Dear Mr Green

Freedom of Information Act (FOIA)

Thank you for your request under the FOIA, which was received on 05 September 2015, for the following information:

“If available, I would appreciate any statistics (eg annual) on the total number of penalties levied by HMRC on businesses whom, following inspection, are found to have kept in inadequate records under the Business Record Check scheme.”

Business Records Checks (BRCs) aim to influence customer behaviour and encourage improvements in record-keeping to support the submission of more accurate returns.

Where a visit reveals inadequate records are being kept, the customer will be liable to a record-keeping penalty under Section 12B (5) Taxes Management Act 1970. HMRC provides guidance on what the customer needs to do to improve their record keeping and arranges a follow up visit, normally three months later. This gives the business reasonable time to make the necessary improvements to their record-keeping processes and to avoid the penalty being assessed.

If, on the second visit, the records have improved to an adequate standard, the penalty is not levied.

The number of penalties levied under Section 12B (5), were:

<table>
<thead>
<tr>
<th>Penalties levied under Sect 12B(5) TMA 1970</th>
<th>Year to 31/03/2014</th>
<th>Year to 31/03/2015</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>&lt;5</td>
<td>&lt;5</td>
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</table>

Date 05 October 2015
Our ref FOI 2619/15
During the periods in question, there have been fewer than five penalties levied under Section 12B (5).

We are unable to provide statistics where numbers are fewer than five as it could lead to the identification of individual taxpayers. The Commissioners for Revenue and Customs Act 2005 (CRCA) section 18(1) gives HMRC a duty of confidentiality which applies to all information it holds in connection with its functions. The prime examples of a function are the assessment and collection of tax; and the payment and management of tax credits. This is to make sure that information held on people and businesses would be protected and released only in controlled and limited circumstances. The full exemption is set out in the attached Appendix.

If you are not happy with this reply you may request a review by emailing foi.review@hmrc.gsi.gov.uk, or by post to HMRC FOI Team, Room 1C/23, 100 Parliament Street London SW1A 2BQ. You must request a review within 2 months of the date of this letter. It would help us carry out our review if you set out the aspects of the reply that concern you and why you are dissatisfied.

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, or by post to: Information Commissioner’s Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Yours sincerely

Harjit Garcha

FOI Team
Appendix

Freedom of Information Act 2000
Section 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).

The exemption at section 44(1)(a) of the FOIA applies when information is prohibited from disclosure under any enactment.

In this instance, the relevant enactment is section 23(1) of the Commissioners for Revenue and Customs Act 2005 (CRCA). To determine whether information is covered by section 23(1) of the CRCA, we are required to consider two questions:

- is the requested information held in connection with a function of HMRC?
- does the information relate to a "person" who is identified, or who could be identified from the information requested?

If, as in this case, the answers to both questions is "yes", then the section 44(1)(a) FOIA exemption is engaged and our statutory duty of confidentiality (at section 18(1) of the CRCA) removes any possibility of disclosure under the Act.

Paragraph 110 of the explanatory notes to the CRCA makes clear that the term "person" includes not just living individuals, but also legal entities such as companies, trusts and charities.