

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

### **Decision notice**

**Date:** 16 May 2024

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

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

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1. The complainant has requested information relating to HMRC's loan charge and specifically for updates to information contained in a particular report.
2. The Commissioner's decision is that HMRC was entitled to refuse to comply with the request, citing section 12(1) (cost of compliance exceeds appropriate limit) of FOIA. The Commissioner is also satisfied that there has been no breach under section 16 (advice and assistance) of FOIA.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 20 June 2023, the complainant wrote to HMRC and requested information in the following terms:  
  
"This is a Freedom of Information request under the Freedom of Information Act 2000. It asks for recorded information which HMRC holds since this report (dated 3 December 2020) was published on gov.uk:

<https://www.gov.uk/government/publicatio...>

The first paragraph of this report confirms that when it was introduced, the Loan Charge was part of a package that was estimated to yield £3.2 billion over five years.

1.As at June 2023, please confirm any changes to that estimate and time scale and provide the new figures.

This HMRC report on implementation confirms that, in January 2020, HMRC wrote to more than 55,000 individuals and employers who were identified as potentially affected by the Loan Charge.

2.As at June 2023, please confirm how many individuals and employers have now been established as actually affected by the Loan Charge, giving exact totals for each.

The same report confirms that 5,600 employers and individuals 'settled' their use of so-called DR schemes in the period to 30 September 2020. These are in addition to the around 11,000 employers and individuals who 'settled' their use of so-called DR schemes between Budget 2016 and 31 March 2020. This gives a total of around 16,600.

3.As at June 2023, please confirm how many individuals and employers have now 'settled' their use of so-called DR schemes, giving exact totals for each.

The same report confirms that since the Loan Charge was announced at Budget 2016 to the end of October 2020, the value of 'settlements' HMRC agreed and recorded with employers and individuals was around £3 billion.

4.As at June 2023, please confirm the value of 'settlements' HMRC has agreed and recorded with employers and individuals, giving exact totals for each.

The same report confirms that HMRC estimated that changes following the review would take 11,000 people out of paying the Loan Charge altogether.

5.As at June 2023, please confirm the actual (not estimated) number of people who were taken out of paying the Loan Charge altogether, giving exact totals for employers and individuals. Please also confirm how many of that actual number of people already had one or more open enquiries (not the overall number of enquiries which affected that specific population, as that figure is not what is being requested), the total amount (if any) which has been agreed under 'settlement' with those people since this report was published in December 2020, and the total value of any outstanding tax and NI which is still being pursued by HMRC.

6. As at June 2023, please also confirm, when HMRC wrote to more than 55,000 individuals and employers who were identified as potentially affected by the Loan Charge in January 2020, whether HMRC excluded any who had 'settled' their use of so-called DR schemes between Budget 2016 and 31 March 2020. If not, how many were included in that exercise in January 2020, as the report clearly states that HMRC has (at December 2020) been able to match data for over 54,000 of the taxpayers it wrote to in January 2020.

The same report confirms that, as at 6 November 2020, HMRC had not been able to complete any refunds to taxpayers following the changes made as a result of the review.

7. As at June 2023, please confirm the exact number of taxpayers who have received refunds (and/or a 'waiver') and the total value of all refunds and/or waivers to date.

The same report confirms that, between April 2019 and May 2020, HMRC identified over 45 so-called DR tax avoidance schemes being marketed, aimed at individuals and designed to avoid tax on employment income.

8. As at June 2023, please confirm how many more so-called DR tax avoidance schemes HMRC has identified as being marketed since May 2020."

5. HMRC responded on 18 July 2023. It stated that it held the information but providing it would exceed the FOIA cost limit.
6. As regards section 16 of FOIA, HMRC said that it could not see any scope for refining the complainant's request to bring it within the cost limit. In addition and outside of FOI, it provided some information on a discretionary basis to assist the complainant.
7. On 10 September 2023, the complainant requested an internal review disputing the application of section 12 to the request and they also asked a range of new questions about the discretionary information provided by HMRC.
8. On 10 October 2023, following an internal review, HMRC wrote to the complainant and revised its position. It no longer relied on section 12 but, instead, said it did not hold the requested information. HMRC explained its revised position as follows. It:

"disagree[d] with the application of s.12(1) of the FOIA in relation to your requests, as they should have been refused on grounds that they would have required one of our teams to carry out new analytical work in order to produce the information you have requested."

9. As regards, the complainant's follow up questions in their internal review request, HMRC correctly treated these questions as a new FOI request and there is a separate process going on in relation to that request. As such, this decision notice is restricted to just the request quoted above.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 21 November 2023 to complain about the way their request for information had been handled.
11. During the course of the Commissioner's investigation, the Commissioner wrote to HMRC seeking more information about its revised response and whether it held information within scope of the request.
12. On 17 April 2024, HMRC responded to both the complainant and the Commissioner and changed its position. HMRC reverted back to its original position and refused the request under section 12(1).
13. The Commissioner asked the complainant if they were satisfied with the revised response. The complainant indicated that they were not and provided further comments to the Commissioner on 10 May 2024. These are set out below.
14. Therefore, the Commissioner considers that the scope of his investigation is to determine whether HMRC was entitled to refuse to comply with the request by way of section 12(1) of FOIA. The Commissioner will also consider if there has been a breach under section 16 (advice and assistance) of FOIA.

## **Reasons for decision**

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### **Section 12 – cost of compliance exceeds appropriate limit**

15. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit.
16. When considering whether section 12(1) applies, the public authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). These are set out at Regulation 4(3) and are:
  - (a) determining whether it holds the information,

- (b) locating the information, or a document which may contain the information,
- (c) retrieving the information, or a document which may contain the information, and
- (d) extracting the information from a document containing it.”
17. 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.
  18. 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.
  19. If HMRC estimates that compliance with the request would exceed the appropriate limit, it is not obliged to comply with the request. There is no public interest to consider.
  20. 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 decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency (EA/20017/0004)*, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”.
  21. Where a public authority claims that section 12 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 FOIA.
  22. The complainant’s request consists of eight questions seeking an update as at June 2023 on information originally provided by HMRC in a report dated December 2020.<sup>1</sup>
  23. In relation to the information requested, as set out above, HMRC explained to the complainant in its original response that:

“You have asked for actual figures as of June 2023, we do not readily have available information as of June 2023 to answer your request. To

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<sup>1</sup> <https://www.gov.uk/government/publications/independent-loan-charge-review-hmrc-report-on-implementation/independent-loan-charge-review-hmrc-report-on-implementation>

provide the requested information would require us to extract series of data and conduct detailed analysis, which would involve both manual and electrical work across multiple HMRC systems and teams. We have established that this task would exceed the FOIA cost limit.”

24. In its revised response to the complainant (where it reverted back to its original section 12 position) HMRC explained:

“...the report you referenced in your request was compiled by skilled data analysts who work with tax specialists and data held across multiple HMRC systems. They make assumptions based on their particular skill and judgement about populations of taxpayers and amounts of tax and whether they should be included or excluded from each particular metric. While HMRC is confident this methodology is robust and produces an accurate estimate of the figures published, it is an estimate, produced using skill and judgement, rather than an exact figure produced by counting cases or settlements.”

...

“On review we have considered whether there is any way to produce the information other than the way we produced it for the report and have concluded that, although it is not a time effective method, some of the information may be obtained by somebody accessing cases manually and extracting the necessary information. We explained in our original response that our most recent estimate is that 61,000 people were affected by the original terms of the loan charge. Therefore, using this method would clearly exceed the appropriate limit as set out in our original response.”

25. HMRC has also explained to the Commissioner in its submissions how it would approach answering some of the questions in the complainant’s request. It said:

“For example, HMRC hold case files that may be able to confirm if an individual or employer has fully settled (i.e. excluding those who have partially settled) which if added together could give the exact totals for the number of individuals and employers who have settled their use of DR schemes since Budget 2016. However, to establish the ‘exact’ total of those taxpayers subject to the loan charge would require us to check over 60,000 case files, which would exceed costs.

If we divide the time available (24 hours) by the number of cases, we see that to achieve this within costs we would have to open each case, read through the information contained, extract what we need and record it separately within 1.4 seconds per case, which is clearly not an achievable target, even if we were only looking for a single piece of information.”

26. As regards the estimated figures in its December 2020 report cited by the complainant in her request, HMRC further explained to the Commissioner that:

“Skilled HMRC analysts apply assumptions and judgements, informed by our current knowledge of taxpayer behaviour and emerging insight (which can change over time), to data extracted from multiple systems to arrive at an estimate. These calculations are quality assured by our analysts to ensure that they are robust at that time.

The policy costings published here<sup>2</sup> [as at 23 April 2020] illustrate the methodology used to produce the estimated yield. This methodology demonstrates the complexity of the analysis and the reliance on assumptions about taxpayer behaviour that are required to produce the estimated yield and other estimated figures in the report. Although we provided the latest updated figures, outside of the FOIA, in the original response, we would not be able to provide an update as of June 2023, as requested, without commissioning new analysis.”

27. The complainant provided the Commissioner with their view of HMRC’s revised response on 10 May 2024. In summary it was that HMRC does hold the information requested and could have readily provided the data it held as at June 2023. The complainant provided the Commissioner with evidence<sup>3</sup> suggesting that HMRC’s reporting and estimates are continuously revised as more information becomes available and so it could have readily provided the data it held as at June 2023.
28. The HMRC report from December 2020 and subsequent published information largely only cite estimated figures. The Commissioner is also not persuaded by the complainant’s argument that just because HMRC reporting and estimates are continuously revised as more information becomes available that this means HMRC holds all the information requested by the complainant as at June 2023. The request did not ask for estimates: it asked for “exact figures”.
29. The Commissioner notes that his guidance<sup>4</sup> states that FOIA only applies to information a public authority already holds in recorded form at the

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<sup>2</sup> <https://www.gov.uk/government/publications/independent-loan-charge-review-summary-of-evidence/section-4-policy-costing>

<sup>3</sup> <https://committees.parliament.uk/publications/41969/documents/208799/default/>;  
<https://committees.parliament.uk/publications/43895/documents/217677/default/>

<sup>4</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/determining-whether-we-hold-information/#create>

time of a request. HMRC has the 'building blocks' necessary to produce the exact information requested because each individual taxpayer's file will contain information about how their case was handled and the outcomes that resulted. Given infinite time and infinite resource it would be possible for HMRC to collate this information into the form the complainant has asked for so the information is "held" by HMRC for the purposes of FOIA. However, the Commissioner agrees with HMRC that the cost of collating the exact information requested would exceed the appropriate limit.

30. Due to the nature of this request and the volume of potentially relevant information, the Commissioner accepts that the quickest method of retrieving the requested information appears to be a manual search of records held by HMRC.
31. To do so HMRC explains it would need to manually review the cases of 61,000 individuals affected by the scope of the Loan Charge in order to extract the specific information that the complainant has requested.
32. HMRC has provided an estimate as to how long compliance with the one part of the request would take: to give the exact totals for the number of individuals and employers who have settled their use of Disguised Remuneration schemes since Budget 2016 up to June 2023. HMRC states it would need to open each case (61,000), read through the information contained, extract what was relevant and record it. HMRC has explained that, in the time available of 24 hours, each case would need to be reviewed within 1.4 seconds per case.
33. Looking at the scope of the request and the volume of records that would need searching for relevant information, the Commissioner does not believe it would be possible to manually search the records to enable HMRC to answer the request within the appropriate limit. In order for the request to fall within the appropriate limit, one staff member would have 1.4 seconds per case file, which the Commissioner accepts is not reasonable or achievable.
34. The Commissioner is therefore persuaded that compliance with the request would exceed 24 hours. Therefore section 12 is engaged and HMRC was entitled to refuse to comply with the request.

### **Section 16 – advice and assistance**

35. When refusing a request under section 12, a public authority needs to offer reasonable advice and assistance to the requester. The aim of this advice and assistance is to help the requester refine their request to one that can be dealt with within the appropriate limit.



36. Within its refusal notice of 18 July 2023, HMRC explained to the complainant that, in the current format, the request could not be refined in a way that would bring it within the appropriate limit.
37. The Commissioner accepts that due to the nature of the request and the amount of records that would need to be manually reviewed, the request could not be meaningfully refined to allow the information to be provided within the cost limit.
38. Therefore, the Commissioner is satisfied that there is no section 16(1) breach in this instance.

## **Right of appeal**

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39. 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)

40. 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.
41. 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**

**Roger Cawthorne**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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**SK9 5AF**