

## **Freedom of Information Act 2000 (FOIA)**

### **Decision Notice**

**Date:** 22 July 2022

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

#### **Decision (including any steps ordered)**

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1. The complainant requested information relating to a three year pay deal for employees of HM Revenue and Customs (HMRC). HMRC stated that it did not hold any recorded information meeting the description set out in the request.
2. The Commissioner's decision is that HMRC does not hold the requested information. No steps are required.

#### **Request and response**

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3. The complainant submitted the following request to HMRC on 17 March 2021:

"HMRC has recently agreed to a 13.56% pay increase over the 3 years ended 31 May 2023, which corrects significant injustices in the salaries of many of its staff, unfairnesses which arose as a direct result of progression pay being frozen in 2013.

What I wish to understand is why HMRC did not take action to address these injustices earlier and chose instead to defer these pay reforms until a time when the economy was in the grips of the worst recession since 1709.

My FOIA request is therefore:

- (a) does HMRC hold any information that would shed any light on these questions? and,
  - (b) if so, would it please share this with me in the form of a single OCR pdf."
4. On 21 April 2021 the complainant contacted the Commissioner to complain that HMRC had failed to respond to his request.
5. Following the Commissioner's intervention HMRC responded to the complainant on 20 May 2021. HMRC explained that it had not received the complainant's correspondence of 17 March 2021.
6. HMRC confirmed that it had now considered the request, and explained that discussions on reforming pay and working arrangements had started in 2018. A business case had been submitted to the Cabinet Office and HM Treasury in 2019, and permission to enter negotiations with trades unions had been granted in July 2020. Therefore HMRC stated that it did not hold any information that fell within the scope of the request.
7. The complainant requested an internal review on 21 May 2021. He argued that HMRC's response suggested that it had not given any thought to pay inequalities until 2018, which he considered to be false. The complainant referred to legal challenges brought in 2014 and 2016 in support of his position:

"... I would point out that in April 2014 HMRC had to defend an Equality Act challenge about its progression pay arrangements in *Mort & Ors v HMRC* (ET 2410596-99/13). A further EA challenge was launched in 2016 in *McNeil & Ors v Commissioners for HMRC* [2019] EWCA Civ 1112. Is HMRC seriously contending that it holds no papers relating to the unfairness of the progression pay arrangements, despite having spent most of the 5 years in question defending itself against legal actions on these issues?"
8. HMRC contacted the complainant on 27 May 2021. It advised that the request had been interpreted as asking why pay reform had been deferred until the Covid-19 pandemic had begun. HMRC explained that the timing of the reform had coincided with the pandemic and was not deliberately delayed until this time, which was why no information was held in respect of "choosing to defer" the reforms as indicated in the response. HMRC offered the complainant the opportunity to clarify his request at this stage.

9. The complainant responded on the same day, confirming that he did not consider his request to be ambiguous. The complainant stated that he held correspondence between HMRC and HM Treasury which indicated that pay inequalities were a live issue at the time specified in his request. The complainant did not accept that the Covid-19 pandemic explained what he maintained was a delay in rectifying pay inequalities that he believed could have been addressed in 2018 or 2019.
10. HMRC provided the complainant with the outcome of its internal review on 1 July 2021. HMRC clarified that it had interpreted the request as "questioning the causality of the fact" that the reforms predated, in the complainant's words, "the worst recession since 1790". HMRC further clarified that it assumed the complainant's reference to the recession to be linked to the Covid-19 pandemic.
11. HMRC further reiterated its position that the timing of the pay offer had not been linked to the economic position of the UK as affected by the Covid-19 pandemic since it had begun before the onset of the pandemic.
12. HMRC also addressed the complainant's interpretation of its response as suggesting that HMRC had not given any thought to pay inequalities until 2018. HMRC argued that this was a different question from that set out in the request, which had asked why no action had been taken on pay injustices. HMRC referred to its original response (see paragraph 6 above), which had provided explanatory information about Government pay rules. HMRC also referred the complainant to its Equal Pay Audit, along with monitoring and consideration of the pay position. HMRC suggested that this might answer the complainant's question, whilst maintaining that it did not fall within the scope of the request.

## **Scope of the case**

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13. On 1 July 2021 the complainant contacted the Commissioner to complain about HMRC's response to his request. The complainant did not accept that HMRC did not hold any relevant information and asked the Commissioner to investigate.
14. The Commissioner considers that there are two key issues to be considered. The Commissioner will first examine whether the complainant's request was properly interpreted. He will then go on to consider whether HMRC holds any recorded information relevant to the properly interpreted request.

## Reasons for decision

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### Interpretation of the request and information not held

15. In the Commissioner's opinion a plain reading of the complainant's request can be seen as asking why HMRC took a decision to defer action, or not to take action, with regard to pay injustices.
16. HMRC maintained to the Commissioner that it had not taken any decision to defer action, nor had it decided not to take action. HMRC explained that it did not have the authority to pay higher valued base pay awards outside of the remit of the civil service pay guidance, unless associated with transformational savings and with the relevant approvals from the Cabinet Office and HM Treasury. HMRC's position was that it would not have been able to take action prior to the pay offer. Therefore HMRC did not hold information which would explain why it had decided to defer action, or not to take action. Accordingly HMRC maintained that it did not hold information falling within the scope of the plain interpretation of the request as set out at paragraph 15 above.
17. The Commissioner accepts HMRC's position that it did not choose to defer pay reforms. It follows that HMRC would not therefore hold information which would be expected to explain a decision to defer such reforms. The Commissioner is unable to identify any further action it could require HMRC to take in order to comply with the plain interpretation of the request.
18. Accordingly the Commissioner finds that HMRC's interpretation of the request was reasonable and no information is held which falls within the scope of the request.
19. In considering this matter the Commissioner has had regard to his published guidance<sup>1</sup> on interpreting requests. This guidance emphasises that public authorities are required to interpret requests objectively, and should clarify unclear or ambiguous requests with the requester.

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<sup>1</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/interpreting-and-clarifying-requests/>

20. The complainant says his request was not at all ambiguous, and the Commissioner is minded to agree. The Commissioner is of the opinion that the wording of the complainant's request reflects the complainant's interpretation of the situation, hence the Commissioner's findings as set out above.
21. However the complainant has also stated that he wishes to understand why HMRC did not take action sooner to address what he considers to be significant injustices and pay inequalities. In the Commissioner's opinion this additional clarification goes beyond the plain interpretation of the request set out at paragraph 15 above.
22. Notwithstanding the Commissioner's findings above, in the interests of completeness the Commissioner referred HMRC to the arguments put forward by the complainant in his request for internal review, as set out at paragraph 7 above and HMRC's response at paragraph 12. The Commissioner suggested that this may offer an alternative interpretation of the request, namely whether HMRC held any information relating to consideration of the impact (perceived or otherwise) of the freeze on pay progression between 2013 and the pay offer.
23. HMRC considered this alternative interpretation and advised that it did hold information that was likely to contain references to the impact of the pay freeze. However, HMRC argued that compliance with this broader interpretation of the complainant's request would exceed the cost limit at section 12 of FOIA. HMRC explained that it would require an extensive search which would be likely to take longer than the 24 hours allowed for under section 12.
24. HMRC also pointed out to the Commissioner that it had previously responded to similar requests from the complainant and had relied on section 12 of FOIA. HMRC therefore maintained that the complainant had been informed as to the time and resource required to conduct searches for similar information. Given that HMRC was satisfied that its interpretation of the request was correct, it did not consider it of practical value to the complainant to issue a further refusal notice citing section 12.
25. HMRC explained that it would in this situation advise the complainant to consider requesting "relevant content from the 2013 Equal Pay Audit and from internal proposal papers for the executive committee as well as the business cases submitted to HM Treasury". HMRC also said that it had reviewed each proposal paper and business case and had prepared an annexe of relevant information which it would be able to share with the complainant on a discretionary basis.

26. The Commissioner put HMRC's advice and proposal to the complainant, who did not accept its position regarding section 12. The complainant advised the Commissioner that he had received some relevant information from HM Treasury, therefore HMRC should be able to deal with his request by conducting a search using the term "progression pay" for the relevant time period. The complainant argued that if HMRC was unable to do this then it must be failing to comply with records management principles.
27. The Commissioner does not consider that the complainant's suggested search would enable HMRC to comply with his request. In the Commissioner's opinion using such broad search terms would be likely to lead to a large volume of information being caught within the results of the search, but would not guarantee that all relevant information would be caught. HMRC would then be required to go through the information in order to identify and extract relevant information.
28. For the reasons set out above the Commissioner does not require HMRC to take any further action in respect of the plain interpretation, or any other interpretation of the request. The Commissioner is satisfied that HMRC does not hold any further information relevant to the plain interpretation, and compliance with a broader interpretation of the request would exceed the cost limit at section 12 of FOIA.

## **Other Matters**

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29. It is of course open to the complainant to make further requests for information. The Commissioner would respectfully recommend that the complainant carefully consider the wording of any such request in order to ensure that it focuses on recorded information that is likely to be held. Public authorities are required to consider whether they hold recorded information that falls within the scope of a particular request. They are not required to address assumptions or interpretations of events. The Commissioner has published guidance on how to request information, including how to word requests to get the best result.<sup>2</sup>

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<sup>2</sup> <https://ico.org.uk/your-data-matters/official-information/>

## **Right of appeal**

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30. 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](mailto:grc@justice.gov.uk)  
Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

31. 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.
32. 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 .....**

**Sarah O’Cathain  
Senior Case Officer  
Information Commissioner’s Office  
Wycliffe House  
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