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Date 15 July 2010
Our ref FOI 1270/10/IR

Dear Mr Burgess

Freedom of Information Act 2000

Introduction

Thank you for your email dated 11 June 2010 in which you requested an internal review of your information request. You are seeking information about the use of the new P46 (Expat) form which was introduced by HMRC on 6 April 2009. You stated that you did not believe that it would take more than 3 days to gather the information requested. You considered that:

“if the P46 (expat) data is held on a relational database then it is a very simple query to group by employer and count the number and sort to show those with the highest count.”

I note that you requested a review after receiving a response to your follow up question concerning P46 (Expat) forms. Your original request was dealt with under our reference FOI 1270/10 and your follow up request was dealt with under our reference FOI 1405/10. This review addresses the use of the fees limit in respect of both requests.

Your first request FOI 1270/10

On 3 March 2010, you made the following request to HMRC:

When an employer takes on a new employee in the UK then they should submit one of the following forms to HMRC:

P45 Part3 - When a new employee starts

P46 - When a new employee starts, but has no P45 from their previous employer

P46 (Expat) - For certain employees seconded to work in the UK

1. Between May 2009 and January 2010 inclusive, how many employers took on more expats than non-expats?

Information is available in large print, audio and Braille formats.
Text Relay service prefix number – 18001



i.e. how many employers submitted more P46 (expat) forms than P45 Part3 forms and P46 forms (either online or in paper or other format)?

2. For each of these employers, how many P46 (expat) forms, P45 Part3 forms and P46 forms did they submit between May 2009 and January 2010 inclusive?

3. Are there any tax advantages to bringing in expats/seconded workers from outside the UK rather than employing normal permanent workers in the UK? E.g. temporary workplace dispensations.

4. Are there any current investigations ongoing into employers claiming such dispensations for expat employees but keeping the tax deduction, and not passing it to the employee?

5. Have any past investigations uncovered employers claiming such dispensations for expat employees and not passing the tax deduction to the employee?

Our first response

On 24 March 2010, Michelle Blake responded to your request and provided answers to questions 3 to 5. In respect of questions 1 and 2, she advised you that the FOIA fees limit was engaged and, under s12(1) of the FOIA, HMRC was not required to deal with the request. She invited you to narrow your request so that it might not exceed the fees limit.

Your second request FOI 1405/10

On 26 March 2010, you made the following refined request to HMRC:

“Can I request the numbers for the 10 employers that have submitted the most P46 expat forms since May 2009 please?”

Our second response

On 26 April 2010, Michelle Blake responded by again citing the fees limit and refusing to deal with your refined request, for the same reasons set out in the first response.

Internal Review

I have been asked to review your 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. In carrying out this review, I have consulted with those involved in dealing with your initial request. I have also made some additional enquiries to see if there might be alternative ways of extracting the data you require.

I see that the response was provided within the statutory deadline, in accordance with section 10(1) of the FOIA. The response set out information about HMRC's review procedure and your right to complain to the Information Commissioner, as required by section 17(7) of the FOIA.

In our initial response, HMRC advised you that it was not obliged to deal with your request because the fees limit was engaged. Specifically, it was the information sought in questions 1 and 2 which could not be located and extracted within the fees limit. Responses were provided to questions 3 to 5 outside of our obligations under FOIA, because the information was readily located.

In our response to your refined request, we gave the same response because the same extraction process would be required for the narrower request as the original one. I will explain this further below.

Exemptions - Section 12(1)

Section 1(1)(a) and (b) of the FOIA describe the general right of access to information held by public authorities as follows:

*(1) Any person making a request for information to a public authority is entitled—
(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
(b) if that is the case, to have that information communicated to him.*

Section 12 of the FOIA is known as a procedural exemption because it determines whether a public authority has to comply with the obligations described above.

Section 12(1) provides that

Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

As already explained the appropriate limit for central government is £600, which equates to 24 hours work at a rate of £25 per hour.

The principle behind the FOIA is to give people rights to access information held by public authorities (unless it is exempt). However that right to information must be balanced by the public authority's duty to deliver its front line services. The Act allows for public authorities to decline to comply with requests for information on the grounds of cost where these requests would be particularly expensive.

If the request exceeds the appropriate limit, a public authority may choose to

- deal with the request and provide the information free of charge,
- deal with the request and charge a fee to cover the communication costs,
- refuse to deal with the request as too onerous.

HMRC's consistent policy and practice is to decline to deal with requests which exceed the appropriate limit. The references to section 13 of the FOIA and to the sum of £7,000 were misleading in our responses. Section 13 only applies when a public authority intends to deal with a request which exceeds the fees limit, but as I have just explained, HMRC always declines to deal with such requests.

Under s12, the appropriate limit is intended as a measure or benchmark to enable a public authority to determine whether or not a request is too onerous. To estimate whether the fees limit is exceeded, we are entitled to take into account staff time incurred determining if the department holds the information, as well as locating, retrieving and extracting it. Having considered each of your requests, I am satisfied that the fees limit has been correctly applied.

The information requested under Questions 1 and 2 of your first request, as well as the information requested in your refined request, is information which HMRC has no business need to collate. For this reason, there are no shortcuts built into our departmental systems to enable us to readily extract the information you have requested. The particular extraction and analysis you are requesting has not previously been commissioned within HMRC. To extract this data would therefore require us to commission a bespoke scanning programme through our IT service provider. This requisitioning process involves a number of stages, including design, development and testing and a number of staff are involved at each stage. The number of hours involved in the requisition of any single data extraction of this type would therefore exceed the 24 hour limit.

Since September 2009, HMRC has had a dedicated Expatriate team in Manchester which has taken over responsibility for dealing with this area of work. I made enquiries to see whether they held any information or data which might answer your requests. They confirmed that the data in their locally held management information would not enable your questions to be answered either.

Although we invited you to narrow your request each time so that it might fall within the fees limit, I have now concluded that it is unlikely that HMRC would be able to provide information of the type you are seeking. I am sorry that we cannot assist you further.

Appeals process

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

Jackie Riley
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