

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 September 2024

Public Authority: HM Revenue & Customs
Address: 100 Parliament St
London
SW1A 2BQ

Decision (including any steps ordered)

1. The complainant has requested information relating to subject access requests ("SARs") made to HM Revenue and Customs. The above public authority ("HMRC") relied on section 44(1) of FOIA (statutory prohibition on disclosure) to withhold part of the information.
2. The Commissioner's decision is that HMRC has correctly relied upon section 44(1) of FOIA.
3. As HMRC upon internal review provided part of the requested information (the dates of the SARs) the Commissioner's decision is that it has not complied with sections 1(1)(b) and 10(1) of FOIA as it did not provide that information within 20 working days of the request.
4. The Commissioner does not require further steps.

Request and response

5. On 20 February 2024 the complainant requested the following information from HMRC:-

"Please can you provide the following information for each subject access request that is currently outstanding with HMRC:

- Internal reference number (if there are multiple this should be the one used either by any central team, or by the team processing the request)
 - Date received.”
6. HMRC responded to the request on 20 March 2024, citing section 44(1) of FOIA as a basis for non-disclosure.
 7. The complainant sought an internal review of HMRC’s handling of the request on 21 March 2024. A response to this was provided on 31 July 2024. The reviewer upheld the original decision regarding the reference numbers but provided the dates on which the subject access requests (“SARs”) were received.

Reasons for decision

8. The following analysis sets out why the Commissioner has concluded that the public authority was entitled to rely on section 44 of FOIA in this particular case.

Section 44 – Prohibitions on disclosure

9. Section 44 is an absolute exemption. This means that if information is covered by any of the subsections of section 44 it is exempt from disclosure. It is not subject to a public interest test.
10. Section 44 of the FOIA states that: (1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it – (a) is prohibited by or under any enactment, (b) is incompatible with any Community obligation, or (c) would constitute or be punishable as a contempt of court
11. HMRC has explained that sections 18(1) and 23(1) of the Commissioners for Revenue and Customs Act 2005 (CRCA) prohibit it from disclosing any information held in connection with its functions.
12. Section 18(1) CRCA states: “Revenue and Customs officials may not disclose information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs.”
13. Although there are exceptions to section 18(1) contained in sections 18(2) and (3) CRCA, section 23 of the CRCA was amended by section 19(4) of the Borders, Citizenship and Immigration Act 2009 to make clear that sections 18(2) and (3) of the CRCA are to be disregarded

when considering disclosure of revenue and customs information relating to a person under FOIA.

14. Notwithstanding the above, section 23(1) CRCA states:

“Revenue and customs information relating to a person, the disclosure of which is prohibited by section 18(1), is exempt information by virtue of section 44(1)(a) of the Freedom of Information Act 2000... if its disclosure (a) Would specify the identity of the person to whom the information relates, or (b) would enable the identity of such a person to be deduced. (2) Except as specified in subsection (1), information the disclosure of which is prohibited by section 18(1) is not exempt information for the purposes of section 44(1)(a) of the Freedom of Information Act 2000.”

12. Therefore, information prohibited from disclosure by virtue of section 18(1) CRCA (in this case, on the basis that if held, it would be held by the authority in connection with its functions) is exempt information by virtue of section 44(1)(a) of the FOIA only if its disclosure would identify a “person” or enable their identity to be deduced.

13. The complainant has stated that they do not consider section 44(1) to be applicable to their request as HMRC’s function as a data controller does not fall within sections 5-7 of the CRCA.

13. HMRC has stated to the Commissioner and the complainant that neither section 18(1) nor section 23 of the CRCA distinguishes between statutory functions explicitly conferred on HMRC or general functions/obligations shared with other public authorities and this distinction is also not made in FOIA itself. HMRC also states that section 51 of the CRCA confirms that the term “function” means “...any power or duty (including any power or duty that is ancillary to another power or duty)”. HMRC views this as the CRCA providing a wide interpretation of the term “functions”.

14. On this basis HMRC argues that information relating to any HMRC function falls within scope, such as its function as a data controller. It is of the view that if Parliament wanted to limit Section 18(1) of the CRCA to apply to only “core functions”, it would have done so.

15. In this case, the Commissioner notes that the request was for internal reference numbers of outstanding SARs with HMRC. As SARs are made by living individuals and are requests for the personal information HMRC holds about them, the withheld information relates to them and they may be identifiable from the reference numbers (a unique reference number is given to each individual request) or the reference numbers put together with other sources. The information requested by way of

the SARs is, by the nature of HMRC, highly likely to contain information about the tax affairs of those living individuals and therefore the Commissioner accepts that this would constitute revenue and customs information relating to a person or persons.

16. The Commissioner also accepts HMRC's position that the CRCA provides a wide interpretation of the term "functions" and that this covers its function as a data controller. The Commissioner therefore finds that disclosing the withheld information would reveal information held in connection with its functions and would enable the identity of the person(s) to whom it relates to be deduced.
17. In view of the above, the Commissioner finds that HMRC was entitled to rely on section 44(1) of the FOIA as a basis for non-disclosure.
18. As section 44 is an absolute exemption, the Commissioner is not required to take into account any public interest factors or the identity of the individual requesting the information.

Right of appeal

19. 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

20. 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.
21. 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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF