

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 11 November 2024

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

### Decision (including any steps ordered)

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1. The complainant has requested information relating to HMRC's use of Large Language Models and generative AI (Artificial Intelligence). HMRC refused to confirm or deny that it held the requested information, citing section 31(3) in conjunction with section 31(1)(d) (prejudice to the assessment or collection of tax or duty).
2. The Commissioner's decision is that HMRC was entitled to refuse to confirm or deny that it holds the requested information. No steps are required.

### Request and response

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3. On 14 December 2023 the complainant requested the following information from HMRC:

"Under the Freedom of Information Act 2000, I am writing to request information regarding the use of Large Language Models and generative AI [Artificial Intelligence], such as ChatGPT, by HM Revenue & Customs (HMRC), specifically within the context of the 'R&D Tax Credits Compliance Team'.

My request focuses on the following areas:

\* Implementation Details: Please provide details on how Large Language Models are currently being used within the R&D Tax Credits Compliance Team. This should include, but is not limited to, the purposes for which these models are employed (e.g., data

analysis, decision-making support, enquiry responses, penalty justifications, etc.)

\* **Model Selection and Development:** Information on the criteria used for selecting these models, any custom development or training undertaken, and the providers of these models.

\* **Data Privacy and Security:** Details on the measures in place to ensure the privacy and security of taxpayer data when using these models, including any data protection impact assessments conducted. Given the sensitive nature of R&D claims, detail should be provided if information is being uploaded relating to the claim which is then used to train language models and be available for use by private companies engaged by the Government, who own the overarching tool.

\* **Outcome and Impact Analysis:** Any available information or studies on the impact of using Large Language Models on the efficiency, accuracy, and overall outcomes of the enquiry processes within the R&D Tax Credits Compliance Team.

\* **Policies and Procedures:** Information on the policies and procedures governing the use of these models, including guidelines on human oversight and ethical considerations.

\* **Future Plans:** Details on any planned expansions or changes in the use of Large Language Models within the R&D Tax Credits Compliance Team or other departments within HMRC.

4. On 8 January 2024 HMRC issued a refusal notice citing section 31(1)(d) of FOIA (prejudice to the assessment or collection of tax or duty).
5. The complainant requested an internal review on 9 February 2024. He contacted the Commissioner on 2 April 2024 because he had not received the outcome of the internal review.
6. Following the Commissioner's intervention HMRC communicated the outcome of the internal review to the complainant on 24 May 2024.
7. At this stage HMRC provided the complainant with links to published information regarding how HM Government approaches and uses generative AI. HMRC also referred the complainant to a published

document setting out its approach to improving compliance in R&D.<sup>1</sup> HMRC upheld its reliance on section 31(1)(d) in respect of any other information which fell within the scope of the request.

## Scope of the case

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8. The complainant remained dissatisfied and asked the Commissioner to investigate.
9. During the course of the Commissioner's investigation HMRC clarified that it had reconsidered the request and now wished to neither confirm nor deny that it held information falling within the scope of the request. It claimed a late reliance on section 31(3) in conjunction with section 31(1)(d) of FOIA. HMRC confirmed that it had now informed the complainant of its change in position.
10. Therefore the scope of the case is to determine whether HMRC was entitled to rely on section 31(3) in conjunction with section 31(1)(d) in order to refuse to confirm or deny that it holds any further information which falls within the scope of the request.
11. For the avoidance of doubt, the Commissioner has not sought to establish whether the requested information is in fact held in this case. He is required to consider only whether HMRC was entitled to refuse to confirm or deny that it holds information falling within the scope of the request, over and above what has already been made available to the public.

## Reasons for decision

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### **Section 31(1)(d): the assessment or collection of any tax or duty or any imposition of a similar nature**

12. Section 31(1)(d) of FOIA provides an exemption from disclosure where this would, or would be likely to prejudice the assessment or collection of any tax or duty or any imposition of a similar nature. Section 31(3) further provides that a public authority may refuse to confirm or deny

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<sup>1</sup> <https://lifeathmrc.blog.gov.uk/2017/07/17/artificial-intelligence-and-machine-learning-exploring-the-possibilities/>

that the requested information is held to the extent that to do so would, or would be likely to prejudice this interest.

13. In order to engage a prejudice based exemption or exclusion such as section 31, there must be the likelihood that confirming or denying that information is held would, or would be likely to, cause prejudice to the interest that the exemption or exclusion protects. In the Commissioner's view, three criteria must be met:

- first, the actual harm which the public authority alleges would, or would be likely to, occur if confirmation or denial was provided has to relate to the applicable interests within the relevant exemption;
- secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential confirmation or denial and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and,
- thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie confirmation or denial 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.

14. The Commissioner's published guidance on section 31(1)(d)<sup>2</sup> sets out his view that the phrase "tax, duty or... imposition of a similar nature" is a very broad term. The Commissioner considers that the exclusion may protect information if confirmation or denial would or would be likely to prejudice the collection of tax from a particular person, or be of use to those evading tax. It may also apply if confirmation or denial would or would be likely to promote tax avoidance.

15. HMRC's position is that confirming or denying whether it holds the requested information in this particular case would assist those intent on defrauding the system. Confirming or denying whether relevant information is held would provide valuable insight into HMRC's operation of the R&D tax credit regime and strategy to deal with non-compliance. It would harm HMRC's ability to deter such fraudsters, and would make it more difficult generally for HMRC to fulfil its core function of securing revenue to the Exchequer.

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<sup>2</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-31-law-enforcement/sections-31-1-a-f-criminal-and-civil-law/>

16. HMRC provided the Commissioner with more detailed arguments which cannot be set out in this decision notice since to do so would defeat the purpose of relying on the exclusion claimed. However the Commissioner can confirm that HMRC provided arguments which demonstrated that it had adequately considered the prejudice test, including the causal link between confirming or denying that the requested information was held, and the prejudice anticipated.
17. Based on the submissions provided by HMRC the Commissioner accepts that section 31(3) is engaged in conjunction with section 31(1)(d) of FOIA. He further accepts that HMRC was entitled to claim the higher level of likelihood, ie that confirming or denying would be more likely than not to result in prejudice.

**Public interest in maintaining the refusal to confirm or deny that the requested information is held**

18. HMRC argued that there was a clear public interest in maintaining the refusal to confirm or deny that the requested information is held. It referred to its obligation to safeguard the public purse from fraudulent activity, which it considered attracted significant weight. HMRC was of the view that there was a strong public interest in protecting its ability to meet this obligation.

**Public interest in confirming or denying that the requested information is held**

19. HMRC acknowledged the general public interest in transparency and openness. It specifically recognised the need to demonstrate robust yet proportionate and effective actions which would withstand public scrutiny. It further acknowledged that confirming or denying that information was held could provide public assurance about the fairness and robust application of its compliance activities. However HMRC set out that this argument was generic rather than specific, and carried little weight when compared with the public interest in avoiding prejudice to its tax collection and compliance functions.
20. The complainant maintained that there was a strong public interest in transparency:  
  
“...transparency in the application and oversight of R&D tax relief does not inherently encourage misuse. Instead it could enhance compliance and innovation by providing clear guidelines on acceptable practices.”
21. They also suggested that:  
  
“Moreover, knowledge of HMRC’s methods to detect and prevent abuse can act as a deterrent, reducing the inclination to exploit the system”.

22. The complainant expressed concern that speculation around HMRC's use of AI could lead to "misunderstandings and distrust in the tax system". They also argued that this could give rise to "concerns over fairness, privacy, and the accuracy of assessments", which they considered could undermine public confidence.

### **Balance of the public interest**

23. The Commissioner appreciates that tax arrangements are generally a matter of substantial public interest. Taxation underpins public services which affect everyone's lives such as health, education and welfare. It is therefore understandable that the public will expect transparency in order to provide reassurance as to how tax is collected and how compliance is attained. The Commissioner is mindful of the presumption running through FOIA that openness is, in itself, to be regarded as something which is in the public interest.
24. The Commissioner further recognises the legitimate public interest in AI, which is a priority area for the ICO, owing to the potential to pose a high risk to individuals and their rights and freedoms. As the data protection regulator the Commissioner has produced guidance and documentation on various aspects of AI.<sup>3</sup> This includes compliance with accountability and transparency under UK data protection law.
25. However, when carrying out the balancing exercise in this case, the Commissioner considers that appropriate weight must be afforded to the public interest inherent in section 31(1)(d) - that is, the public interest in avoiding prejudice to the collection of tax. The Commissioner considers that this will attract considerable weight in most cases, including this one, since it is obviously a matter of significant public interest to protect the public purse from fraudulent activity.
26. In finding that section 31(3) is engaged the Commissioner has accepted that confirming that the information is held, or denying that it is held, would have detrimental consequences, either in terms of encouraging fraudulent activity to explore measures to prevent detection; or encouraging fraudulent activity on the basis such measures are not required.
27. The Commissioner has given careful consideration to the complainant's argument that public confidence requires transparency. The Commissioner accepts this as a matter of broad principle, but it is not an

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<sup>3</sup> <https://ico.org.uk/about-the-ico/what-we-do/our-work-on-artificial-intelligence/>

unqualified entitlement. Fraudulent activity and the avoidance of paying tax also has the potential to undermine public trust, since it reduces the amount of money available to deliver public services. In the Commissioner's opinion ambiguity around the information held (or not held) by HMRC serves an important purpose in that it makes it more difficult for those who intend to commit fraud to be confident about their chances of success. This ambiguity creates a powerful deterrent and thus protects the public purse.

28. In reaching his decision in this case the Commissioner has considered a confidential submission provided to him by HMRC. He may not reproduce its content in this decision notice since to do so would undermine HMRC's neither confirm nor deny stance.
29. The Commissioner is mindful that the request in this case is not about whether HMRC is using AI in broad terms. He observes that the general information signposted by HMRC indicates that it is exploring AI, but is mindful that the complainant's request specifically relates to a particular area: the R&D Tax Credits Compliance Team. The Commissioner has not seen any information in the public domain that undermines HMRC's neither confirm nor deny position with respect to this specific area.
30. For the reasons set out above the Commissioner accepts that there is a significant public interest in maintaining the refusal to confirm or deny that further relevant information is held. Although there is a legitimate public interest in confirming or denying that the requested information is held in this particular case, the Commissioner is not persuaded that it is especially compelling. Therefore he finds that the public interest in maintaining the refusal to confirm or deny clearly outweighs the public interest in confirming or denying that HMRC holds further information relevant to the request.

## **Procedural matters**

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31. Section 1(1)(a) of FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 10 of FOIA requires a public authority to comply with section 1 within 20 working days of receiving a request.
32. HMRC contravened section 10(1) in conjunction with section 1(1)(a) of FOIA in that it initially advised the complainant that it held information relevant to the request (in addition to the web links provided to the complainant). It was not until the Commissioner investigated that HMRC sought to refuse to confirm or deny that it held any further information.

33. The Commissioner wishes to emphasise that he has not made any finding as to whether HMRC does hold further information despite HMRC's previous confirmation. HMRC has since clarified that it ought to have refused to confirm or deny that it held information falling within the scope of the request.

### **Other matters**

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34. Although it does not form part of the decision notice the Commissioner wishes to express his disappointment about the time taken to complete the internal review, which in this case was over three months.
35. FOIA does not impose a statutory time within which internal reviews must be completed, albeit that the section 45 Code of Practice recommends that such reviews should be completed within a reasonable timeframe.<sup>4</sup>
36. The Commissioner expects that most internal reviews should be completed within 20 working days, and even for more complicated requests, reviews should be completed within a total of 40 working days, unless there are legitimate reasons why a longer extension is necessary.<sup>5</sup> In this case HMRC clearly exceeded 40 working days, which the Commissioner considers unreasonable.

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<sup>4</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

<sup>5</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/request-handling-freedom-of-information/#internal>



## Right of appeal

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37. 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)

38. 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.
39. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Sarah O’Cathain**  
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**Information Commissioner’s Office**  
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