



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 – Internal Review

Thank you for your email dated 16 March 2012, in which you requested an internal review of your FOI request. On 22 March 2012, you asked:

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

In your request for an internal review, you stated:

Section 18 (2)(h) of the Commissioners for Revenue and Customs Act 2005 states that information can be disclosed if the individual whose data is at issue consents to the disclosure. Therefore, if the Chancellor consents to the disclosure of the information, Section 44 would not apply. Given his recent positive public statements on the publication of the tax affairs of senior members of the government, I would have expected Mr Osbourne's consent to be solicited.

On this basis, I would like to request an internal review on the basis that Mr Osbourne should be asked for his permission. Clearly, if he withholds his permission, the exemption would apply.

Having taken advice, I have decided, on this occasion, not to refer this on for a separate internal review. I have addressed below the points you have made but any reviewer would be in the same position as I am regarding any customer specific information. I am satisfied that HMRC's position regarding requests for customer information under FOIA has been correctly applied in relation to your request. HMRC's view is that s44(2) is engaged for this



request and we therefore suggest that you make your complaint directly to the Information Commissioner if you remain unhappy with our response.

In my response, I explained why HMRC was unable to confirm or deny whether the information requested was held. I also explained that the exceptions to HMRC's statutory duty of confidentiality (set out in s18(2) and (3) of the CRCA) are not taken into consideration when information is requested under the FOIA. The absolute prohibition against disclosure contained in section 18(1) is the only relevant provision in this regard. I made reference to the amendment to s23 of the CRCA which was introduced in 2009. I have copied this again below.

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.”*

You make reference to s18(2)(h) of the CRCA and suggest that, if HMRC had sought and obtained the necessary consent, then s44(2) of the FOIA would not apply. That is not the case, as s23(1A) of the CRCA makes clear.

Appeal Process

As previously advised, if you are not content with the handling of your request under the FOIA, you may apply directly to the Information Commissioner, who can be contacted at:

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Yours sincerely

Teresa Chance