

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 7 August 2013

Public Authority: Her Majesty's Revenue & Customs (HMRC)
Address: 100 Parliament Street
London
SW1A 2BQ

Decision (including any steps ordered)

1. The complainant has requested from HMRC the names of the ten entities who declared the highest total waste landfilled on returns for a specified quarter together with copies of the associated Landfill Tax Returns. HMRC claimed that the requested information was exempt from disclosure under regulations 12(5)(d) (confidentiality of proceedings) and 12(5)(e) (confidentiality of commercial or industrial information) of the EIR. They also argued that the exemption set out at section 44(1) (statutory prohibitions) would apply where it was decided that any part of the records should be processed in accordance with FOIA and the EIR. The Commissioner's decision is that the EIR is the relevant access-regime in this case, that regulation 12(5)(d) is engaged and the public interest in maintaining the exception outweighs the public interest in disclosure. In light of this finding, the Commissioner has not gone on to assess HMRC's application of regulation 12(5)(e) of the EIR. Furthermore, he does not require HMRC to take any steps as a result of this notice.

Request and response

2. On 3 November 2012 the complainant wrote to HMRC and requested information in the following terms:

(1) Please can you provide me with a complete and unredacted copy of "LFT8010 - Disclosure of information: Disclosing information related to Landfill Tax" a redacted copy appears here: <http://www.hmrc.gov.uk/manuals/lftmanual...> If you cannot

please explain which exemptions apply.

(2) Please can you provide me under EIR with the names of the ten entities who declared the highest 'total weight of waste landfilled' on returns covering the quarter to 31 March 2012 together with copies of the relevant Landfill Tax Return Forms.

(3) Please also provide a copy of any spreadsheet HMRC already holds or can readily generate from an existing database showing the data entered in boxes 1 to 20 for each entity submitting a Landfill Tax Return Form for the four quarters in the year to 31 December 2011.

3. HMRC responded to each of the requests on 20 November 2012 as follows: (1) HMRC agreed to the disclosure of the requested information. (2) The requested information was withheld under regulations 12(5)(d) and 12(5)(e) of the EIR. (3) HMRC refused to comply with the request on the basis that it was manifestly unreasonable for the purposes of regulation 12(4)(b) of the EIR.
4. The complainant wrote to HMRC again later the same day and challenged their decision to refuse disclosure of the information described at request (2). HMRC subsequently carried out an internal review, the outcome of which was provided to the complainant on 25 January 2013. This upheld HMRC's original position.

Scope of the case

5. The complainant contacted the Commissioner on 4 January 2013 to complain about the way HMRC had handled request (2). The Commissioner's considerations that are set out below therefore focus solely on this particular request and do not extend to requests (1) and (3).

Reasons for decision

Background

6. HMRC has introduced their arguments for withholding the requested information by providing the Commissioner with an explanation of the landfill tax regime. This is outlined below.
7. Landfill tax is a UK wide environmental tax on waste disposed of at authorised landfill sites throughout the UK. It was introduced on 1

October 1996 in order to encourage waste producers to produce less waste, recover more value from waste, for example through recycling or composting and to use more environmentally friendly methods of waste disposal. The landfill tax, working alongside other environmental regulations, has been successful in reducing the amount of waste sent to landfill. Since 1996, when landfill tax was introduced, the amount of waste sent to landfill has more than halved.

8. The tax is levied on landfill operators by weight of refuse disposed in landfill sites. HMRC have stated that the landfill site operators are not necessarily the producers of the waste. A lower rate of £2.50 per tonne applies to all less polluting waste such as rock and soil, while all other waste, including domestic household waste, is charge at the standard rate of £56 per tonne in 2011-12, £64 per tonne in 2013-13 and £72 per tonne in 2013-14.
9. Landfill tax revenue forms part of general government receipts and is not set aside specifically for expenditure on activities related to the environment. However, the regime enables landfill tax site operators to claim credits against the tax due by making payments under the Landfill Communities Fund.

The applicable access-regime - FOIA or the EIR?

10. HMRC have argued that under EIR they are not obliged to disclose the requested information. However, they have also raised the possibility that not all of the information would be environmental, in which case FOIA and not the EIR would apply. In the event that the Commissioner found that FOIA was employed to any extent, HMRC were of the view that the corresponding information would be covered by the exemption set out at section 44(1).
11. The first question that must therefore be addressed is whether the requested information constitutes environmental information for the purposes of the EIR. "Environmental information" is defined at regulation 2 of the EIR. In order for it to be environmental, information must fall within one or more of the definitions set out at regulation 2(1)(a) through (f) - constituting "information on" any of the subjects covered by those six paragraphs.
12. In their original response to the complainant, HMRC confirmed that the requested information was environmental information as defined in regulation 2(1)(c); being information on measures and activities affecting the elements (landscape) and factors (waste) referred to in regulation 2(1)(a) and (b). On a more forensic examination of the Landfill tax returns, however, HMRC have pointed the Commissioner to

the possibility that only some of the records could properly be classified as environmental. In particular, HMRC stated the following:

"Boxes 1 to 9 of the Landfill Tax Return Form (LTR) capture landfill tax declarations including, for example, claims for bad debt relief entered in Box 6 of the LTR. Some of this data has no attributable link to the environment. For entities which operate multiple sites, the waste tonnages declared at Box 10, 11 and 12 of the LTR cannot be linked to any one specific site since a landfill tax registration and its LTRs must account for tax for all the landfill sites where the registered operator is the permit holder."

13. In his guidance '[What is Environmental Information?](#)' the Commissioner acknowledges that the use of the word "on" in the definition indicates a wide application and will extend to any information about, concerning, or relating to the various definitions of environmental information. If information is about, relates to or concerns any of the following definitions, it is environmental information. A key point is that, for regulation 2(1)(b) to (f), it is not necessary for the information itself to have a direct effect on the elements of the environment.
14. The Commissioner has initially considered whether the requested information falls within the definition of environmental information provided by regulation 2(1)(c) of the EIR; the provision referred to by HMRC. This requires that:
 - the information is on a measure or an activity; and
 - the measure or activity (not the information itself) affects, or is likely to affect, the elements and factors in regulation 2(1)(a) and (b), or is designed to protect the elements in (a).
15. HMRC's general guide¹ to landfill tax states that, unless subject to an exemption, landfill tax applies to all material disposed of: as waste; by way of landfill; and, at a landfill site that is covered by a licence or permit under specific environmental legislation. Broadly speaking, the information contained in the returns requested by the complainant enable the assessment of tax based on the level of an organisation's disposal of waste as landfill. It is therefore a measure, namely the tax contribution burden, which will directly affect the disposal strategies

¹http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageExcise_ShowContent&propertyType=document&id=HMCE_CL_000509#P198_9153

employed by an organisation and therefore the elements (land) and factors (waste) described by regulations 2(1)(a) and (b).

16. The Commissioner recognises, however, that there will be occasions when a document contains both environmental and other information. The question that then potentially arises is whether the information can, practically speaking, be divided. However, the Commissioner does not consider this is one of those occasions and so the question does not need to be addressed here.
17. As stated, the Commissioner will apply a wide definition of environmental information. He accepts that it may be easier to link some elements of a landfill tax report with an environmental effect than others. Nevertheless, he considers that HMRC's purpose in collating the data contained within a return is to allow it to verify the tax burden on an activity, landfill, which indisputably has an environmental effect.
18. The complainant has similarly submitted that all the information contained in a landfill tax return should properly be construed as information on the administration of an environmental tax and that the administration of an environmental tax is an activity designed to protect the environment. The complainant has pointed out that the Government classify environmental taxes as those that meet all of the following three principles²:
 - The tax is explicitly linked to the government's environmental objectives
 - The primary objective of the tax is to encourage environmentally positive change
 - The tax is structured in relation to environmental objectives, for example: the more polluting the behaviour, the greater the tax levied.
19. That the landfill tax is an environmental tax based on these three principles reinforces, according to the complainant, the view that all the information contained in a return should be considered under the EIR because the information relates to the administration of the tax. The Commissioner agrees.

² <https://www.gov.uk/government/news/definition-of-environmental-tax-published>

20. The Commissioner has therefore decided that the EIR is the relevant access-regime in this case and thus his considerations focus on the operation of this piece of legislation.

Emissions

21. Before considering the substance of HMRC's application of the exceptions, the Commissioner has been asked to consider whether HMRC was entitled within the legislation to seek to rely on the exceptions in the first place.
22. The complainant has argued that the requested information relates to emissions and thus regulation 12(9) of the EIR would apply. This provides that to the extent requested information relates to information on emissions, a public authority shall not be entitled to refuse to disclose that information under an exception referred to in paragraphs (5)(d) to (g) of regulation 12. In other words, the application of the exceptions in question would fall by the wayside should the requested information relate to emissions.
23. In reference to regulation 12(9), the complainant considers that the wording of the paragraph is critical. In essence, it is not simply concerned with information about emissions but more broadly with information that relates to information about emissions. In this context, the complainant has pointed out that information about the nature and quantity of waste sent to landfill is information relating to information about emissions because it is relevant to understanding emissions into the land, the air and water.
24. The Commissioner has considered this argument but respectfully disagrees that regulation 12(9) should be found to apply in the circumstances.
25. In his recent guidance '[Information on emissions \(regulation 12\(9\)\)](#)', the Commissioner acknowledged that his approach to the interpretation of regulation 12(9) had narrowed. The Commissioner explains at paragraph 16 that in the past he had taken the view that regulation 12(9) could apply where information was more indirectly linked to emissions. However, his considered position now is that the regulation will only apply where the information is *directly* linked to emissions.
26. HMRC considers, and the Commissioner accepts, that it would be a strained interpretation of the paragraph to find that the information relates to emissions in the situation. While landfill will undoubtedly lead to emissions – not least in the form of gaseous discharges - this is not to say that information provided in respect of tax contributions also has a *direct* link to emissions. On the contrary, the information contained in

the returns does not refer to the ways of managing, or levels of, emissions produced in respect of landfill. The Commissioner has therefore determined that regulation 12(9) is not relevant and has gone on to consider HMRC's decision to withhold information under the exceptions already cited.

Regulation 12(5)(d) – confidentiality of proceedings

27. Under regulation 12(5)(d) of the EIR, a public authority may refuse to disclose information to the extent that its disclosure would adversely affect:

the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law

28. Breaking down the component parts of regulation 12(5)(d), it can be observed that the engagement of the exception rests on three conditions being met. First, the confidentiality referred to by a public authority must specifically relate to the confidentiality of proceedings. Second, this confidentiality must be provided by law. Third, it must be demonstrated that disclosure would have an adverse effect on the confidentiality of the proceedings. The Commissioner addresses each of these conditions in turn.
29. In his guidance '[Confidentiality of proceedings \(regulation 12\(5\)\(d\)\)](#)', the Commissioner interprets 'proceedings' as possessing a certain level of formality. They will include, but are not limited to: formal meetings to consider matters that are within the authority's jurisdiction; situations where an authority is exercising its statutory decision making powers; and legal proceedings.
30. Picking up on the interpretation of proceedings as covering statutory decision making powers, HMRC considers that regulation 12(5)(d) of the EIR is engaged because the information is held for its statutory duty to assess and collect landfill tax. They explain that the Commissioners for HMRC are responsible for the collection and management of landfill tax revenue. HMRC exercises their statutory decision making powers in respect of the assessment and collection of landfill tax by receiving and examining the landfill tax returns.
31. Applying the interpretation of 'proceedings' set out in his guidance, the Commissioner has found that the information is covered by the exception. The Commissioner must therefore next consider whether the confidentiality of the proceedings is provided in law. If the confidentiality of the proceedings is not provided by law, either in common law or a specific statutory provision, regulation 12(5)(d) will not apply.

32. HMRC have claimed in this case that the confidentiality of the proceedings is provided by a specific statutory provision. HMRC operates under the Commissioners for Revenue and Customs Act 2005 (CRCA) and section 18(1) of the CRCA provides a prohibition on disclosure. Further, section 19(1) of the CRCA states that it is an offence to disclose revenue and customs information relating to an identifiable person – in this case the legal bodies whose names have been requested by the complainant. 'Revenue and customs' information is defined at section 19(2) – describing it as information *about, acquired as a result of, or held in connection with the exercise of a function of the Revenue and Customs* in respect of the person.
33. In previous decisions made under FOIA, the Commissioner has recognised that the CRCA can act as statutory prohibition on disclosure in respect of tax information. Similarly, in this case, the Commissioner considers that the information contained in landfill tax returns is acquired in connection with HMRC's function to assess tax liability. Further, he is not aware of any exceptions contained in the CRCA that would permit the disclosure of the withheld information. The Commissioner is therefore satisfied that the confidentiality of the proceedings to which regulation 12(5)(d) relates is provided by section 18(1) of the CRCA. The next issue is therefore whether disclosure would adversely affect the confidentiality of proceedings.
34. Consistent with his approach to the relevant exceptions contained in regulation 12(5), the Commissioner interprets the wording of 'adversely affect' to set a relatively high threshold in terms of the likelihood of any prejudice occurring. Put simply, it must be considered that disclosure 'would' have an adverse effect, which means that the likelihood must be more substantial than merely a remote possibility.
35. The Commissioner recognises that the purpose behind the inclusion of a statutory bar to disclosure in the CRCA was to protect potentially sensitive information that was only received by HMRC to allow it to discharge its tax functions. In HMRC's words:

"The statutory protection of tax records is a fundamental feature of the UK tax system. By providing taxpayers with the assurance that details of their personal and corporate financial affairs will remain confidential, trust and candour between the taxpayer and the tax authorities is fostered and maintained. This principle is vitally important as in most cases taxpayers are under a legal obligation to provide considerable amounts of sensitive and personal information to the revenue departments. Not only do we owe our customers a duty to protect their information but also it is more likely that they will more willingly comply with their

obligations if they feel confident that their details are safeguarded.”

36. It is noted that, unlike FOIA and section 44, the EIR does not contain a specific provision under which information is exempted where its disclosure is prohibited by prior legislation. This ensures that potentially significant environmental information is not automatically placed outside the possibility of the public viewing this information. Nevertheless, the Commissioner also accepts the importance that HMRC has placed on the issue of trust between taxpayer and tax authority. In the view of the Commissioner, one unintended consequence of disclosing information that would otherwise be barred under the CRCA is to weaken the trust in HMRC's ability to protect the confidentiality of sensitive tax information.
37. On this basis, the Commissioner has decided that disclosure would have an adverse effect on the confidentiality of proceedings. As regulation 12(5)(d) has therefore been found to be engaged, the Commissioner must next consider the balance of the public interest. In doing so, he has taken into account the EIR's express presumption in favour of disclosure.

Public interest arguments in favour of disclosure

38. As HMRC have observed, some weight should always be attached to the public interest in transparency and accountability, especially where environmental information is concerned. The complainant has also advanced that the importance of the requested information is such that in this situation the case for disclosure is particularly strong. This importance attests to the possibility that disclosure would:
- *enable the public to understand and discuss the impact that the named private companies have on the environment;*
 - *enable the public to hold regulators to account for perceived policy failures; and*
 - *enable informed public participation in decision making.*

39. In respect of these arguments, the complainant has pointed out that landfill has a major impact on land, air and water and thus there is an inherent value in the public knowing the identities of the entities that are among the largest landfill polluters in the UK.

Public interest arguments in favour of maintaining the exemption

40. HMRC considers that the strength of the arguments for maintaining the exemption clearly outweigh those in favour of disclosure. HMRC's position can be summarised as follows:

- There is a public interest in ensuring that HMRC are able to assess and collect landfill tax as efficiently as possible. If the expectation of confidentiality cannot be relied upon, taxpayers may be less willing to comply with their statutory obligations to submit returns or provide other confidential information. HMRC can impose penalties on those who fail to comply with their obligations but this would add to the cost of assessing and collecting tax.
- HMRC have carried out research into customer behaviour and attitudes to tax compliance in respect of individuals and small businesses. This research has shown that taxpayers are more likely to comply with their tax obligations where they have a positive view of HMRC and a strong sense of citizenship. Whilst confidentiality was not explicitly considered, in HMRC's view anything that damages the trust and candour between the taxpayer and the tax authorities is likely to negatively impact on compliance. The reports produced from the research are available on HMRC's website:

<http://www.hmrc.gov.uk/research/report193.pdf>

<http://www.hmrc.gov.uk/research/report205.pdf>

- The uncertainty that may result from the disclosure of confidential taxpayer information is likely to affect not only those liable to landfill tax but also those liable to other environmental taxes. This would further swell the cost of assessing and collecting tax.
- There is the potential for underreporting if businesses see that information about the "top ten" entities might be disclosable. Accordingly, this would have a bearing on the ability of HMRC to carry out its statutory functions.
- The public interest in disclosure is already addressed by the high level data published by HMRC as well as by other environmental regulators.
- The landfill site operators are not necessarily themselves the producers of the waste and the disposal of waste at authorised landfill sites is a lawful activity. It would therefore be wrong to attempt to classify the entities in question as the 'worst' polluters.
- Leading on from the above point, HMRC have pointed out that the request only asks for information relating to the entities that have declared the highest total tonnage of landfill. As this does not differentiate between the different categories of waste, it is possible that another operator may have declared a higher total of standard rate waste than the operators subject to the request.

This could lead to the public drawing incorrect conclusions from the disclosed information.

41. Each of these arguments has been considered by the Commissioner when reaching a decision, even where he has not felt it necessary to address a particular argument further in the body of this notice.

Balance of the public interest arguments

42. In approaching the public interest test the Commissioner has borne in mind what the authors of the EIR intended by including the condition set out at regulation 5(6). Allowing that the public should have greater powers to access environmental information, the authors took care by including the provision to ensure that any enactment or rule or law that would otherwise prevent the disclosure of information covered by the EIR could not automatically obstruct the release of environmental information. This stresses the importance that was placed on transparency in respect of environmental information; a principle that is similarly echoed in regulation 12(2) of the EIR, which formally endorses a presumption in favour of disclosure.
43. The EIR's emphasis on transparency is, in this case, coupled with a number of arguments made in favour of disclosure. The Commissioner acknowledges that the wider issue of landfill, and the schemes used to manage this form of waste disposal, become increasingly important commensurate with the increased strain on disposal sites and the need to adopt greener policies in this area. Ultimately, the government's position on waste disposal will have far-reaching consequences for the wider population.
44. The Commissioner is also not impressed by HMRC's arguments regarding the possibility that the information could be misleading if disclosed in the form that it was requested. In previous decisions, the Commissioner has rejected the validity of concerns of this nature by pointing out that a statement of clarification could be provided alongside the disclosed information. This principle similarly applies here. The Commissioner also considers that the natural way of addressing HMRC's concerns would be to provide a more detailed breakdown of the requested information rather than by effectively blocking all access to information on the related subject.
45. However, as mentioned previously, the Information Commissioner does accept that disclosure will inevitably weaken the faith that organisations have in the ability of HMRC to protect what might otherwise be assumed to be confidential tax information. HMRC's effectiveness as a tax authority is predicated on the accuracy and completeness of the tax information it holds. Therefore, every effort

must be made to foster the relationship between the taxpayer and the tax authority; a relationship that the Commissioner has recognised could be affected by disclosure. In the Commissioner's view, the detriment associated with disclosure combined with the importance of the information itself to HMRC greatly strengthens the case for withholding the requested information.

46. Yet, even while saying this, the Commissioner recognises that an argument could potentially be made that casts doubt on the severity of the detriment cited by HMRC. In particular, it cannot be ignored that HMRC's tax-collecting responsibilities are supported by statute. As such, there should be no question of an organisation refusing to provide relevant tax information. Further, there will be occasions when the importance of the information to the public will trump any concerns a public authority has about the sensitivity of the information.
47. After a final consideration though the Commissioner has found the importance of safeguarding the trust between taxpayer and tax authority to be paramount, swaying the balance of the public interest in favour of maintaining the exception.
48. The Commissioner understands that HMRC will be at its most effective when taxpayers have faith in the confidentiality of its processes and thus are more willing to engage with them. Even though HMRC have statutory powers, HMRC's ability to carry out its functions efficiently and in a timely fashion would likely be compromised through disclosure. The Commissioner also doubts the inherent worth of the information to the public.
49. In this regard, the Information Commissioner realises that the debate on waste management, and particularly the ways in which waste can be disposed of more resourcefully, becomes ever more important. This reflects the strain that the waste from human consumption and other activities is placing on the environment. Consequently, repeating the complainant's arguments, the Commissioner acknowledges that there is a genuine public interest in knowing more about the government's policies on waste and the relative success or failure of these policies. However, the Commissioner has been unable to reconcile the requested information itself with the broader public interest just mentioned.
50. As explained by HMRC, the landfill site operators are not necessarily the sources of the waste. Accordingly, there would be little value to the public in knowing the tax returns of the top ten supposed 'worst offenders'. On this point, it must be reiterated that there is no suggestion that the operators have acted illegally or outside what is expected of them. While it is not the Commissioner's place to specify exactly what information is, or will be, of significance for the purposes of

debate, he does consider that there will be greater public interest in information relating to the operation of an environmental policy designed to affect behaviour rather than in the specific information requested here.

51. The Commissioner has therefore decided that, in all the circumstances, the public interest in maintaining the application of regulation 12(5)(d) outweighs the public interest in disclosure. In light of this finding, the Commissioner has not been required to go on to consider whether regulation 12(5)(e), the other exception relied on by HMRC, also applied.

Right of appeal

52. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

53. 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.
54. 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

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