



Central Policy

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Date 16 April 2012
Our ref FOI 1568/12
Your ref

Dear Mr Turner,

Freedom of Information Act 2000

Thank you for your email dated 22 March 2012, in which you made the following FOI request for information about the Chancellor of the Exchequer:

I would like to request a copy of Mr Osborne's most recent tax return, and any information from the current tax year that would indicate whether Mr Osborne has in fact paid the 50p rate or not.

HMRC's Response

Section 1(1) of the FOIA provides two rights to those who make requests for information. They are:-

- a) the right to be informed in writing by the public authority whether or not it holds the information sought in the request; and
- b) if so, the right to have that information communicated.

However, these rights are subject to a number of exemptions under the FOIA. With regard to the information you have requested concerning Mr Osborne, I am unable to confirm or deny whether HMRC holds the information because it is exempt from disclosure under s44(2) of the FOIA. I have included an appendix at the foot of this letter, with relevant extracts of legislation.

When another law prevents disclosure of information, it is exempt from disclosure because of section 44(1)(a) of the FOIA. Furthermore, if confirming or denying information is held

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would itself reveal information which is exempt under section 44(1)(a), the duty to confirm or deny information is held does not arise; section 44(2) FOIA refers.

Section 18(1) of the Commissioners for Revenue and Customs Act 2005 (CRCA) provides that Revenue and Customs officials may not disclose information which is held by HMRC in connection with a function of the Revenue and Customs. The information you are seeking, if held, would be held in connection with our function to assess and collect tax and would identify the named individual.

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. 'Person' includes both living persons and legal entities (see paragraph 110 of the explanatory notes to the CRCA).

Taken together, the above removes information about our customers from the right of access under FOIA. Section 44 is an absolute exemption and therefore does not require a consideration of the public interest. I see that you accept that in normal circumstances, the tax records of an individual are confidential. However, you contend that there should be an exception to that confidentiality in this particular case. I cannot agree with that contention.

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 our information about our customers might be discloseable 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."

If a request for information is considered under the FOIA, the specific exceptions to HMRC's statutory duty of confidentiality (set out in s18(2) and (3) of the CRCA) are not taken into consideration. The absolute prohibition against disclosure contained in section 18(1) is the only relevant provision in this regard. An amendment to the CRCA was introduced in 2009 to make this explicit (See s19(4) of the Borders, Citizenship and Immigration Act 2009).

I have noted the points you make regarding the legitimate interest in making this particular information public. I recognise that, if HMRC were to rely on s40(5) of the FOIA to neither confirm nor deny that the personal data requested was held, we would be obliged to consider your arguments concerning legitimate interests. You also maintain that disclosing under the FOIA the requested information, if held, would not constitute an actionable breach of confidence. I recognise that, if HMRC were to rely on s41(2) of the FOIA to neither confirm nor deny that the information requested was held, we would be obliged to consider your arguments concerning the overriding public interest in disclosure.

However, since we are relying on the absolute exemption under s44(2) of the FOIA, I am not required to take into account these considerations. The fact that s44 is an absolute exemption demonstrates that, whilst recognising that the public interest will generally be best served by openness, it must be in the public interest to defer to any existing statutory prohibitions against disclosure.

Appeals Process

If you are not happy with this reply you may request a review by writing to HMRC FOI Team, Room 1C/25, 100 Parliament Street London SW1A 2BQ or email xxx.xxxxxx@xxxx.xxx.xx 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

Teresa Chance

Appendix

Legislation relevant to disclosures under FOIA

Freedom of Information Act 2000

http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en_1

44 Prohibitions on disclosure

(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,*
- (b) is incompatible with any Community obligation, or*
- (c) would constitute or be punishable as a contempt of court.*

(2) The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).

Commissioners for Revenue and Customs Act 2005

http://www.opsi.gov.uk/acts/acts2005/ukpga_20050011_en_1

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.

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.

(3) In subsection (1) “revenue and customs information relating to a person” has the same meaning as in section 19.

Explanatory Note to s19 CRCA

<http://www.legislation.gov.uk/ukpga/2005/11/notes/division/1/13/2/20>

110. Subsection (1) makes it an offence for any person to contravene the non-disclosure provisions of section 18(1), or of section 20(9), in relation to “revenue and customs information relating to a person” whose identity is revealed by the disclosure. The term “person” includes both natural and legal persons, and, for example, the tax affairs of a limited company are also protected by the provisions of the subsection.

Borders, Citizenship and Immigration Act 2009

http://www.opsi.gov.uk/acts/acts2009/pdf/ukpga_20090011_en.pdf

19 Application of statutory provisions

*(4) In section 23 of the Commissioners for Revenue and Customs Act 2005 (c. 11) (freedom of information), after subsection (1) insert—
“(1A) Subsections (2) and (3) of section 18 are to be disregarded in determining for the purposes of subsection (1) of this section whether the disclosure of revenue and customs information relating to a person is prohibited by subsection (1) of that section.”*