



HM Revenue  
& Customs

Mr Nathan Hamilton

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**Counter-Avoidance**

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Date: 10 September 2018  
Our ref: IR2018/01413

Dear Mr Hamilton

**Freedom of Information Act 2000 (FOIA)**

I am writing with reference to your e-mail of 8 July 2018 regarding our response of 26 June 2018 to your request for information under reference FOI2018/01112 request '2019 Loan Charge - Taxpayer notification'. I am sorry for the delay in replying.

You have requested an internal review of HM Revenue and Custom's handling of your FOI request.

**Original Request FOI2018/01112**

“Could you please describe what measures you have taken to notify tax payers who may be potentially impacted by the 2019 Loan Charge as passed by the UK Parliament in the 2017 Finance Act.

In particular I need to know

- 1) The date of the communication
- 2) The medium (Spotlight, e-mail, postal mail, journal article etc)
- 3) Where applicable, the name of the site or journal/paper
- 4) Where applicable, the number of tax payers contacted (e-mail, post only)

If the information is available, please also specify your plans for future notifications in the run up to the reporting deadline”

Our response of 26 June informed that under section 12(4) of the FOIA, your request for information FOIA2018/01112 was grouped with two other requests (FOI2018/01197 and FOIA2018/1199) and our response dealt with all three FOI requests.

You disagreed with our conclusion that your requests were similar, were grouped together and the s12(4) of the FOIA applied.



## **Request for Internal Review**

You have asked for a review of our decision dated 26 June 2018 saying:

*I am writing to request an internal review of HM Revenue and Customs's handling of my FOI request '2019 Loan Charge - Taxpayer notification'.*

*I am very dissatisfied with the response and request an internal review.*

*1) Whilst I accept that the three queries broadly relate to HMRC's conduct of tax inquiries, there is sufficient difference in the nature of the questions that, to bulk them up is unreasonable and appears to have been done with the intention of avoiding providing an answer. This is supported by the stock response paragraphs provided in the "Outside FOIA" section.*

*2) The link Tax Avoidance Litigation Decisions covers two years only and is not current. In addition, this as well as the Press Releases say nothing about failed cases or cases which are still ongoing.*

*Given the size of HMRC's litigation team, you surely have some sort of case management system from which statistics can be extracted, if only for monitoring effectiveness and performance trends.*

*Given the 2019 Loan Charge is retrospective 20 years I am looking for evidence of HMRC prosecuting these schemes over a longer period.*

*3) With relation to communications regarding the 2019 Loan Charge, I am confident that you will have records of e-mail or postal mail shots that can be used to provide a partial response to my inquiry. If HMRC have made any attempts to publicize the 2019 Loan Charge in print media someone reasonably senior will have had to sign off the expenditure. With regard to mailshots, I know some people have received mail shots in June 2018 but want to determine whether HMRC has made a substantial effort to spread the word, and when this effort commenced.*

*Also, your answer seems to be conflating the 2019 Loan Charge and the CLSO2. I asked specifically about the 2019 Loan Charge and would be grateful if your answer focused on it.*

*4) A separate FOIA request will be made to establish the factual number of CLSO2 expressions of interest received.*

*Could I please ask you to review the above in conjunction with the original FOIA request and consider whether you could provide more information. This is a matter of quite considerable importance to a very large number of people and it is in the public interest for the facts to come out as opposed to conjecture.*

*A full history of my FOI request and all correspondence is available on the Internet at this address: [https://www.whatdotheyknow.com/request/2019\\_loan\\_charge\\_taxpayer\\_notifi](https://www.whatdotheyknow.com/request/2019_loan_charge_taxpayer_notifi)*

## **Internal Review**

The purpose of an Internal Review is to assess how your FOI request was handled in the first instance and to determine whether the original decision given to you was correct. This is an independent review: I was not involved in the original decision.

The Act gives applicants two rights in respect of information held by a public authority:

- (1) a right to be told if the information is held (known as the duty to confirm or deny);  
and
- (2) a right to have that information communicated subject to any exemption or exemptions that might apply.

Each of these rights is subject to exemptions under the FOIA.

The statutory deadline for your request was 27 June 2018 and the response was provided by the Freedom of Information Team on 26 June 2018. The response was therefore compliant in this respect with the requirements of the FOIA.

They explained that in your case, they applied exemption under section 12(4) of the FOIA, as the three requests seek information relating to the same topic and made by the same person and would require an extensive search of numerous case records. Section 12(4) states that a public authority may aggregate two or more requests made by the same person, when the same or similar information is requested and where those requests are received within a period of sixty consecutive days.

The response provided some information outside the Act which included links to information regarding DR settlement terms, avoidance litigation cases, Disclosure of Tax Avoidance Scheme (DOTAS) statistics, HMRC's series of spotlights and press releases, thereby discharging our duty under Sec 16 FOIA.

### **Aggregation**

I have reviewed your requests and I am satisfied that the aggregation of your requests was applied correctly under the FOIA. As the response explained, the FOIA and Data Protection (Appropriate Limit and Fees) Regulations 2004 allows for two or more requests to be aggregated if they relate to the same or similar information, provided that the conditions under section 12(4) of the FOIA have been met, namely where two or more requests have been made by the same person and received by the department within a space of 60 consecutive working days. Section 12(4) of FOIA allows that the cost of complying with any part of the requests is to be taken to be the estimated costs of complying with all of them.

Regulation 5(2) of the Fees Regulations requires that the requests which are aggregated relate "to any extent" to the same or similar information.

All the requests relate in some way to the disguised remuneration (DR) loan charge and were all made within 60 consecutive working days, fulfilling the criteria at regulations 5(1) (a) and 5(2) (b). I therefore find that HMRC was entitled to rely on section 12(4) of the Act to aggregate your four requests.

### **Section 12(1) – cost of compliance exceeds the appropriate limit**

I am satisfied that the section 12 cost limit exemption was applied to your request correctly. The estimated cost of complying with your requests aggregated under the Fees Regulations was based on HMRC's view of the resources that would have to be committed to answering all four requests. On this occasion this meant that it was calculated that the appropriate cost limit of £600 would be exceeded and therefore under the terms of section 12(4) of the FOIA the department was not obliged to comply with your request.

I have set out below the information/ questions that will exceed the cost limit to provide.

HMRC contacts customers via various methods. To confirm how many have been contacted via email and letter, particularly in our day to day work, would involve detailed examination of our manual and electronic records.

Where section 12 applies to one part of a request HMRC refuses all of the request under the cost limit as advised by the Information Commissioner's Office.

With regards to your comments about HMRC's data management system, record of email and postal mail shot; it may be helpful to know that the level of detail held through our management systems does not enable interrogation of the data in an automated way. The information is not held in a centrally searchable/retrievable format and cannot be established through any quicker method. Extensive examination of individual case records is therefore required. For example, if we were to review 5,000 case files, even if it took an officer no

more than 20 minutes on each case, the time taken to review each case and extract any relevant information would exceed the costs limit as specified in regulation.

I accept that we should have been clearer in our application of section 12(1) of the FOIA. I also accept that response should have offered further advice on how you may have been able to refine your request but after reviewing the information and the scale of the work involved I cannot see any scope for doing this.

You might like to be aware that we have recently responded to several requests for information about how HMRC has raised awareness about DR and the loan charge. These have been published on [www.whatdotheyknow.com](http://www.whatdotheyknow.com) and may go some way to answering your original question:-

- [https://www.whatdotheyknow.com/request/2019\\_loan\\_charge\\_4#incoming-1206607](https://www.whatdotheyknow.com/request/2019_loan_charge_4#incoming-1206607)
- [https://www.whatdotheyknow.com/request/what\\_measures\\_have\\_you\\_taken\\_to#incoming-1199498](https://www.whatdotheyknow.com/request/what_measures_have_you_taken_to#incoming-1199498)
- [https://www.whatdotheyknow.com/request/what\\_measures\\_have\\_you\\_taken\\_to\\_2#incoming-1184057](https://www.whatdotheyknow.com/request/what_measures_have_you_taken_to_2#incoming-1184057)
- [https://www.whatdotheyknow.com/request/what\\_measures\\_have\\_you\\_taken\\_to\\_3#incoming-1199508](https://www.whatdotheyknow.com/request/what_measures_have_you_taken_to_3#incoming-1199508)

Please note that HMRC will continue to aggregate requests in accordance with the conditions laid out in the Fees Regulations.

#### **Additional Information outside of the FOIA**

In response to your comment about the information provided to you on a discretionary basis, please note that any information provided on a discretionary basis outside the scope of FOIA is not subject to a review. As such I have not reviewed any discretionary information provided to you in the original response.

I would advise you that the list of avoidance litigation cases is updated annually and is published at the same time as HMRC Annual Report and Accounts. The list of 2017-18 cases was published on 12 July 2018. Further information about HMRC litigation activities is available in the Tax Assurance Commissioner's annual report which is published on GOV.UK at: <https://www.gov.uk/government/collections/how-we-resolve-tax-disputes> and [www.gov.uk/government/collections/hmrcs-annual-report-and-accounts](http://www.gov.uk/government/collections/hmrcs-annual-report-and-accounts).

You also might like to be aware that on 18 July 2018 a 'HMRC issue briefing: disguised remuneration charge on loans' was published on GOV.UK. This provides additional information about the loan charge, links to the settlement terms and relevant Spotlights along with helpful information for those who may have difficulty paying what they owe. This can be found at: [www.gov.uk/government/publications/hmrc-issue-briefing-disguised-remuneration-charge-on-loans/hmrc-issue-briefing-disguised-remuneration-charge-on-loans](http://www.gov.uk/government/publications/hmrc-issue-briefing-disguised-remuneration-charge-on-loans/hmrc-issue-briefing-disguised-remuneration-charge-on-loans)

Additionally you might also like to know that the responses to a number of requests for information in relation to DR and the loan charge have been published on [www.whatdotheyknow.com](http://www.whatdotheyknow.com).

#### **Outcome**

In conclusion I am satisfied that the response sent to you on 26 June 2018 was correct but partially compliant as it did not provide refinement advice for which I apologise. However, I hope that the additional information provided goes some way to answering your request for information.

If you are not content with the outcome of an internal review, you can complain to the Information Commissioner's Office (ICO). The ICO will not usually consider a case unless you have exhausted the internal review procedure provided by HMRC.

You can make a complaint through the ICO's website at: [www.ico.org.uk](http://www.ico.org.uk), or by post to: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Yours sincerely

Freedom of Information Team