

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 28 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 the Serial Tax Avoidance Regime (STAR). HMRC refused to disclose the requested information in reliance on the exemption at section 31(1)(d) of FOIA (prejudice to the assessment and collection of tax).
2. The Commissioner's decision is that the exemption is engaged and the public interest in maintaining the exemption outweighs the public interest in disclosure. The Commissioner does not require further steps.

#### **Request and response**

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3. On 5 January 2024, the complainant wrote to HMRC and requested information in the following terms:

"Schedule 18, Finance Act 2016 introduced provisions in relation to "serial tax avoidance". The provisions enable HM Revenue & Customs ("HMRC") to: (i) give warning notices to persons who incur "relevant defeats"(as defined in paragraph 11); (ii) publish information about persons if the conditions in paragraph 18 are met; (iii) issue "restriction of relief notices" if the conditions in paragraph 19 are met; and (iv) issue penalties if the conditions in paragraph 30 are met.

Please provide information in respect of HMRC's use of these powers under Schedule 18, as summarised above, since 6 April 2017; in particular, please provide me with the following information for each of the tax years ended 6 April 2017 to 2023:

(i) The number of warning notices issued by HMRC, and the number of recipients of warning notices;

(ii) The number of persons in respect of whom information was published (in accordance with paragraph 18);

(iii) The number of restriction of relief notices issued by HMRC, the number of recipients of restriction of relief notices, and the total value of the relief restricted; and

(iv) The number of penalties issued by HMRC (under paragraph 30), the number of recipients of such penalties, and the total value of the penalties imposed.”

4. HMRC responded on 30 January 2024. It confirmed that it held information within the scope of the request but stated that it was considered exempt from disclosure under section 31(1)(d) of FOIA.
5. The complainant contacted the Commissioner on 23 May 2024 to complain that they had not received the outcome of the internal review.
6. HMRC provided the complainant with the outcome of its internal review on 29 May 2024. The internal review upheld the original reliance on section 31(1)(d) of FOIA.

## Scope of the case

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7. The complainant contacted the Commissioner on 11 June 2024 to confirm that they remained dissatisfied with HMRC’s refusal to disclose the requested information. The complainant provided the Commissioner with a detailed submission in support of their complaint, which the Commissioner has carefully considered.

## 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**

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

9. 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.

10. HMRC describes tax avoidance as follows:

"Tax avoidance involves bending the rules of the tax system to try to gain a tax advantage that Parliament never intended. It often involves contrived, artificial transactions that serve little or no purpose other than to produce this advantage. It involves operating within the letter, but not the spirit, of the law."<sup>1</sup>

11. STAR, or the Serial Tax Avoidance Regime, was introduced in the Finance Act 2016. The complainant describes STAR as:

"...a regime of warnings followed by the imposition of escalating sanctions on those who repeatedly use tax avoidance arrangements that are defeated by [HMRC]."<sup>2</sup>

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<sup>1</sup> <https://www.gov.uk/guidance/tax-avoidance-an-introduction>

<sup>2</sup> <https://www.gov.uk/guidance/serial-tax-avoidance>

12. HMRC set out that disclosure of the requested information would be likely to prejudice its ability to assess and collect tax. It stated that disclosure would provide insight to those avoiding and seeking to avoid paying their fair share of tax, as well as those advising them.
13. HMRC further explained that such individuals would be likely to use the information to identify where HMRC was focusing its resources, so as to arrange their activities to reduce the risk of challenge. It would be likely to have the effect of encouraging such parties to use tax avoidance schemes, thus reducing the tax recovered by HMRC and making it more difficult to assess and collect tax.
14. The complainant set out several grounds of disagreement with HMRC's arguments. Firstly, they maintained that:

“STAR does not result in any individuals being assessed to tax. Nor does it result in tax being collected. Instead, STAR imposes a series of graduated sanctions in respect of historic conduct.”
15. The Commissioner respectfully disagrees. His published guidance on section 31(1)(d)<sup>3</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.
16. HMRC also referred the Commissioner to the First-tier Tribunal decision in *Paul Doherty v Information Commissioner and HMRC*.<sup>4</sup> In that case the Tribunal was satisfied that the section 31(1)(d) was engaged because disclosure of the information in question would result in less tax being lawfully due than would otherwise have been the case.
17. Secondly, the complainant argued that disclosure of the requested information could not result in the harm claimed by HMRC. They set out that for harm to occur, there would need to be a clear relationship

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<sup>3</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/>

<sup>4</sup> [https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i660/2012-01-25 Decision EA20110202.pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i660/2012-01-25%20Decision%20EA20110202.pdf)

between the number of STAR sanctions issued and the resources assigned to them by HMRC, in comparison with resources assigned to other activities. For example, the complainant suggested that if 1000 penalties were issued in a particular year, there would be no way of knowing whether 10 HMRC officers or 100 HMRC officers had been involved.

18. The complainant also highlighted that they were seeking historical information, which could not necessarily be used to predict future activity.
19. The Commissioner has considered this argument but does not find it persuasive. He accepts that disclosure of the requested information may or may not assist the public in assessing the resources assigned by HMRC to STAR sanctions, for example on the basis that a higher number of sanctions may suggest that more resources have been committed. However the inverse is not necessarily the case; there may be several reasons as to why a lower number of sanctions might have been issued.
20. The Commissioner further accepts that historical information does not provide a definitive indication of future activity, but the request only covers seven years of data. It is also noted that the STAR regime was only introduced seven years ago. In the Commissioner's opinion disclosure of the requested information would facilitate limited analysis but he is mindful that seven years is not particularly extensive and may not allow statistically significant conclusions to be drawn.
21. Thirdly, the complainant argued that:

"...by definition, a regime that has its purpose deterrence (of individuals engaging in tax avoidance arrangements that are defeated by HMRC) can not be undermined by the disclosure of information that, according to HMRC, may have the consequence of deterring individuals from engaging in activities that HMRC wishes to deter..."
22. The Commissioner acknowledges that part of STAR's purpose is to deter individuals from engaging in tax avoidance arrangements. However he disagrees with the complainant's position regarding undermining that deterrent. It is obvious that, in theory at least, disclosing information about the consequences of attempting tax avoidance should deter individuals from attempting tax avoidance (and thus suffering those consequences). However, this is not the only outcome that would result from disclosure. HMRC has set out its concerns that disclosure may also have the unwanted consequence of encouraging attempts at tax avoidance, which would be harmful to HRMC's ability to collect tax.

23. In light of the above, and having considered all of the arguments put forward, the Commissioner is satisfied that the prejudice identified by HMRC is relevant to the particular interest that section 31(1)(d) is designed to protect, specifically the collection of tax. He is also satisfied that HMRC has demonstrated a causal relationship between the disclosure of the information at issue and the prejudice that section 31(1)(d) is designed to protect.
24. In relation to the level of prejudice, HMRC confirmed to the Commissioner that it was relying on the lower threshold, ie disclosure would be likely to have the prejudicial effect identified. The Commissioner considers that the lower threshold places a weaker evidential burden on a public authority to discharge than that relating to the higher threshold (would prejudice).
25. Again, the Commissioner is mindful of the subject matter of the request, and the detailed nature of the withheld information. He accepts HMRC's position that prejudice would be likely, but is not necessarily more likely than not. In any case the likelihood of prejudice occurring must be more than a hypothetical possibility. Rather, there must be a real and significant risk, which the Commissioner accepts has been made out in this case. Therefore he is satisfied that the exemption is engaged on the basis of the lower threshold of "would be likely to" prejudice.

### **Public interest in favour of disclosure**

26. HMRC acknowledged the strong public interest in ensuring that HMRC is accountable for its activities and is as transparent as possible about the way it applies its resources. It recognised that disclosure of the requested information would reassure that public that its compliance activities are fair and robust, and applied equitably across the range of customers.
27. The complainant asked the Commissioner to consider their grounds of complaint relating to prejudice as part of the public interest test, which he has done.
28. The complainant raised further public interest arguments in favour of disclosure. They pointed out that HMRC routinely publishes information regarding its compliance activities in annual reports.<sup>5</sup> This includes

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<sup>5</sup> For example, <https://www.gov.uk/government/publications/hmrc-annual-report-and-accounts-2023-to-2024>

“naming and shaming” tax avoidance promoters and publishing the number of “stop notices” issued in respect of such schemes.

29. Finally the complainant argued that the public interest in disclosure outweighed any harm that might be caused (although they disputed that harm would be caused). They maintained that:

“There is a strong public interest in understanding the ways in which HMRC conducts itself, particularly with regard to the use of powers that it has been granted fairly recently, such as STAR.”

### **Public interest in favour of maintaining the exemption**

30. HMRC considered that there was a strong public interest in maintaining the exemption at section 31(1)(d). It reiterated that STAR is designed to be a deterrent to behaviour that reduces revenue to the exchequer and disadvantages honest taxpayers, who pay the correct amount of tax.
31. HMRC maintained that there is clearly a public interest in preserving the efficiency of a regime that protects revenue to the exchequer. It went on to argue that disclosing the requested information, and thus encouraging tax avoidance, would deprive the UK of the money it needs to fund vital public services. It would also undermine public confidence in the fairness of the tax system, as well as increasing the burden on HMRC in tackling tax avoidance. HMRC argued that this would not serve the public interest.
32. HMRC acknowledged the complainant’s argument that it published information about identified tax avoidance schemes, promoters, enablers and suppliers. However HMRC was of the view that these disclosures were sufficient to meet the public interest, and that the harm caused by disclosure would be disproportionate to any public benefit.

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

33. The Commissioner is mindful that the fact that a prejudice-based exemption is engaged is not in itself conclusive evidence that information should be withheld. Rather, the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption in question outweighs the public interest in disclosure. The exemption is qualified because Parliament anticipated that there would be some cases where it is right to disclose information even though prejudice would, or would be likely to, occur.
34. The Commissioner has thoroughly examined the arguments put forward by the complainant and HMRC. He notes the presumption running through FOIA that openness is, in itself, to be regarded as something

which is in the public interest. He recognises that disclosure of the requested information would demonstrate transparency and accountability on the part of HMRC.

35. However, the Commissioner does not consider that substantial weight may be attached to the public interest in disclosure of the specific requested information in this case. Having inspected the requested information he is not persuaded that its disclosure into the public domain would be informative as to the efficacy or otherwise of the STAR regime as a deterrent.
36. Conversely, the Commissioner is of the opinion that there is a compelling public interest in protecting HMRC's ability to ensure that correct taxes are collected from those who are required to pay them. The Commissioner notes that the weight of the prejudice test carries over to consideration of the public interest. In this case the Commissioner has accepted the lower threshold of "would likely to prejudice". Nevertheless he accepts that there is a clear, significant public interest in protecting HMRC from the prejudice identified.
37. Encouraging, or failing to deter, those who wish to avoid paying their fair share of tax, is not, in the Commissioner's opinion, in the public interest. The Commissioner has accepted that disclosure of the requested information would be likely to have this harmful consequence, and he is mindful that the state of public finances, and public services, is of concern to everyone. Accordingly the Commissioner finds that the public interest in maintaining the exemption at section 31(1)(d) outweighs the public interest in disclosure.

## **Other matters**

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### **Internal review**

38. Although it does not form part of this notice the Commissioner would like to note the following matter of concern. FOIA does not prescribe a time limit within which public authorities must complete internal reviews. However, the Commissioner's guidance<sup>6</sup> sets out his view that an internal review should take no longer than 20 working days in most cases, or 40 working days in exceptional circumstances.

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<sup>6</sup> <https://ico.org.uk/for-organisations/foi/guide-to-managing-an-foi-request/#20>



39. In this case the complainant requested the internal review on 21 March 2024, but HMRC did not provide the outcome of the internal review until 29 May 2024. This exceeds even the 40 working days that the Commissioner considers acceptable (although not desirable) in the most exceptional cases. The Commissioner is not aware of any exceptional circumstances in this case that would justify the time taken. He would expect HMRC to take steps to ensure that future internal reviews are conducted as promptly as possible.

## Right of appeal

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40. 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)

41. 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.
42. 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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