

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 September 2016

Public Authority: Her Majesty's Revenue and Customs (HMRC)

Address: 100 Parliament Street
London
SW1A 2BQ

Decision (including any steps ordered)

1. The complainant has requested information about statistics relating to recently arrived non-UK EEA nationals subject to income tax and national insurance contributions, or receiving HMRC administered benefits. By the date of this notice HMRC had yet to provide a substantive response to this request. The Information Commissioner's decision is that HMRC has breached section 10 of the FOIA in that it has failed to provide a response to the request.
2. The Commissioner requires HMRC to take the following steps to ensure compliance with the legislation:
 - Issue a response to the request under the FOIA by either complying with section 1(1) or issuing a valid refusal notice.
3. The public authority 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 FOIA and may be dealt with as a contempt of court.

Request and response

4. On 13 May 2016, the complainant wrote to HMRC and requested information in the following terms:

"HMRC yesterday (12 May) published "Statistics on recently arrived non--UK EEA nationals subject to income tax and National

Insurance contributions or receiving HMRC administered benefits". The contact given for this publication was [named individual].

This provided a single figure for total receipts of income tax and NICs payments by 'recently-arrived' EEA nationals (as defined) and a single figure for total payments of tax credits and child benefit to them.

1. Please provide these figures separately, i.e. distinguishing income tax from NICs and tax credits from child benefit, broken down by each EEA nationality, and showing the number of payers and recipients.

In case this is unclear, the following table illustrates the information requested (obviously not all the countries are shown)."

5. The complainant provided a grid to be completed by HMRC with horizontal tabs showing country and vertical tabs relating to tax and benefit to be completed by HMRC.
6. The complainant has been told by HMRC that the request is being actively managed but has had no substantive response to date.

Scope of the case

7. The complainant contacted the Commissioner on 28 July 2016 to complain about the way his request for information had been handled. He specifically asked the Commissioner to consider the fact that no substantive response had been provided.
8. The Commissioner contacted HMRC, but it was unable to confirm that a response would be issued within ten working days. No substantive response to the request had been provided by the date of this notice.

Reasons for decision

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

1(1) Any person making a request to a public authority is entitled –

- (a) *to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) *if that is the case, to have that information communicated to him.*

10. Section 8(1) of the FOIA states:

8(1) In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested.*

11. The Commissioner considers that the request in question fulfilled these criteria, and therefore constituted a valid request for recorded information under the FOIA.
12. Section 10(1) of the FOIA states that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
13. From the information provided to the Commissioner it is evident that HMRC did not respond to the complainant within the statutory timeframe in respect of this request. Despite the Commissioner's intervention, HMRC has failed to respond to the complainant's request. It has failed to confirm or deny that it holds the requested information, and has neither disclosed the requested information nor provided a valid refusal notice.
14. Accordingly the Commissioner's decision is that HMRC did not deal with the request for information in accordance with the FOIA. It breached section 10(1) of the FOIA by failing to provide a substantive response to the request within the statutory timeframe of 20 working days.

Right of appeal

15. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

16. 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.
17. 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

Sarah O’Cathain
Senior Case Officer
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF