

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 31 October 2024

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

#### Decision (including any steps ordered)

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1. The complainant has requested information related to the Probate return forms from the HM Revenue & Customs (HMRC). HMRC said that it did not hold the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, HMRC does not hold information within the scope of the request and has therefore complied with section 1(1) of FOIA.
3. The Commissioner does not require HMRC to take any further steps.

#### Request and response

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4. On 27 October 2023, the complainant wrote to HMRC and requested information in the following terms:

*"This is a Freedom of Information Act request for information regarding copies of return of probate forms on microfiche, or digitally:*

1. *Do HMRC keep copies of return of probate forms on microfiche, or digitally, after the original paper copies have been destroyed?*
2. *How many copies are held?*

*3. How old are these copies (please give a range in years from the date when these probate documents were filed with HMRC)? How many copies are older than 21 years?*

*4. How many copies have been destroyed by HMRC after HMRC have been told they are needed for the purpose of detecting and prosecuting fraud & Accessing a Court to assert someone's ECHR Rights?*

*5. As a public authority under the Human Rights Act 1998, what rules and procedures do HMRC have in place to prevent breaches to a fraud victim's ECHR Rights by destroying information, as is HMRC's legal duty under S6 of that Act? (Please Note: Destroying information a victim needs to gain access to a Court to protect his ECHR Rights is a breach of Article 6 ECHR see KH & others v Slovakia)"*

5. HMRC responded on 8 February 2024. It stated that it did not hold information requested in parts 1 to 5 of the request. It did, however, provide advice which could assist the complainant in obtaining information he sought.
6. On the same date, 8 February 2024, the complainant requested an internal review of the response he received from HMRC. He disputed that the information he requested was not held.
7. HMRC provided an internal review on 15 March 2024 in which it maintained its original position.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 26 March 2024 as he disputed that the information he requested is not held by HMRC. He explained that, prior to making the request for information which is the subject of this case, he was told by an HMRC employee that the information was held in the microfiche format.
9. The Commissioner considers that the scope of his investigation is to determine whether, on the balance of probabilities, HMRC holds recorded information within scope of the complainant's request and therefore whether it has complied with section 1(1) of FOIA when stating that it did not hold the requested information.
10. For completeness, the Commissioner wishes to clarify that although any previous FOI requests made by the complainant to HMRC are not the subject of this decision notice, some references to a request made in 2008 have been made for context.

## Reasons for decision

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### Section 1 of FOIA – Information held / not held

11. Section 1 of FOIA states that:

Any person making a request for information 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.

12. The public authority is not obliged to create or acquire information in order to satisfy a request.

13. 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. The Commissioner is not required to challenge the accuracy or the adequacy of the recorded information a public authority does (or, in some cases, does not) hold. This is because the terms of FOIA only relate to the provision of information as it is recorded, regardless of its accuracy or validity.

14. 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, and the civil standard of proof based on the balance of probabilities, must decide whether the public authority holds any information which falls within the scope of the request (or was held at the time the request was made).

### The complainant's position

15. The complainant told the Commissioner that HMRC failed to release the information he asked for, namely two return of probate forms one of which the complainant believes to be fraudulent and therefore providing him with evidence of a criminal activity of which he became a victim.

16. The complainant explained that when he first asked HMRC for this information in 2008, HMRC confirmed that it held it but refused to disclose it citing section 18 of the Commissioners for Revenue and Customs Act 2005 (CRCA), however, in response to a new request, which is the basis of this complaint, HMRC denied holding any information within the scope of the request.

17. He further added that during a telephone conversation with HMRC he was told that copies of all returns of probate would be held on microfiche. However, this has been later confirmed by HMRC that this information was given in error.
18. The complainant therefore believes that either the information is held by HMRC or it could have been destroyed.

### **HMRC's position**

19. In its response to the complainant's original request for information, HMRC denied holding any information within the scope of the request. It confirmed the same in its internal review. It further advised the complainant that:

*"At this point in time, Probate is exclusively dealt with by HM Courts and Tribunal Service (HMCTS). The payment of Inheritance Tax (IHT) is linked to the granting of Probate in the sense that IHT needs to have been paid for Probate to be granted, but it's HMCTS that grant the Probate. HMRC had a small Probate Helpline which closed in October 2023 and then all Probate enquiries are dealt with by HMCTS. They are responsible for Probate and all related queries should be addressed to them. Details on how to contact the HM Courts and Tribunal Service can be found on their web page:*

*<https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service> "*

20. In its internal review response HMRC apologised and explained to the complainant that the information given to him regarding documents he was asked for being kept on microfiche was incorrect. It added that:

*"HMRC does not maintain or retain copies of probate documents, including probate forms, microfiche, or digital formats. The probate process and related documentation are handled exclusively by HM Courts and Tribunals Service (HMCTS). Therefore, any inquiries regarding the retention, destruction, or availability of probate forms should be directed to HMCTS."*

21. HMRC then went on to address other concerns raised by the complainant, such as number of probate forms copies held, their age and potential destruction. It again explained that it could not provide this information for the reason of not handling nor maintaining such records.
22. Regarding the complainant's concern about potential destruction of information needed for detection of fraud or assertion of rights under the European Convention on Human Rights (the ECHR), HMRC confirmed that it adheres to all relevant legislation such as Data Protection Act,

FOIA, the Human Rights Act and ECHR. However, it further reiterated that since probate documents are under the purview of HMCTS any queries about their retention or destruction should be directed there.

23. HMRC further addressed in its internal review response concerns raised by the complainant as an annotation on 'WhatDoTheyKnow' website<sup>1</sup> in relation to a form IHT205 related specifically to inheritance tax, which, although relevant to the context of the matter and information sought by the complainant, does not form part of the original request and therefore is not a subject of this complaint. However, for completeness, HMRC confirmed the following:

*"Please note that the IHT205 form is sent to HMCTS, not HMRC. If an IHT205 is inadvertently sent to HMRC, it is destroyed as these forms should only come to HMRC via HMCTS following the granting of probate. HMRC does not consider changing the domicile on a previously received IHT205 unless a full IHT400 return form is subsequently filed."*

24. In summarising its response to the complaint HMRC re-emphasised:

*"HMRC does not hold or maintain probate forms or related documentation. We recommend that you direct your inquiries regarding probate forms, their retention, and potential destruction to HMCTS, as they are the responsible authority for the probate process."*

25. Similarly, in its response to the Commissioner's investigation, HMRC confirmed that Probate matters, including the information within the scope of the request, are handled by HMCTS and that HMRC's role is strictly limited to the assessment and collection of Inheritance Tax (IHT).
26. In response to the Commissioner's specific request for clarification of the statement when HMRC said: *"At this point in time, Probate is exclusively dealt with by HM Courts and Tribunal Service (HMCTS)."*, HMRC explained that: *"While we previously operated a small Probate Helpline, solely to assist customers in completing their probate forms, this closed in October 2023, clarifying the division of responsibilities between HMRC and HMCTS."*
27. In relation to the searches conducted to determine whether any information within the scope of the request was held, HMRC explained

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<sup>1</sup> [Return of probate forms - a Freedom of Information request to HM Revenue and Customs - WhatDoTheyKnow](#)

that given its understanding of the role in probate matters and its own record management practices the searches were not deemed necessary, as such records are not held or stored by HMRC. It further added that:

*"As HMCTS is the authority responsible for probate forms and related matters, we felt it appropriate to signpost Mr Gell to HMCTS for the information he sought. We consulted senior officials in relevant departments, including within our Operations and Policy teams. These consultations confirmed that HMRC does not hold copies of probate forms on microfiche or digitally, nor do we hold any other requested information relating to probate."*

28. HMRC confirmed that it does not hold probate forms in any form either electronic or hard copies for the reasons already given and also because there is no business purpose, not currently nor historically, for HMRC to hold information related to probate forms.
29. It further clarified, referring to the point already mentioned in paragraph 25 of this decision notice and which point may have potentially created ambiguity in the understanding of the HMRC role in the probate process, that:

*"While HMRC previously operated a helpline to assist customers in completing probate forms, this service was solely for guidance purposes and did not involve any handling or retention of probate documentation. HMRC might occasionally request to see a copy of a grant but would not ask for or retain the probate forms themselves. All matters related to probate are handled exclusively by HMCTS."*

### **The Commissioner's findings**

30. In reaching his decision the Commissioner carefully considered the evidence available to him in this case, including the complainant's arguments, HMRC's response to requests for information and internal review as well as its submissions to the Commissioner's investigation.
31. The Commissioner acknowledges the complainant's dissatisfaction with HMRC's responses and the reasons why he may have believed that the information was either held but not disclosed to him or destroyed by HMRC, particularly following the information he obtained during a telephone conversation with HMRC that the information he was seeking is held in microfiche format, however, the Commissioner found no evidence supporting the complainant's assertion.
32. The Commissioner analysed HMRC's explanations and arguments and he finds it consistent and persuasive. HMRC provided detailed and thorough responses to the complainant as well as to the Commissioner, addressing concerns raised. He also notes that HMRC provided advice to

try and assist the complainant in his attempts to obtain the requested information and thus fulfilling its obligation under section 16 of FOIA (Duty to provide advice and assistance).

33. Consequently, the Commissioner is satisfied that based on the balance of probabilities, HMRC does not hold recorded information falling within the scope of the complainant's request and therefore HMRC complied with the requirements of section 1(1) of FOIA.

## **Procedural matters**

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### **Section 10 – Time for compliance with request**

34. Under section 10(1) a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of a request.
35. The Commissioner finds that HMRC responded on 8 February 2024 and therefore after over 3 months from the date of the original request made on 23 October 2023.
36. Consequently, HMRC breached section 10(1) of FOIA.
37. The Commissioner notes that HMRC acknowledged the delay and apologised to the complainant.

## Right of appeal

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38. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Gosia Kostrzewa**  
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