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Date 28 May 2010
Our Ref 1189/10
Your Ref

www.hmrc.gov.uk

Dear Mr. Jagger

Freedom of Information Act 2000: Request for review

Thank you for your reminder about your request for an internal review of the decision dated 31 March 2010. Due to a transposition of reference numbers with another of your requests (1190/10) it was thought that the review had already been dealt with. I do apologise for this oversight.

Your request

You wrote on 15 February 2010:

This request concerns any written legal opinion which HMRC received from external Counsel, during the period 1/1/2001 to 31/12/2007, relating to the double tax scheme covered by Budget Note 66 (12th March 2008). I would be extremely grateful if you could supply the date of each opinion.

Our response

HMRC replied by letter dated 31 March 2010 confirming that it held the information but was withholding it under section 42(1). The letter went on to explain that in its view section 17(4) of the Act also applied.

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Request for internal review

You asked for an internal review on 31 March 2010. You wrote:

The advice I have received is that the date of an opinion would not be protected by LPP. I would therefore be grateful if you could review your decision to apply the exemption under Section 42(1) of FOIA.

Internal review

The right in section 1 of the Freedom of Information Act (FOIA) is to recorded information held by a public authority at the date it received the request. Where the public authority holds the information it is obliged to release it, subject to a number of exemptions, within the statutory deadline.

I note that your request was received on 15 February 2010 and that a full reply was not sent to you until 31 March 2010. HMRC has therefore missed the statutory deadline of 20 working days on this occasion. I apologise again on behalf of the department for this delay.

I note that you have been told about your rights to a review by HMRC and to complain, if dissatisfied, to the Information Commissioner. I also note that the letter refers to your request as being referenced 1190/10; it should in fact have been referenced 1189/10.

Conclusion

Having now had the opportunity to review the department's handling of your request I uphold the original decision to cite sections 42(1) and 17(4).

I confirm that this now completes the HMRC internal review process. If you are not satisfied with the outcome of this review, you may apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Yours sincerely

Margaret Earing (Mrs)

The Freedom of Information Act 2000

Section 42(1) of the Act states that:-

Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt.

Section 17(4) states that:-

A public authority is not obliged to make a statement under subsection (1) (c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.