

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

### **Decision notice**

**Date:** 10 March 2023

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

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

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1. The complainant requested information relating to pay awards. HM Revenue & Customs (HMRC) suggested that, based on one interpretation of the request, the information would be subject to the exemption for prejudice to the effective conduct of public affairs (section 36. HMRC also confirmed that clarification should have been sought from the complainant but did not explicitly ask the complainant to provide this clarification.
2. The Commissioner's decision is that HMRC has breached section 16(1) of the FOIA as the request did not have a single objective reading, but that HMRC did not seek clarification of the request under section 1(3) of the FOIA.
3. The Commissioner requires HMRC to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with advice and assistance by requesting clarification of the request.
4. HMRC must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 12 August 2022, the complainant made the following request for information to HM Revenue & Customs (HMRC):

"The applicant understands that HMRC did not have the authority to agree pay awards outside of the remit of the civil service pay guidance, unless they were associated with transformational savings and had the approval of the Cabinet Office and HM Treasury. In 2018, HMRC started discussions on reforming pay and working arrangements, which resulted in pay increases of 13.56% in February 2021.

The applicant seeks information regarding the changes that occurred before the discussions in 2018, which enabled this pay offer to be made. If nothing did change in or prior to 2018 that enabled HMRC to make this offer, the applicant wishes to understand why the pay discussions that HMRC started in 2018 did not take place sooner.

In relation to the issues above, the applicant requests a copy of all relevant documents in the format of a single searchable pdf in OCR format."

6. HMRC responded on 9 September 2022 and disclosed some information. On 9 September 2022 the complainant asked HMRC to carry out an internal review of its handling of the request.
7. On 17 January 2023 HMRC issued its internal review response. This explained that, having considered the complainant's original request and their request for internal review, it was apparent that there was a divergence between the complainant's and HMRC's understanding of the relevant facts and that clarification should have been sought.
8. HMRC's final position is that it considers there are more than one objective readings of the request and that the complainant needs to provide clarification as to precisely what information is being sought.

## Reasons for decision

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### Section 16 of the FOIA – Advice and Assistance

#### Interpreting and Clarifying requests

9. Section 1(3) of the FOIA states:

“Where a public authority-

(a) Reasonably requires further information in order to identify and locate the information requested, and

(b) Has informed the applicant of that requirement, the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

10. Section 16(1) of the FOIA states:

“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”.

11. Therefore, where an authority considers that a request is unclear or ambiguous, the authority’s section 16 duty to provide advice and assistance is triggered and it should revert to the complainant to ask for clarification as per section 1(3) of the FOIA

12. As covered in the Commissioner’s guidance on interpreting and clarifying requests<sup>1</sup>, where a request does not have a single objective reading a public authority is obliged to seek clarification from the requester. It should not proceed with responding to the request until that clarification has been received.

13. In this case the complainant has argued that their request is clear and unambiguous. The Commissioner acknowledges why this might appear to be the case, however, HMRC has explained that the complainant’s representation of the facts associated with pay awards in

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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/>

their request correspondence does not align with its own position. The Commissioner accepts that an outcome of contested interpretations of the relevant facts, which provides the premise for a request, might be that a request is misinterpreted.

14. HMRC has additionally confirmed that it has previously encountered issues relating to the interpretation of requests with the complainant so it does not presume to know what precise information was required. HMRC has accepted that its review response was not explicit that the complainant should submit a new, clarified request; this was only implied this by stating how, based on one reading of the request, a request for certain information would, hypothetically, be refused under section 36 of the FOIA.
15. Whilst HMRC has acknowledged that it should have approached the complainant for clarification it failed to explicitly take this step. the Commissioner finds that it has, therefore, breached section 16(1) of the FOIA
16. The Commissioner therefore requires HMRC to seek clarification of the request from the complainant.

## Right of appeal

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18. 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: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

19. 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.
20. 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 .....**

**Christopher Williams**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**