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Mr Nigel Jagger

(sent by email to:  
request-134xxxxxxxxxxx@xxxxxxxxxxxxxxxxxxx)

**Tel**

**Fax**

**Email**

**Date** 28 August 2009

**Our Ref** FOI 1710/09

**Your Ref**

[www.hmrc.gov.uk](http://www.hmrc.gov.uk)

Dear Mr Jagger

### **Freedom of Information Request**

Thank you for your email of 17 July 2009, requesting an internal review of our response to your FOI request. I apologise for the delay in replying.

### **Your request**

On 19 June 2009, you made the following Freedom of Information (FOI) request:

*“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”*

### **Our response**

In our response on 17 July 2009, we explained that the information you have requested is personal information, and that release of the information would breach the first data protection principle. We therefore concluded that the information is exempt from disclosure by virtue of the exemption at section 40(3)(a)(i) of the FOI Act.

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## **Your request for an internal review**

In your email on 17 July 2009 you made the point that employees of HMRC in the courtroom were attending court in an official, not personal, capacity and therefore their names should be released.

## **Outcome of our internal review**

We have reconsidered the issues in relation to this case in the light of your comments.

In determining whether information is exempt under section 40(3)(a)(i) of the FOI Act, we need to consider two questions:

- Is the information being requested “personal” as defined by the Data Protection Act? and
- If it is personal information, would disclosure contravene a data protection principle?

In our response on 17 July 2009 we explained that the information falls within the definition of ‘personal data’ as it relates to a living individual who can be identified. We are satisfied that we were correct to come to this view.

Turning to the second criterion (whether disclosure would contravene a data protection principle) we have reviewed our rationale for deciding that disclosure would contravene a data protection principle and we are satisfied that we were correct to come to this conclusion for the reasons set out in our response.

In the course of this internal review we have also come to the view that we should have engaged a further FOI exemption in our response to you. Section 44(1)(a) of the FOI Act exempts information if its disclosure is prohibited by any enactment.

Section 18(1) of the Commissioners for Revenue and Customs Act 2005 (CRCA) provides that HMRC officials may not disclose information which is held by us in connection with a function of HMRC. Section 23(1) CRCA further provides that where information falling in section 18(1) relates to a ‘person’ who is identified or who could be identified, the exemption in section 44(1)(a) FOIA applies. In this context ‘person’ includes both living persons and legal entities such as companies, trusts and charities.

Therefore, to engage the section 44 FOIA exemption, we have to consider:

- Is the information held by us for one of our functions? and
- Does it relate to an identifiable ‘person’?

If the answer to both the questions is ‘yes’, then the information is exempt from the right to information under FOIA. The information you are seeking is clearly held in connection with a function of HMRC. And in your FOI request you have identified a person to whom any information would relate. Therefore the information you are seeking is exempt from disclosure under section 44 of the FOI Act.

Both the section 40 and section 44 FOIA exemptions are absolute exemptions, and we are not required to consider whether, notwithstanding that the exemptions are engaged, there is an overriding public interest in disclosing the information.

If you are not content with the outcome of this internal review, you may now apply directly to the Information Commissioner for a decision. He can be contacted at The Information Commissioner’s Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Yours sincerely

**Aidan Callan**