

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 December 2024

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

Decision (including any steps ordered)

1. The complainant has requested information in relation to payments made by HM Revenue and Customs (HMRC) under section 194 of the Legal Services Act 2007. HMRC provided some information, it 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. The Commissioner also found that HMRC complied with the requirements of section 10.
4. The Commissioner does not require further steps.

Request and response

5. On 8 April 2024, the complainant wrote to HMRC and requested information in the following terms:

"Please advise of the quantum of each of the following types of payment(s) (if any) made by HMRC (as set out in Table A) in each of the periods as set out in Table B.

TABLE A

- payments under section 194 of the Legal Services Act 2007
- payments under section 194A of the Legal Services Act 2007
- payments under section 194B of the Legal Services Act 2007
- in relation to each of the above three statutory provisions, payments agreed to be paid by HMRC without a formal order from the relevant court/tribunal (i.e. in anticipation of such an order and/or to compromise an application or proposed application for such an order)

TABLE B

- payments made in the period 1 April 2022 to 31 March 2023
 - payments made in the period 1 April 2023 to 31 March 2024.”¹
6. HMRC responded on 7 May 2024. It explained that for four parts of the request the figure was 'nil'. It withheld the further two parts citing section 44(1)(a) of FOIA.
 7. HMRC provided an internal review on 25 June 2024 which maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 27 June 2024 to complain about the way their request for information had been handled.
9. Specifically, they disagreed with the application of section 44(1)(a) to refuse to provide the withheld information. They also complained about the time taken by HMRC to respond to the request. The complainant contended that the response provided on the last day of the 20 working day period cannot be considered as being prompt.
10. The Commissioner considers that the scope of his investigation is to determine whether HMRC was entitled to rely on section 44(1)(a) of FOIA to refuse disclosure. He has also considered whether HMRC complied with section 10 of FOIA.

¹ The Commissioner understands that this request specifically sought payments made to the Access to Justice Foundation.

Reasons for decision

Section 44 - Prohibitions on disclosure

11. Section 44 of 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.”

12. Section 44 of FOIA is an absolute exemption. This means that if information is covered by any of the subsections of section 44 it is exempt from disclosure.

13. Section 44 is not subject to a public interest test.

The complainant's position

14. The complainant, in their internal review request, disputed that the withheld information could lead to a person or person's to be identified.

15. They stated that “no person is identified or capable of identification by disclosure of a sum (or sums) of money.”

HMRC's position

16. HMRC cited the Commissioners for Revenue and Customs Act 2005 (CRCA). This prohibits the disclosure of information held by HMRC in connection with one of its functions (section 18(1) of CRCA) and provides that where information relates to a person (whether a natural person or legal person) it will be exempt from disclosure under FOIA if disclosure would specify that person's identity or enable their identity to be deduced (sections 19(2) and 23(1) of CRCA).

17. HMRC explained in both its response and internal review that “the information is held in connection with our functions because it relates to payments made by HMRC under the named act. Secondly, the request identifies information relating to an individual taxpayer, as the figures requested are for payments made by HMRC to recipients. The section

44(1)(a) FOIA exemption is therefore engaged and the information requested cannot be released under this act.”

18. In its refusal notice HMRC provided some information to the complainant, it explained that for four parts of the request the figure was 'nil'. It withheld the remainder of the information due to the low number of recipients involved. HMRC argued that the low number, alongside the sub sections it has provided, could result in a figure relating to a single person therefore identifying that person.

19. In its internal review HMRC further explained the significance of the low numbers alongside the provided information. It said:

“I consider that the disclosure of an aggregate figure, where some of the separate elements are known could result in a figure relating to a single person being deduced, contrary to section 23(1)(b) CRCA.”

20. HMRC went on to cite a previous Tribunal decision which found in favour of this approach in similar circumstances EA/2023/0164 Gary O'Shea vs Information Commissioner and HM Revenue & Customs:

“The Tribunal agrees with HMRC’s analysis of the interaction between that statutory duty and the rights of information requesters under the FOIA: It is not necessary for HMRC to demonstrate that an information requester or any other person would be in a position to identify a person to whom requested information relates in order to withhold that information in reliance on section 23 of the CRCA. It is merely necessary to show that a person (a legal entity) would be in a position to identify the person to whom the requested information relates. This would also include self identification.”

21. The decision notice² in the Tribunal case refers to the point of self identification:

“HMRC acknowledges that the complainant in this case is unlikely to be able to identify the individual with the highest value ISA through disclosure of just the financial amount. However, HMRC pointed out that the account holder would be able to identify themselves from disclosure of the value of their ISA. In addition, HMRC considers it probable that bank staff where the ISA is held would be able to identify the individual concerned and possibly friends and family of the account holder.”

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4024706/ic-208169-p5h2.pdf> - paragraph 14

The Commissioner's position

22. The Commissioner has previously agreed that disclosure of information relating to the tax affairs of a particular person (where the term "person" refers not just to living individuals but also companies or charitable trusts) will breach the CRCA in circumstances where the person is identifiable, either directly from the information or indirectly from other sources.
23. The Commissioner is satisfied that the requested information is clearly held by HMRC in connection with its functions, in particular payments made by HMRC under the named act. Therefore, the information falls under section 18 of the CRCA and is prohibited from disclosure.
24. The Commissioner must now consider if disclosure would, as section 23(1) of the CRCA states, identify the person or persons to whom the information relates.
25. Whilst he has not seen the withheld information, the Commissioner is satisfied that in this case, disclosure would identify persons to whom the information relates, namely the payment recipients. This is because of the significantly low numbers HMRC has advised being provided alongside the accompanying disclosed information.
26. Furthermore, the Commissioner considers that, in this case, given the small amount of people the information relates to, the point of self identification is sufficient to meet the test at section 23(1)(b) of the CRCA.

Section 10 - Time for compliance with request

27. In their request for an internal review and in their complaint to the Commissioner the complainant complained about the length of time HMRC took in providing a response.
28. They argued that:

"HMRC failed to provide their response to me "promptly". Instead they left it till 20 working days after my request. The response given could have been reasonably provided far earlier."
29. The Commissioner appreciates the concern raised by the complainant and is mindful that his guidance³ considers an interpretation of a prompt response, to which the complainant also refers. However, to determine

³ [Time limits for compliance under the Freedom of Information Act \(Section 10\) | ICO](#)

whether the breach has taken place, he has to consider specific circumstances of the case.

30. Given that HMRC would need time to consider the request and conduct searches, the Commissioner does not consider that the public authority breached section 10 of FOIA.

Right of appeal

31. 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

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Jonathan Slee
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