

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 November 2023

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) regarding the names of registered childcare providers and payments made in relation to each, over three financial years.
2. The Commissioner's decision is that HMRC was entitled to rely on section 44(1)(a) of FOIA (the prohibitions on disclosure exemption) to refuse to disclose the requested information.
3. The Commissioner does not require HMRC to take any further steps.

Request and response

4. On 18 June 2023, the complainant wrote to HMRC and requested information in the following terms:

"I am writing to make a formal request for information under the provisions of [FOIA] regarding the breakdown of childcare payments made to Tax Credit claimants. Specifically, I am seeking a spreadsheet that lists the total value of childcare payments made to claimants for the last three financial years, sorted according to the name and address of each Ofsted registered childcare provider.

Since you require the name of the registered childcare provider for each childcare reimbursement claim, I believe you would have the necessary data to know how much each childcare provider ought to have received. This information is vital so that there can be

transparency if the publicly available financial accounts of providers are more or less than the income received from UC [the Commissioner's understanding is that this is a reference to Universal Credit] claimants. The publication of this data will help drive out fraud.

To assist in compiling the requested information, I kindly request you provide a spreadsheet or table that includes the following details:

- Childcare Provider Name: [Name of the registered childcare provider]
 - Total Value of Childcare Payments: [The total amount of childcare payments made to claimants for each registered childcare provider, within each financial year]".
5. HMRC responded on 20 June 2023. It stated that it held the requested information, but it was exempt from disclosure under section 44(1)(a).
 6. In their internal review request, the complainant further explained why they seek the requested information. They said "the information I am seeking serves to validate the legitimacy of childcare claims by confirming their association with registered childcare providers".
 7. As discussed further in the analysis below, the complainant also suggested that as a compromise HMRC could redact the names of the childcare providers, and disclose only partial postcodes with payments made.
 8. The complainant's comments about the reason for the request indicate the type of information they want – information that can, ultimately, be linked to the childcare providers.
 9. Following an internal review, HMRC wrote to the complainant on 28 July 2023, upholding its original decision.

Background

10. Official information online about Tax-Free Childcare¹ explains that subject to eligibility provisions, people can get a certain sum of money from government every three months, for each of their children, to help with the costs of childcare.

¹ <https://www.gov.uk/tax-free-childcare>

11. This involves setting up an online childcare account. Government pays money into this account, to be used to pay the provider.
12. Tax-Free Childcare can be used to pay for 'approved childcare'. Childcare providers must be signed up to the scheme, before people can pay them and benefit from Tax-Free Childcare. The childcare is 'approved childcare' if provided by registered childminders, agencies and schools.
13. In England, it is possible to check approved childcare providers through Ofsted or the list of registered childminder agencies².
14. To sign up, childcare providers give their bank account details to HMRC and get a childcare provider account, allowing them to receive payments from parents who use Tax-Free Childcare³.

Scope of the case

15. The complainant contacted the Commissioner on 30 July 2023 to complain about the way their request for information had been handled.
16. They disagree with HMRC's refusal, and asked the Commissioner to scrutinise HMRC's position. They made some specific points to challenge HMRC's position, which the Commissioner notes in the analysis below.
17. The Commissioner considers that the scope of this case is to determine whether HMRC was entitled to rely on section 44(1)(a) of FOIA to refuse disclosure.

Reasons for decision

Section 44(1)(a) – prohibitions on disclosure

18. Section 44(1)(a) of FOIA provides that information is exempt from disclosure if its disclosure otherwise than under FOIA is prohibited by or under any enactment.
19. It is an absolute exemption, so is not subject to a public interest test.

² <https://www.gov.uk/help-with-childcare-costs>

³ <https://www.gov.uk/guidance/sign-up-to-tax-free-childcare-if-youre-a-childcare-provider>

20. HMRC has cited the Commissioners for Revenue and Customs Act 2005 (CRCA). This prohibits the disclosure of information held by HMRC in connection with one of its functions (section 18(1) of CRCA), and provides that where information relates to a person (whether a natural person or legal person) it will be exempt from disclosure under FOIA if disclosure would specify that person's identity or enable their identity to be deduced (sections 19(2) and 23(1) of CRCA).

Complainant's position

21. The complainant, in their internal review request, disputed that the information is held by HMRC in connection with HMRC's functions.
22. The complainant suggested to HMRC that if it refuses to disclose the requested information in full, instead HMRC could redact the names of the childcare providers and provide only the first halves of the postcodes, along with the amounts of childcare payments made.
23. The complainant has said to the Commissioner that around December 2020, HMRC disclosed information about companies that claimed furlough under the Coronavirus Job Retention Scheme (CJRS). They therefore consider that HMRC's approach to disclosure is inconsistent.

HMRC's position

24. On whether the information is held by HMRC in connection with its functions, HMRC clarified at internal review stage that the requested information relates first to the administration of Tax-Free Childcare, one of HMRC's functions.
25. HMRC explained that disclosure of the requested information would identify the registered childcare providers. Part of the request of 18 June 2023 asks for their names.
26. HMRC explained to the Commissioner that even if it redacts the name and second half of a childcare provider's postcode (as suggested by the complainant at internal review), this could still result in the identification of persons.
27. To explain, HMRC noted that in the request itself, the complainant had expressed an intent to compare the requested information with the publicly-available financial accounts of childcare providers. HMRC said that whilst redacting the childcare provider names and second halves of postcodes means that childcare providers would not be directly identified, the redacted details suggested by the complainant, if compared with the Ofsted register of childcare providers and publicly-available financial accounts, could enable the identity of providers to be deduced.

28. Furthermore, HMRC has argued that “childcare providers would be able to identify **themselves** from a disclosure providing the exact amount of funding they received from a particular source broken down by postcode area” (emphasis added).
29. It argued that CRCA does not define who must be able to identify the person(s) the information relates to. HMRC cited a recent decision notice⁴, regarding a case where HMRC made the same argument (see paragraph 15 of that decision notice). In that case, HMRC argued the prohibition in CRCA (and by extension section 44(1)(a) of FOIA) is engaged where a person (in that instance, an account-holder) would be able to identify themselves from a disclosure.
30. The Commissioner upheld the application of section 44(1)(a) of FOIA in the above case.
31. Regarding the complainant’s point about HMRC’s disclosure of information about furlough, HMRC told the Commissioner “The referenced publication was mandated by a Treasury Direction under the Coronavirus Act 2020” so is not a relevant point.
32. HMRC directed the Commissioner to some relevant further information about this. A copy of the direction HMRC has referenced is available online⁵. The Commissioner notes that paragraphs 34.1-34.8 deal with ‘publication of CJRS claimant details’. According to the direction (paragraph 34.1), “HMRC must publish information ... about an employer who has received a payment pursuant to a CJRS claim”, for certain claim periods. The employer information that must be published is (paragraph 34.2):
 - “(a) the name of the employer or the qualifying PAYE scheme
 - (b) if the employer has a company reference number, that number, and
 - (c) the amount of the CJRS claim made by that employer”.
33. It continues that the information must be published by a notice on www.gov.uk or by such other means as HMRC considers appropriate.

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4024706/ic-208169-p5h2.pdf>

⁵ <https://www.gov.uk/government/publications/treasury-direction-made-under-sections-71-and-76-of-the-coronavirus-act-2020/cjrs-direction>

Commissioner's position

34. The Commissioner is satisfied that the requested information is clearly held by HMRC in connection with its functions, in particular the administration of Tax-Free Childcare, as HMRC has told the complainant.
35. Whilst he has not seen the withheld information, he is also satisfied that disclosure would identify persons to whom the information relates, namely the childcare providers, or enable their identities to be deduced.
36. On 18 June 2023 the complainant specifically asked for the names of the childcare providers. Clearly, disclosing such information would directly identify them. Regarding the redacted disclosure subsequently suggested by the complainant, the Commissioner accepts the arguments HMRC has made (see paragraphs 26-29).
37. He also emphasises that based on the complainant's own comments (see paragraphs 4, 6 and 8 above), it is clear the complainant wants information they could match with other information about the childcare providers. Their goal involves identifying the childcare providers.
38. He considers that HMRC, in its submissions, has addressed the complainant's comments about CJRS and explained the basis for the disclosures the complainant argued were inconsistent with the refusal in this case (see paragraphs 31-33).
39. The Commissioner is therefore satisfied that in this case, disclosure of the requested information would be contrary to the prohibition in CRCA and that HMRC was entitled to rely on the exemption at section 44(1)(a) of FOIA.

Right of appeal

40. 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

41. 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.
42. 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

Daniel Kennedy
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