

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

### **Decision notice**

**Date:** 25 March 2025

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

### **Decision (including any steps ordered)**

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1. The complainant has requested correspondence provided to HM Revenue & Customs (HMRC) in relation to a specific case. HMRC refused to confirm or deny whether it held the requested information and cited section 44(2) (prohibitions on disclosure) of FOIA.
2. The Commissioner's decision is that HMRC has correctly relied upon section 44(2) of FOIA to neither confirm nor deny holding the information.
3. The Commissioner does not require further steps.

### **Request and response**

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4. On 19 July 2024, the complainant wrote to HMRC and requested information in the following terms:

"I write to make a request under the Freedom of Information Act. I request a copy of the correspondence and advice provided by a computer/software specialist to HMRC caseworker [name redacted] under case reference [redacted]. This is within the Wealthy/Mid-Sized Business Compliance team of HMRC under postcode BX9 1LH."
5. HMRC responded on 13 August 2024. It stated that it can neither confirm nor deny whether it holds the information requested. HMRC cited section 44(2) of FOIA and explained that this is because the

complainant is seeking information which, if held, would be prohibited from disclosure by other legislation. In this case section 23(1) of the Commissioners for Revenue and Customs Act 2005 (CRCA)<sup>1</sup>.

6. The complainant requested an internal review on 13 August 2024. HMRC provided an internal review on 10 October 2024 in which it maintained its original position.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 1 October 2024 to complain about the way their request for information had been handled.
8. Specifically, the complainant was not satisfied that HMRC correctly determined that the information requested related to section 18(2)(c) and (h) of the Commissioners for Revenue and Customs Act 2005. They considered that HMRC, therefore was not entitled to apply section 44(2) to neither confirm nor deny holding the information.
9. The complainant also highlighted that they had not received a response to their request for an internal review made on 13 August 2024. The Commissioner has addressed this in the 'Other matters' section of this decision notice.
10. The Commissioner considers that the scope of his investigation is to determine whether HMRC was entitled to rely on section 44(2) to neither confirm nor deny holding the requested information.

## **Reasons for decision**

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### **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 assimilated obligation, or

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2005/11/section/23>

(c) would constitute or be punishable as a contempt of court.”

(2) The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1)

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.

### **The complainant's position**

13. In their internal review request, the complainant challenged HMRC's application of section 18(2) and (h)<sup>2</sup> of the Commissioners for Revenue and Customs Act (CRCA) 2005. They stated:

“Section 23 of CRCA 2005 can only be engaged to prohibit a disclosure request under the FOIA 2000 should section 18(1) of the same act apply but for subsection 2.”

### **HMRC's position**

14. HMRC considers that the information requested, if held, would be prohibited from disclosure by virtue of the Commissioners for Revenue and Customs Act 2005 (CRCA)<sup>3</sup> and, therefore would fall within paragraph (a) of section 44(1) of FOIA.
15. Section 18(1) of CRCA states that HMRC officials may not disclose information which is held by HMRC in connection with one of its functions. The information requested, if held, would be done so in connection with a function of HMRC because it relates to correspondence between an identified customer and the department in relation to the general management and collection of taxes.
16. HMRC stated for the purposes of FOIA, section 18(1) only acts as a statutory prohibition where section 23(1) of CRCA is also satisfied.

“Revenue and customs information relating to a person, the disclosure of which is prohibited by section 18(1) is exempt information by virtue of section 44(1)(a) of FOIA if disclosure-

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<sup>2</sup> <https://www.legislation.gov.uk/ukpga/2005/11/section/18>

<sup>3</sup> <https://www.legislation.gov.uk/ukpga/2005/11/contents>

- (a) Would specify the identity of the person to whom the information relates, or
  - (b) Would enable the identity of such a person to be deduced.”
17. HMRC further explained that the CRCA states the term “person” includes both natural and legal persons therefore includes entities such as companies, trusts and charities. Where the answer to both questions above is “yes”, section 44(1)(a) of FOIA is engaged and removes any possibility of disclosure under the act.
18. HMRC explained that in confirming or denying that it holds information within scope of the request, it would be disclosing information about the named entities.
19. In its internal review response, HMRC addressed the complainant’s reference to the provisions at section 18(2) as a reason why section 44 is not applicable. HMRC explained that “such provisions or gateways usually only permit disclosure for specific purposes, e.g. for legal proceedings.”
20. HMRC further explained that in the circumstances of this case, the gateways are not applicable as a request made under FOIA results in release of information to the world at large, regardless of the purpose or reason for the request. As a result, even if the requester was a party to legal proceedings, this would not be relevant when considering a request under FOIA because, the disclosure under FOIA would be to the world at large and not solely to the requester.
21. HMRC stated:
- “This position was made clear with respect to HMRC information when section 23 was amended (at section 23(1A)) by section 19(4) of the Borders, Citizenship and Immigration Act 2009<sup>4</sup>, providing that sections 18(2) and (3) CRCA are to be disregarded when considering disclosure of revenue and customs information relating to a person under FOIA.
- This amendment removed any discretion for HMRC to disapply its duty of confidentiality when considering a request under the FOIA.”
22. HMRC went on to explain that given disclosure under FOIA is to the general public it must consider the impact of merely confirming or denying whether the information is held as, that in itself, would disclose prohibited information.

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<sup>4</sup> <https://www.legislation.gov.uk/ukpga/2009/11/section/19>

23. On this basis, HMRC maintained its position to rely on section 44(2) of FOIA.
24. In its refusal notice HMRC directed the complainant to its 'Information Disclosure Guide', and said it might be useful as it explains the limited circumstances in which HMRC can lawfully disclose taxpayer information.

### **The Commissioner's position**

25. The Commissioner acknowledges the complainant's position in relation to the provisions at section 18(2) as a reason for the section 44 exemption not being applicable. That is to say, the complainant argues that "HMRC FOI team had erred in their decision on the basis the request made is in relation to s18(2)(c) and (h). Section 23 of the CRCA 2005 can only be engaged to prohibit a disclosure request under the FOIA 2000 should s18(1) of the same act apply but for subsection 2"
26. Section 18 states 'Revenue and Customs officials may not disclose information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs'
27. Section 2(c) states: 'subsection 1 does not apply to a disclosure which is made for the purposes of civil proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Revenue and Customs have functions'.
28. Section 2(h) states: 'subsection 1 does not apply to a disclosure which is made with the consent of each person to whom the information relates'.
29. The Commissioner recognises that the complainant may consider they have consent from parties whom the information relates, equally they may consider the information to part of civil proceedings.
30. However, the Commissioner is satisfied that, gateways section 2(c) and (h), referred to are not applicable in this case given that the request has been made under FOIA and therefore, would be a disclosure to the world at large.
31. The Commissioner is also satisfied that confirming or denying whether the requested information is held is prohibited under section 23(1) CRCA. This is because, to confirm or deny would reveal information held in connection with a function of HMRC.
32. It is the Commissioner's position that HMRC has satisfactorily established the criteria set out in section 23, which is clearly met in this case.
33. Section 44 is an absolute exemption which is not subject to the public interest test in section 2(1)(b) FOIA.

34. In conclusion, the Commissioner's decision is that HMRC was entitled to rely on section 44(2) of FOIA.

### **Other matters**

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35. The Commissioner notes that in this case the complainant requested an internal review on 19 July 2024. Following the Commissioner's intervention, HMRC provided its internal review on 10 October 2024.
36. There is no obligation under FOIA for a public authority to provide an internal review process. However, it is good practice to do so, and where an authority chooses to offer one, the code of practice established under section 45 of FOIA sets out, in general terms, the procedure that should be followed.
37. The code states that reviews should be conducted promptly and within reasonable timescales. Therefore, Internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances and, in no case should the internal review exceed 40 working days.
38. In this case HMRC took significantly longer than 40 working days to provide an internal review. Given that this type of request is one that HMRC handles regularly, it is not apparent why the internal review would take longer than the 20 working days.
39. The Commissioner considers that in failing to conduct an internal review within the timescales set out above, HMRC has not acted in accordance with the section 45 code.

## **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.

**Stacey Edwards**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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**SK9 5AF**