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Mr Nigel Jagger

(sent by email to:
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Date 17 July 2009

Our Ref FOI 1710/09

Your Ref

www.hmrc.gov.uk

Dear Mr Jagger

Freedom of Information Request

I refer to your Freedom of Information (FOI) request made on 19 June 2009 for the following information:

“Can HMRC publish a list of their employees who were present at the following hearing in the High Court, including their full name, job title and their roll [sic] within the organisation.

*COURT 63 Before KENNETH PARKER QC (Sitting as a Deputy High Court Judge)
Tuesday 16 June, 2009*

At 2 o'clock Applications for Permission CO/10012/2008 The Queen on the application of Huitson v HM Revenue & Customs”

Section 1 FOIA confers on members of the public a right to information held by public authorities. The nature of this right is twofold:

1. to be informed in writing whether the public authority holds the requested information; and if the information is held,
2. to have that information communicated to him.

However, this right is subject to a number of provisions including the exemptions contained within Part II FOIA.

Information is available in large print, audio tape and Braille formats.
Type Talk service prefix number – 18001



INVESTOR IN PEOPLE



Turning to your request, we can inform you that HMRC does hold the information but we have found that the exemption contained at 40(3)(a)(i) applies and, therefore, HMRC will not be publishing the data in response to your request.

Section 40(3)(a)(i) is an absolute exemption that applies to information which is personal data, not pertaining to the requestor, the disclosure of which would contravene one of the data protection principles as contained in Schedule 1 of the Data Protection Act 1998. It is an absolute exemption and therefore there is no need to consider the public interest.

Our reasoning in applying this exemption is set out below:

- The information you have requested is 'personal data' of another/others as defined in section 1(1) of the Data Protection Act 1998 ('DPA 1998'), namely that the information relates to living individuals who can be identified from the data or from the data and other information.
- As the information is personal data, we have to consider whether publication would breach one or more of the data protection principles as contained in Schedule 1 of the DPA 1998.
- The first data protection principle states that:
'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –
(a) at least one of the conditions in Schedule 2 is met
[(b) not applicable as the data encompassed in your request is not sensitive personal data for the purposes of the DPA 1998.]
- There are six conditions in Schedule 2 but there are only two conditions that may be applicable to your request: (i) consent of the individual/individuals concerned; or (ii) 'processing' (i.e. disclosure) of the data is necessary for the purposes of legitimate interests pursued by HMRC, or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.
- Consent of the data subject/subjects has not been obtained. This means that the only condition left is 'legitimate interest'. In deciding whether this condition is met, we must balance the legitimate public interest in disclosure against the interests of the individual/individuals whose data it is.
- In identifying the 'legitimate interest', there must be a genuine public interest at stake.
- Although there is always a public interest in the transparency and accountability within government as underlined by the nature of the FOIA itself, in this case we are of the opinion that there is no 'legitimate interest' that would be served by disclosing the names of HMRC officials who attended the specified court hearing.
- These court proceedings were open to members of the public. HMRC was represented by Mr. Rabinder Singh Q.C, who put forward legal argument on behalf of this department. In our view, transparency has been met and accountability in respect of these arguments will be dealt with by the court in a public judgment.

Accordingly, we have decided that the first data protection principle would be breached by release of this information and for the purposes of FOIA, the absolute exemption at section 40(3)(a)(i) is met and the information withheld.

If you are not happy with this reply you may request a review by writing to HMRC FOI Team, Room 4/52, 100 Parliament Street London SW1A 2BQ. You must request a review within 2

months of the date of this letter. It would assist our review if you set out which aspects of the reply concern you and why you are dissatisfied.

If you are not content with the outcome of an internal review, you may apply directly to the Information Commissioner for a decision. The Information Commissioner will not usually consider a case unless you have exhausted the internal review procedure provided by HMRC. He can be contacted at The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Yours sincerely

Aidan Callan