA is also relevant. Section 23(1) specifically designates as exempt from disclosure under section 44(1)(a) FOIA, if its disclosure would identify the person to whom it relates or would enable the identity of such a person to be deduced. The term "person" includes both natural and legal persons.

29. Section 23 CRCA is expressed in such a way as to be certain that under FOIA, no-one is entitled to information HMRC holds relating to a person. This may on occasion have the effect of catching information that is in the public domain, but that is a proportionate incident to the certainty of taxpayer protection under FOIA that the prohibition seeks to achieve.
30. In the words used in section 19(2) CRCA, it is held in connection with the exercise of a function of the public authority and from that, the persons to whom the information relates are identifiable. The test, it should be noted, is not whether the information sought is taxpayer confidential. It is whether the information would specify the identity of a person to whom it relates or would enable their identity to be deduced.
31. HMRC stated that disclosure of the information would specify the identity of a person, i.e. the complainant. It is of relevance that the usage of 'person' is much wider in scope in the CRCA and should be noted that the Commissioner has previously agreed with HMRC that a 'scheme' itself constitutes a legal person.
32. In the Upper Tribunal case of *Gordon v Information Commissioner and Her Majesty's Revenue and Customs*¹ it is concluded that the wording 'in respect of the person' in section 19(2) CRCA applies to the exercise of the functions rather than the information. As the requested information in this case is held by HMRC in connection with its functions in respect of both the complainant i.e. responding to a media enquiry, which the Commissioner considers would be an ancillary power relevant to a function of HMRC and also its functions as set out in paragraph 26 above in respect of the scheme which is the subject of the request, the Commissioner considers that it falls under section 19(2) CRCA.
33. Therefore the Commissioner finds that HMRC was entitled to withhold the requested information on the basis of section 44(1)(a) FOIA.

¹ GIA/1668/2019

Right of appeal

34. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

35. 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.
36. 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

Deirdre Collins

Senior Case Officer

Information Commissioner's Office

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