

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **9 August 2021**

Public Authority: HM Revenue and Customs

Address: 100 Parliament Street
London
SW1A 2BQ

Decision (including any steps ordered)

1. The complainant asked the public authority whether there was a statutory obligation on all public bodies to report tax evasion to the public authority. The public authority advised the complainant that it did not hold recorded information matching the request.
2. The Commissioner's decision is that on the balance of probabilities, the information requested by the complainant is not held by the public authority.
3. No steps are required.

Request and response

4. On 8 December 2019 the complainant submitted a request for information to the public authority in the following terms:

"Please could you provide copies of any policies or guidance relating to the reporting of tax avoidance or evasion to HMRC. In particular, please could you confirm whether all public bodies have a duty to report all suspected tax avoidance or evasion to HMRC?"

5. The public authority provided its response on 2 January 2020. It refused to comply with the request on the basis of the exemption at section 21 FOIA (information reasonably accessible to an applicant). It referred the complainant to the link below which explains how to report fraud (including tax evasion) to the public authority.

<https://www.gov.uk/government/organisations/hm-revenue-customs/contact/report-fraud-to-hmrc>

6. The public authority added that public bodies are not subject to any other process and this guidance applies to all regardless of whether they are an individual, business or organisation.
7. The complainant requested an internal review of this decision on 14 January 2020 in the following terms:

"Your response provides links on how to report tax evasion but doesn't answer the question on whether there is an existence of a statutory duty on public bodies to report tax evasion. I'd be grateful if you would answer this question as part of your internal review."
8. On 24 March 2020 the public authority wrote to the complainant with details of the outcome of the review. The review upheld its response to the request submitted by the complainant on 8 December 2020. The review further concluded that the following question: "whether there is an existence of a statutory duty on public bodies to report tax evasion..." was a new request for information and that the public authority was entitled to refuse to comply with this request on the basis of section 12(1) FOIA.
9. On 1 April 2020 the complainant wrote to the public authority disputing the application of section 12(1) FOIA. The public authority did not respond, presumably because it considered that it had issued an adequate explanation.

Scope of the case

10. The complainant contacted the Commissioner on 17 May 2020. He complained that the public authority had refused to provide him with all of the information he had requested.
11. On 8 December 2020 the Commissioner advised the complainant that she considered the scope of her investigation was to consider whether the public authority was entitled to rely on section 12(1) FOIA to refuse the request that the complainant submitted on 14 January 2020. The complainant did not respond.
12. However, during the course of the Commissioner's investigation, the public authority initially withdrew its reliance on section 12(1) and sought to rely instead on section 12(2) FOIA¹. The public authority subsequently withdrew its reliance on section 12(2) on the basis that it did not hold the information requested by the complainant on 14 January 2020.
13. On 30 April 2021 the Commissioner advised the complainant of the new scope of her investigation along with her findings with a view to informally resolving the complaint without issuing a decision notice. The complainant did not respond and instead lodged an appeal with the First-tier Information Rights Tribunal. In response, the Commissioner offered to serve a decision notice, which the complainant accepted following the issuance of case management directions.
14. This notice sets out the Commissioner's decision with respect to whether the public authority was entitled to conclude that it did not hold recorded information matching the following question submitted by the complainant on 14 January 2020: "whether there is an existence of a statutory duty on public bodies to report tax evasion..."

¹ Section 12(2) FOIA exempts a public authority from complying with the duty in section 1(1)(a) FOIA to confirm or deny whether it holds requested information if complying with section 1(1)(a) would exceed the appropriate limit.

Reasons for decision

Section 1(1) FOIA – General right of access to information

15. When a public authority claims that the information requested by an applicant is not held, the Commissioner will decide whether this is the case relying on the civil burden of proof; ie on the balance of probabilities. She will reach a decision based on the adequacy of the public authority's search for the information and/or any other reasons explaining why the information is not held.

Public authority's position

16. The public authority's submissions are summarised below.
17. It should be pointed out from the outset that the request is wide-ranging in that it does not pertain to action taken by the public authority but rather the duties of all other public bodies to report instances of tax evasion to the public authority.
18. The public authority holds information sharing agreements which allow public bodies to provide it, along with other law enforcement agencies, with information relating to suspected offences. However, these agreements do not impose a statutory duty on these public bodies to report tax evasion or other suspected offences. It is possible that within the related correspondence to these agreements there could be reference to a body's obligation to report suspected offences but this cannot be confirmed.
19. In any event, the public authority does not hold information matching the request. The complainant appears to be seeking an overarching policy or obligation on public bodies to report tax evasion. The Cabinet Office rather than HMRC is the correct department to respond to such a request. There are in excess of 300 public bodies² in the UK and information relating specifically to the statutory duties of those bodies would be held by those bodies themselves.
20. The Directory of Civil Service Guidance suggests that there is a professional duty rather than statutory duty on public bodies to report

² The Commissioner notes that the meaning of "public bodies" is set out the [Public Bodies Handbook](#) – Part 1 published by the Cabinet Office

offences. Whilst this would include tax evasion, it is not specific to such. The relevant paragraph states:

"Civil servants who believe that they have information (including documents) which may be relevant to planning or committing a criminal offence, or to the investigation or prosecution of a criminal offence or to the defence, have a general professional duty to draw this fact to the attention of the appropriate authorities."

Commissioner's considerations

21. In the Commissioner's view, it is necessary to initially determine whether the request was for an overarching statutory obligation on all public bodies to report tax evasion.
22. In his original request of 8 December 2019, the complainant asked the public authority to "...confirm whether **all** public bodies have a duty to report all suspected tax avoidance or evasion to HMRC..." Subsequently, on 14 January 2020, the complainant added: "Your response...doesn't answer the question on whether there is an existence of a statutory duty on public bodies to report tax evasion..."
23. In light of the wording of the complainant's requests of 8 December 2019 and 14 January 2020, the Commissioner finds that the request was for an for an overarching statutory obligation on public bodies to report tax evasion.
24. Strictly speaking, the inclusion of "statutory" in the correspondence of 14 January 2020 constitutes a new request. A duty to act might not necessarily be a statutory duty. In addition, only tax evasion is mentioned in the correspondence of 14 January. However, it would not be unreasonable in the circumstances to have treated this correspondence as a clarification of the meaning of "duty" in the original request rather than as a new request for information.
25. The public authority has information sharing agreements (which may or may not refer to statutory obligations) with individual public bodies pursuant to its responsibility for the collection of taxes. This would seem reasonable given the different considerations likely to apply to different public bodies. The public authority has also provided a link to a page on its website which explains how any individual or organisation could report suspected cases of fraud including tax evasion.
26. The public authority should be able to know whether it holds information on a statutory obligation on all public bodies to report tax evasion to the authority and, if it does, it would be reasonable to expect it to have that information readily accessible given the legal implications. However, the public authority says it is not aware of and does not hold information on

such a statutory obligation on all public bodies. Rather, in addition to the information sharing agreements it has with individual public bodies, there is a professional duty on civil servants to report suspected offences (including tax evasion) to the appropriate bodies and, any individual or organisation is able to report suspected cases of fraud (including tax evasion) to the public authority.

27. The Commissioner has found no reason to dispute the public authority's submissions. Consequently, the Commissioner finds that on the balance of probabilities, the public authority does not hold recorded information matching the complainant's request.

Right of appeal

28. 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

29. 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.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed.....

Terna Waya
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