

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

### **Decision notice**

**Date:** 18 December 2023

**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 has requested information from HM Revenue and Customs ("HMRC") in relation to the National Heritage Assets tax relief scheme. HMRC refused to provide the information, citing section 12(1) of FOIA – cost of compliance exceeds the appropriate limit.
2. The Commissioner's decision is that HMRC was entitled to rely on section 12(1) of FOIA to refuse to provide the withheld information.
3. The Commissioner does not require further steps as a result of this decision notice.

#### **Request and response**

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4. On 22 June 2023, the complainant wrote to HMRC and requested information in the following terms:

"I would like to request a list of all assets that have been withdrawn from the National Heritage Assets tax relief scheme. Please include (1) the date the asset was included on the scheme, (2) the publicly listed details for the asset eg name, description, contact details for viewing and the general location,

(3) the date that the asset was withdrawn from the scheme, (4) the reason for withdrawal, (5) the amount of tax that became payable on withdrawal and (6) the amount of this tax that has been recouped on the asset by the treasury to date. If the actual figure of tax liability on the asset cannot be released then please include the percentage of the payable tax that has been recouped by the treasury to date instead. I would also like to request a list of reports/enquiries relating to the inaccessibility of National Heritage Assets including (1) the date received, (2) the nature of the concern (eg nonresponsive contact or viewing refused etc) and (3) the public listing details of the asset that it related to. If the above is too large for one request I am happy to separate as necessary.”

5. HMRC responded on 21 July 2023. It refused to provide the requested information, citing section 12(1) of FOIA.
6. Following an internal review HMRC wrote to the complainant on 25 August 2023. It stated that it maintained its original position.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 15 September 2023, to complain about the way their request for information had been handled.
8. The Commissioner considers the scope of this case to be to determine if HMRC has correctly cited section 12(1) of FOIA in response to the request. The Commissioner has also considered whether HMRC met its obligation to offer advice and assistance, under section 16 of FOIA.

### **Reasons for decision**

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#### **Section 12 – cost of compliance**

9. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the “appropriate limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).
10. Section 12(2) of the FOIA states that subsection (1) does not exempt the public authority from the obligation to comply with paragraph (a) of section 1(1) (the duty to inform an applicant whether it holds information of the description specified in the request) unless the

estimated cost of complying with that paragraph alone would exceed the appropriate limit. HMRC relied on section 12(1) in this case.

11. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for HMRC is £600.
12. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 24 hours for HMRC.
13. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
  - determining whether the information is held;
  - locating the information, or a document containing it;
  - retrieving the information, or a document containing it; and
  - extracting the information from a document containing it.
14. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
15. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
16. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

**Would the cost of compliance exceed the appropriate limit?**

17. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner asked HMRC to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
18. In its submission to the Commissioner HMRC provided some background information to the National Heritage Assets tax relief scheme. It advised that in order to qualify for the scheme, assets must be one of the following:
  - Buildings of outstanding historical or architectural interest.
  - Land of outstanding scenic, historic or scientific interest, or land protecting the setting of an outstanding building.
  - Objects (broadly, works of art) or collections of objects of pre-eminent national, scientific, historic or artistic interest, or objects historically associated with an outstanding building.
19. HMRC explained that assets are registered individually with the scheme and many claims include assets in more than one of the above categories. Separate files are maintained for land and buildings, and for pre-eminent objects that might comprise a single 'estate'. HMRC added that the exemption may be claimed on multiple occasions relating to separate taxable events, so there may be several files relating to the same assets exempted at different times.
20. HMRC explained that the most common reason for an asset to be withdrawn from the scheme is due to its sale, and such sales usually only concern only one of multiple assets or part of a larger parcel of land that's protected by the exemption. The withdrawal of that asset would be recorded, along with the information requested relating to the tax liability incurred, within the relevant file(s). HMRC advised that a file would not be closed when a single asset is withdrawn from the scheme.
21. HMRC advised that in order to determine whether any individual asset, or part of an asset, has been withdrawn from the scheme, it would have to retrieve each of the approximately 2,000 case files relating to assets registered with the scheme and manually review each file to determine whether any withdrawals had been made at any point since the estate entered the scheme. HMRC advised that it would then have to find the details of the withdrawal, extract it and collate the information requested.
22. HMRC explained that the scheme, in its present form, has been in existence since 1975 and some assets have been registered for nearly 50 years. It advised that although a basic database has been in use since around 1997 and the scheme began using a generic database to

record some information around 2016, neither of them contain all the information that the requester is seeking.

23. HMRC went on to explain that due to the age of the scheme and the lack of any narrowing of the date range from the requester, it means that most of the requested information is in paper files that would need to be retrieved from off-site storage and examined. It added that even for more recent case files where the file exists electronically, while access is easier, it would still have to examine individual documents within the electronic file to determine whether an asset had been withdrawn from the scheme, as the database was not specifically designed for this scheme and withdrawals are not recorded as a searchable field.
24. HMRC advised the Commissioner that it carried out a sampling exercise to determine how long it would take to retrieve the information requested. It explained that the exercise was based on the quickest method of gathering the requested information and included a case that is entirely paper based, a case that has both an archived paper record and an electronic record on its database, and a case where the records are entirely electronic.
25. HMRC explained that on average to took 21 minutes to review each file and extract the information with a further 6 minutes to order the file where a paper file from storage was required. It said that even without the time taken to retrieve the paper files, the time taken to review alone indicates that reviewing the files and extracting the requested information 2,000 files, it would far exceed the 24 hour limit as determined by the Fees Regulations.
26. The Commissioner considers that HMRC estimated reasonably that it would take significantly more than the 24 hours limit/£600 limit to respond to the request. HMRC was therefore correct to apply section 12(1) of FOIA to the complainant's request.

### **Section 16(1) – The duty to provide advice and assistance**

27. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45

code of practice<sup>1</sup> in providing advice and assistance, it will have complied with section 16(1).

28. The Commissioner notes that in HMRC's original response to the complainant, it advised that they may wish to narrow the scope of the request to a defined time period so that the collation of the material could be completed within this cost limit. The Commissioner is therefore satisfied that HMRC met its obligations under section 16 of FOIA.

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<sup>1</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

## Right of appeal

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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: 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)

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 .....**

**Michael Lea**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**