

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 March 2024

Public Authority: HM Treasury
Address: 1 Horse Guards Road
Westminster
London
SW1A 2HQ

Decision (including any steps ordered)

1. The complainant requested from HM Treasury (HMT) information regarding "Introduction of earnings-related national insurance contributions (ER-NIC) 1975/76". HMT stated it does not hold any information relating to this request.
2. The Commissioner's decision is that, on the balance of probabilities, HMT does not hold the information falling within scope of the request, and it has complied with section 1(1)(a) of FOIA. Therefore, the Commissioner does not require HMT to take any further steps as a result of this decision.

Request and response

3. On 10 September 2023 the complainant wrote to HMT and requested information in the following terms:

"I would like a copy of the paper that proposed, justified, and recommended the introduction of ER-NIC and identifies the author. The year of introduction was 1975/76, so It will be dated in early 1975 or before.

ER-NIC Employed

ER-NIC replaced Graduated Pension Scheme contributions (a pension scheme providing a graduated pension in addition to the state pension) which ended the end of 1974/75, and NIC flat rate contributions which were recorded for each employee by stamps on a record card for each tax year. ER-NIC does not provide an additional pension, so is not a like-for like replacement, making it in effect an additional income tax on earnings.

ER-NIC Self-employed

The flat rate record continued, qualifying the contributor for the state pension. The ER-NIC self-employed contributions were in effect an additional income tax on earnings.

ER-NIC reversed EIR (earned income relief) that was in place 1914/15-1972/73 resulting in unearned incomes, income arising from wealth, being taxed less than earnings.

ER-NIC created a divide between the taxation workers and pensioners where there was no division before, the only difference was pensioners stopped paying the flat rate contribution.

Note there was no White Paper issued and no Public Consultation held.

The introduction of ER-NIC in 1975/76 was a tax revolution and a disaster."

4. On 4 October 2023 HMT responded and confirmed that it does not hold information within the scope of the request. It advised the complainant that the paper(s) in question could be available via the National Archives (TNA), given the year it would have been produced. It directed the complainant to TNA's website and informed him he could search for items held in TNA via the link provided.
5. On the same day the complainant asked HMT to search again by using his suggested phrasing.
6. On 5 October 2023 the complainant asked for an internal review of HMT's original response to his request.
7. On 8 October 2023 the complainant emailed HMT a report he authored, and which he considered may help in its search to locate the specific information. He referred HMT to a particular part of his report.
8. On 30 October 2023 HMT provided its review response and maintained its original position that it does not hold the requested information.

Reasons for decision

9. This reasoning covers why, on the balance of probabilities, HMT does not hold the information relating to the request.

Section 1 – information held/not held

10. Section 1 of FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
11. The public authority is not obliged to create or acquire information in order to satisfy a request.
12. The Commissioner's role when determining whether a public authority has or has not complied with section 1(1) of FOIA, is limited to determining whether it is more likely than not that the public authority has provided all the recorded information it holds.
13. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).

The complainant's position

14. The complainant disagrees with HMT's response that it does not hold the information requested. He said he is dissatisfied with HMT not being able to locate the paper that recommended the introduction of earnings-related national insurance introduced 1975/76. He argued the following:

"It is the Chancellor of the Exchequer that announces in the annual budget statement changes / increases in earnings-related nic. The DHSS deals with benefit pay out changes. HM Treasury deals with the funding."

It is the responsibility of HM Treasury to search the National Archives because

- (a) HM Treasury must have originated the paper
- (b) HM Treasury need it to competently undertake routine funding policy review.

"Which set out the case for the abolition of Class 1 secondary national insurance contributions (employer nic)" (para 3 page 3).

This is absolutely incorrect:

My report relates to the introduction of earnings-related Class 1 primary nic (employee nic) and Class 4 (self-employed nic), not employer nic."

HMT's position

15. HMT was asked by the Commissioner to provide him with its response to the complainant's arguments. HMT explained the following:

"National Insurance contributions policy was owned by the Department of Health and Social Security in the years the requester refers to this paper being produced. If the paper is held by a government department, it is likely that it would be held by one of their successors (the Department of Health and Social Care or the Department for Work and Pensions) rather than HM Treasury, however for the reasons explained below, it may be the case they also do not hold the paper.

It is not the responsibility of HM Treasury to search the National Archives or another government department. The National Archives are separate to HM Treasury."

16. HMT directed the Commissioner to a link¹ where further information about TNA can be found. It advised of where more details on the process of transferring files² to TNA can be found, and provided links to this and to items held³ in TNA that can also be searched.
17. HMT provided the Commissioner with its view on the complainant's report which he authored and referred to in his email of 8 October 2023. HMT said the complainant claims (in his paragraph) that the proposal of introducing ER-NIC must be documented in a paper held by HMT.

¹ <https://www.nationalarchives.gov.uk/about/our-role/>

² <https://www.nationalarchives.gov.uk/information-management/manage-information/selection-and-transfer/>

³ <https://discovery.nationalarchives.gov.uk/>

18. However, HMT said it believes the complainant is working on his own assumptions that such a document exists, and that he suggests there is a conspiracy to withhold information. HMT noted to the Commissioner that the existence of such a paper is not confirmed, and it had informed the complainant that HMT does not hold such a paper.
19. HMT notified the complainant that following a search of its records, it does not hold information within the scope of the request. HMT advised the complainant that the information (paper or papers) could be available via TNA, given the year in which it would have been produced. HMT directed the complainant to TNA's website and informed him he could search for items held in TNA via the link provided.
20. HMT informed the Commissioner of the searches carried out to check no information was held within the scope of the request. It stated it conducted a search of the Personal Tax, Welfare and Pensions (PTWP) group's legacy records centre on SharePoint. HMT considered this search was reasonable because the information requested relates to personal taxes and the Department for Work and Pensions, which are one of the succeeding departments to the Department of Health and Social Security in the years the complainant refers to.
21. HMT said it also conducted a search of its repository of historical records held by HMT records team. It explained that it holds a very small number of paper records from the period in question, and these records are part of a backlog going through referral with other government departments. HMT said there is no indication that information pertaining to the creation of this paper exists within these records. Although they are retained by department, HMT said these records are still searchable on TNA's Discovery platform.
22. It further explained "HMT records over 20 years old that have been retained for historical and cultural significance will have been transferred to The National Archives website. Records over 20 years old that are pending review or are retained for security purposes will have been catalogued and listed on the Discovery Catalogue on The National Archives website. According to our records, the review for records from 1975 and 1976 was conducted in 2005 and 2006 respectively. If the information requested exists, it is likely within a record that has already been transferred to The National Archives who will now hold that information. Please be aware that the Discovery platform provided by The National Archives does not offer a detailed itemisation of record contents. As a result, some additional investigation may be necessary."

23. With regard to search terms which were used, HMT stated searches were re-conducted under the search terms used for the original FOI request, and these returned no results. HMT clarified that these consisted of the searches: "employer NICs" and "ER-NIC".
24. HMT said subsequent searches were completed with the complainant's suggested phrasing in his additional FOI request, as well as variants of this and phrases within it. These searches returned no results. HMT clarified the searches:
 - "Introduction of Earnings-Related National Insurance Contributions. Class 1 (employed) and Class 4 (self-employed)"
 - "Earnings-Related National Insurance contributions"
 - "Class 1"
 - "Class 4"
25. HMT also clarified searches completed using terms from the complainant's paper "REPORT ON THE INTRODUCTION IN 1975/76 AND CONTINUANCE OF EARNINGS-RELATED NATIONAL INSURANCE (ER-NIC)". These returned no results, and HMT stated its searches also included the terms: "The social security act 1975" and "Graduated pension scheme".
26. HMT confirmed that if the information was held, it would be manual as it rarely holds online copies of papers produced prior to the mid-2000s. HMT also confirmed that it has no reason to believe information was held within scope of this request, and no information has been destroyed/deleted, and it has no record of any such destruction.
27. HMT stated that any records from 1975 – 1976 that were not deemed historically or culturally significant, would have been destroyed. HMT said it does not believe it ever held this information. If it was ever held by HMT, as explained above, the review for records from 1975 and 1976 was conducted in 2005 and 2006 respectively, which would have resulted in the information being transferred to TNA or being destroyed.
28. HMT provided the Commissioner with the relevant section of its records policy, and it highlighted the relevant points:
 - "once transferred to the HMT Archive Records Centre folders will be reviewed by the KIM team no later than 10 years from the date that they were closed
 - folders with enduring historical value will be sent to the National Archives no later than 20 years after they were first closed. All other folders will be destroyed".

29. With regard to a business purpose, HMT confirmed there is a business purpose to retain information such as the document requested in relation to the records management policy, and to allow HMT to carry out its business where necessary. However, as stated above in paragraph 22, HMT records over 20 years old that have been retained for historical and cultural significance, would have been transferred to TNA. HMT reiterated its full explanation as in paragraph 22 above.
30. HMT was also asked by the Commissioner about statutory requirements to retain the requested information. HMT explained that "under the Public Records Act 1958, those responsible for public records, must make arrangements for the selection of those records which ought to be permanently preserved." HMT emphasised that any records from 1975 - 1976 that were not deemed historically or culturally significant, would have been destroyed.

The Commissioner's view

31. The Commissioner, in reaching his decision in this case, has taken account of the views put forward by the complainant. He has considered HMT's actions to check whether it holds the requested information, and he accepts its reasoned and detailed account of how HMT determined that it does not hold it. The Commissioner is satisfied HMT carried out appropriate searches for the information. He finds that HMT clearly demonstrated why it does not hold this, and he is satisfied with HMT's explanation as to why the relevant information is not held.
32. The Commissioner notes the complainant's dissatisfaction with the responses from HMT, and that he strongly considers the information requested is held by HMT. The Commissioner accepts it is not the responsibility of HMT to search TNA or another government department for the requested information. He acknowledges that HMT directed the complainant to TNA's website to find further information about TNA, and for details on the process of transferring files to TNA.
33. Whilst the complainant may believe information must be held, the Commissioner has found no evidence which would indicate that HMT holds the requested information, and he sees no reason to doubt HMT's explanations.

Conclusion

34. Based on the evidence provided to him, the Commissioner is satisfied that, on the balance of probabilities, HMT does not hold information falling within the scope of the request. He is therefore satisfied that HMT has complied with the requirements of section 1(1) of FOIA in this case.

Right of appeal

35. 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

36. 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.
37. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Joanna Marshall
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF