

Mr Frank McLaughlin
by email to:

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Our Ref FOI 1699/09

Your Ref

Dear Mr McLaughlin

Freedom of Information Act 2000 – Request for Review**Introduction**

Thank you for your email dated 14 July 2009, in which you ask for an internal review of your Freedom of Information Act (FOIA) request. In your email you contend that HMRC has incorrectly withheld the requested information and you do not accept the grounds cited by HMRC for refusing to disclose. I address these points in my review.

Your request

In your e-mail of 15th June 2009 you requested the following information under the FOIA:

“With reference to the Amendment to the Memorandum of Understanding on Royal Taxation that the Chancellor announced to the House of Commons on 22nd April 2009, please disclose how this proposal came to be initiated in HMRC.”

Our response

Mrs Chance's letter dated 13 July 2009 informed you that the requested information was being withheld under section 44(1)(a) of the FOIA, which exempts information if its disclosure is prohibited by any enactment. She explained that the relevant enactment was the Commissioners for Revenue and Customs Act (CRCA) 2005. She advised you that, under section 23 of the CRCA, information held by HMRC in connection with one of our functions is exempt from disclosure under FOIA, if it identifies a person or enables their

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identity to be deduced. She confirmed that section 44 is an absolute exemption under the FOIA.

Internal Review

I have been asked to review your FOIA request and its handling. The purpose of the internal review is to provide a fair and thorough review of decisions made pursuant to the FOIA.

I note that you made your request on 15 June 2009, and HMRC provided its response on 13 July 2009. This is within the statutory deadline as required by section 10(1) of the FOIA. I note that the response also set out HMRC's review procedure and your right to complain to the Information Commissioner, as required by section 17(7) of the FOIA.

I now turn to the particular points of your review request. Whilst you accept that HMRC has a duty to withhold information relating to its operational work in dealing with its customers, you consider that the section 44 exemption should not apply to initiatives which change the legal framework. You consider that your request is effectively a request for legislative policy information and therefore the exemption should not apply.

You are correct to say that there is a distinction between information which HMRC holds in relation to identifiable customers and information about the department itself; its strategies, policies, performance etc. The CRCA makes this distinction clear in section 23.

Section 18(1) of the CRCA provides that HMRC officials may not disclose information which is held by HMRC in connection with a function of the Revenue and Customs. Section 23(1)(a) and (b) states that information held in connection with a function of HMRC, which relates to identifiable persons, is exempt from disclosure under the FOIA. But section 23(2) makes it clear that information which does not relate to identifiable persons is discloseable under the FOIA. The clear intention of Parliament was to remove information we hold about our customers from the right of access under FOIA, as is shown by the statement made by the then Paymaster General, Dawn Primarolo, on the introduction of section 23 CRCA, which followed concerns expressed during the passage of the Bill through Parliament, that information we hold about our customers might be disclosable under FOIA. . She said:-

"Taxpayer confidentiality remains of paramount importance in the new department. As I have said, for that reason, the Bill ensures that information connected with a taxpayer is not discloseable under the Freedom of Information Act. That was always the intention, but the new clause puts that beyond doubt—that information will not be discloseable under that Act. However, much of the information that Her Majesty's Revenue and Customs will hold is not taxpayer confidential—for example, information about the department's internal processes. The new clause clarifies that such information will be subject to the Freedom of Information Act. Therefore, if a person requests information that is not taxpayer confidential, that request will be considered under the Act."

Generally speaking, legislative policy information held by HMRC is not covered by the s44 exemption and is potentially discloseable under the FOIA. However, the specific policy you are asking about relates solely to identifiable persons, namely members of the Royal Family. Even if the specific names of the individuals were redacted from the information we hold, the identities could be deduced because the names of the members of the Royal Family are in the public domain. I am satisfied, therefore, that Mrs Chance was right to withhold the requested information falling within the description of your request.

Appeal Process

As previously advised, if you are not content with the outcome of this review, you may apply directly to the Information Commissioner, who can be contacted at:

The Information Commissioners Office
Wycliffe House Water lane
Wilmslow

Cheshire
SK9 5AF

Yours sincerely

John Sharpe

Annex

Freedom of Information Act 2000

Section 44

(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.

Commissioners for Revenue and Customs Act (CRCA) 2005

Section 18 Confidentiality

(1) 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.

Section 23 Freedom of information

(1) 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 the Freedom of Information Act 2000 (c. 36) (prohibitions on disclosure) if its disclosure—

(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.

(2) Except as specified in subsection (1), information the disclosure of which is prohibited by section 18(1) is not exempt information for the purposes of section 44(1)(a) of the Freedom of Information Act 2000.