

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 August 2024

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

Decision (including any steps ordered)

1. The complainant has requested information regarding Loan charge communications. HM Revenue and Customs ("HMRC") relied on section 12 of FOIA (cost of compliance) to refuse the request.
2. The Commissioner's decision is that HMRC was entitled to rely on section 12(1) of FOIA to refuse the request. The Commissioner also finds that HMRC complied with its section 16 obligation to offer advice and assistance.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 22 January 2024, the complainant wrote to HMRC and requested information in the following terms:

"1. Electronic copies of any communication plans to address the loan charge since 2010. For the avoidance of doubt this includes any departmental communication plans as well as bespoke ones.

2. Copies of any evaluation of the loan charge communication plans."
5. On 13 February 2024, HMRC responded. It relied on section 12 of FOIA to refuse the request – a position it upheld following an internal review.

Reasons for decision

Section 12 – cost of compliance

6. The following analysis covers whether complying with the request would have exceeded the appropriate limit.
7. 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”)
8. 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.
9. 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.
10. 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.
11. 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. 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.
12. 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.

13. 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.

HMRC's position

14. HMRC informed the Commissioner that on receipt of this request, the Corporate communication teams searched all folders labelled 'loan charge' and the Counter Avoidance team conducted searches using the terms 'DR' and 'comms plans'. It explained that 'DR' was an internal shorthand used for 'Disguised Remuneration'.
15. HMRC explained to the Commissioner that during these searches, its Corporate communication team had located 400 files which would require manual review to determine whether the information fell into the scope of the request.
16. It advised that its Counter Avoidance team had also identified a further 50 digital files which would also need to be reviewed. HMRC advised the Commissioner that the scope of the request predates the formation of the Counter Avoidance team, which means that if it were required to comply with the request, additional searches within other areas of compliance would also be necessary.
17. HMRC explained to the Commissioner that it had undertaken a sample exercise on one of the 50 files located by the Counter Avoidance directorate. It advised that within this one file, there were 19 subfolders ('tier 1'). HMRC opened the first of the 19 subfolders, which was made up of an additional 6 subfolders ('tier 2').
18. HMRC reviewed the first folder ('tier 3'), which located a further 9 documents and one additional sub folder which contained an additional 35 documents ('tier 4'). HMRC stated it took 5 minutes to review the 9 files located and an additional 15 minutes to review the 35 documents located in the tier 4 subfolder.
19. It informed the Commissioner that based on this sampling exercise, it took 20 minutes to review all the information contained in just one of the 6 subfolders. HMRC stated that if it were to assume that each of the folders held a similar number of subfolders and files, it would take 120 minutes to review all 6 of the tier 3 subfolders.
20. It would then need to make a similar assumption for the 19 remaining tier 2 subfolders, which meant that it would take around 2280 minutes/38 hours to review all the requested information within 1 of the total 450 files located by the HMRC.

The Commissioner's view

21. The Commissioner is satisfied that complying with this request would exceed the appropriate limit.
22. The sampling exercise clearly shows that of the 450 files located, there is likely a larger amount of information contained within these. HMRC have demonstrated that just reviewing one of the 450 files, would exceed the cost limit. If the Commissioner were to require HMRC to comply with the request in full, it would vastly exceed the appropriate cost and time limit.
23. For the above reason the Commissioner is satisfied complying with the request would therefore exceed the cost limit and so HMRC was entitled to rely on section 12(1) of FOIA to refuse the request.

Procedural matters

16 – advice and assistance

24. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.
25. When a public authority refuses a request because the cost of compliance exceeds the appropriate limit, it should explain, to the requester, how they could refine their request such that it would fall within that limit. In rare cases, it will be appropriate for the public authority to explain to the requester why their request cannot be meaningfully refined.
26. In this case, HMRC informed the requester that narrowing the scope of the request to a reduced period of time or a specific campaign could allow for information to be provided within the appropriate cost and time limit.
27. The Commissioner is therefore satisfied that HMRC did comply with section 16 of FOIA when dealing with this request.

Other Matters

28. The Commissioner would like to take this opportunity to respond to the complainant's reference to the public interest test in their complaint. HMRC is under no obligation to consider the public interest test under section 12(1) of FOIA.

Right of appeal

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

Website: 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.

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