

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 December 2024

Public Authority: HM Revenue and Customs
Address: 10 South Colonnade
London
E14 4PU

Decision (including any steps ordered)

1. The complainant requested information relating to section 684 of the Income Tax (PAYE) Regulations (ITEPA). HM Revenue and Customs (HMRC) provided some information in response to the request but said that there is no right to invoke gross pay under section 684 ITEPA 2003.
2. The Commissioner's decision is that on the balance of probabilities HMRC does not hold further information within the scope of the request and has therefore complied with section 1(1) of FOIA.
3. The Commissioner does not require further steps to be taken by HMRC.

Request and response

4. On 2 March 2024, the complainant wrote to HMRC and requested information in the following terms:

"I am writing to you under the Freedom of Information Act 2000 to request information regarding the procedures and obligations related to invoking the right to gross pay under Section 684 of the Income Tax (PAYE) Regulations, as referenced in my communication with HMRC.

Specifically, I seek clarity on the following points:

1. What steps, forms, or information are required for a taxpayer or employer to invoke the right to gross pay under Section 684 of

the Income Tax (PAYE) Regulations? Are there specific forms or documentation that need to be completed, and if so, could you provide copies or direct me to where they can be obtained?

2. Does an employer have an obligation to fulfil the request of an employee or payer seeking to invoke the right to gross pay under Section 684? If so, could you please outline the employer's obligations in this regard?
3. Does an employer hold any obligation to inform employees about the process for facilitating gross payment under Section 684 of the Income Tax (PAYE) Regulations? If so, what are the employer's responsibilities in ensuring that employees are aware of their rights in this matter?
4. Furthermore, I would appreciate it if you could provide any relevant guidance documents, official publications, or links to online resources that detail the procedures and requirements for invoking the right to gross pay under Section 684.

I understand that some of the information I am requesting may be sensitive or subject to exemptions under the Freedom of Information Act. However, I would like to assure you that I am making this request in good faith and solely for the purpose of obtaining a better understanding of my rights and obligations as a taxpayer or employer under the relevant tax legislation”.

5. HMRC responded on 3 April 2024 and provided an explanation of how it interpreted the complainant’s request. It stated that:

“The requirement for Pay As You Earn (PAYE) to be operated on employment income is laid out in the Income Tax (Earnings and Pensions) Act 2003 (ITEPA). S684 ITEPA 2003 does not provide a right for an individual to insist on receiving gross pay and there is no corresponding requirement for an employer to consider a request for gross pay”.

6. The complainant requested for an internal review on 16 April 2024 stating that HMRC had failed to provide answers to specific questions they had raised in their original request. They clarified that their request specifically related to the steps, forms and procedures required for a taxpayer or employer to exercise the right to gross pay under section 684.
7. HMRC responded to the internal review on 11 July 2024, and maintained its original position. HMRC also provided a response to the complainant’s specific questions reaffirming that its original response was correct.

Scope of the case

8. The complainant contacted the Commissioner on 2 August 2024 to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of his investigation is to determine whether on the balance of probabilities HMRC acted in accordance with section 1 of FOIA.

Reasons for decision

Section 1- information held or not held

10. Section 1 of FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request and if so, to have that information communicated to them.
11. A public authority is not obliged to create or acquire information in order to satisfy a request. 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.
12. In this case the fundamental dispute is that the complainant is of the view that HMRC's response lacks specific answers to their queries. HMRC stated that the response it provided was correct and that it provided answers to all the complainant's questions.

The complainant's position

13. The complainant disputed the response they had received from HMRC. During the Commissioner's investigations, they stated:

"The key points of my complaint are as follows:

1. Insufficient Clarity: HMRC provided general information about PAYE obligations but failed to directly address the specific procedures, forms, and steps necessary for invoking the right to gross pay, as outlined in my original request. This lack of specificity leaves me without essential information regarding my rights and obligations.

2. **Misinterpretation of My Request:** It appears that HMRC may have misunderstood the context and focus of my request. I sought detailed clarification on employer obligations and employee rights under Section 684, but their response did not engage with these critical aspects.
3. **Failure to Acknowledge My Rights:** By not providing a comprehensive response, HMRC has not fulfilled its statutory duty to provide information or to outline any valid exemptions applicable to my request. This undermines the principles of transparency and accountability integral to the Freedom of Information Act.
4. **Lack of Guidance and Resources:** I specifically requested guidance documents or resources that could clarify the processes and requirements for invoking gross pay under Section 684. The absence of such information in their response is concerning.

Given these points, I believe that HMRC has not adequately complied with the requirements of the Freedom of Information Act. I respectfully ask that you investigate this matter and consider the implications of HMRC's actions in relation to my legal right to access information."

HMRC's position

14. During the Commissioner's investigations, he asked that as part of its submissions, HMRC provides its response to the complainant's concerns above.
15. HMRC's position is that it has fulfilled its obligations under the FOIA in full in relation to the complainant's request. It maintained that there is no further information within scope of the request that could be disclosed to the complainant.
16. HMRC have argued that in both the original response and internal review response, it advised the complainant that section 684 of ITEPA does not provide a right for individuals to receive gross pay. HMRC maintained that all of the complainant's questions were addressed including the fact that there are no documents that exist. HMRC stated that it provided additional information about related aspects of the PAYE system in order to provide advice and assistance.
17. HMRC believed it interpreted the complainant's request correctly and explained clearly that there are no such provisions under section 684 ITEPA. It argued that, in their internal review request, the complainant did not suggest that HMRC had misinterpreted their information request. HMRC reiterated that no guidance or resources exist because the right to invoke gross pay does not exist.

18. HMRC stated that the complainant's original request was clearly focused and that no amount of advice and assistance would have enabled them to make a request that would produce information confirming the right to invoke gross pay or telling them how to do this.
19. It added that it provided related guidance and procedures to follow should the complainant be successful in persuading their employer to pay the tax they are liable for on their notional earnings on their behalf. HMRC explained that that this would not result in the complainant receiving gross pay and this is not a right that they are able to invoke but an arrangement they may come to with their employer with the agreement of both parties.

The Commissioner's findings

20. The Commissioner notes that the complainant considers HMRC should hold information within the scope of the request as they believe the information is relevant to HMRC's work and functions. However, the Commissioner is satisfied that HMRC's response to the complainant's request is reasonable and relevant to the scope of the complainant's request.
21. While the complainant may not be satisfied with HMRC's response to their request, it is essential to note that HMRC informed them that there is no right to gross pay under section 684 ITEPA 2003 and there are no relevant documents, official publications or links or online resources that detail the procedures and requirements for invoking the right to gross pay under the Act.
22. The Commissioner considers that HMRC has taken the necessary steps to assist the complainant by providing its explanation and responses to their request. The Commissioner is not required to prove beyond doubt that HMRC do or do not hold information but can only make a decision based on the civil standard of the "balance of probabilities" that information within the scope of the request is more than likely not held.
23. Therefore, the Commissioner's decision is that, on the balance of probabilities, HMRC does not hold information within the scope of the request.

Right of appeal

24. 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

25. 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.
26. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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