



HM Revenue & Customs

Mr Simon Owen
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Dear Mr Owen

Freedom of Information Act 2000 (FOIA)

Thank you for your request, which was received on 12 January, for the following information:

“Please provide ALL correspondence including emails, letters, meetings , phone calls etc... between Sir Amyas Morse / The Loan Charge Review secretariat team and HMRC relating to the Loan Charge Review commissioned by the government.

Relevant dates: Between August 2019 to current date (12-01-20)Yours faithfully,”

We previously wrote to you on 11 February advising that your request was being considered with reference to the exemption at section 35(1)(a) FOIA and advising that we required additional time to consider the public interest in maintaining this exemption.

Section 35(1)(a) states:

“Information held by a government department is exempt information if it relates to the formulation or development of government policy.”

The exemptions at section 35 are class based. This means that as opposed to prejudice-based exemptions, demonstrable evidence of the likelihood of prejudice is not a condition for engaging the exemptions. The withheld information simply has to fall within the class described, in this case, the formulation or development of government policy. The classes are broad and capture a wide range of information.

The Information Commissioner Office (ICO) considers that the term ‘relates to’ in section 35 can be interpreted broadly within the meaning of the class exemption. This means that the withheld information does not itself have to be created as part of the activity. Any significant link between the information and the activity is enough.

As at the time your request was received, the Government was yet to legislate to implement the recommendations of the Independent Loan Charge Review, information which was provided in the course of the review does relate to the formulation or development of government policy and section 35(1)(a) is engaged.

However as previously stated, the exemptions at section 35 are qualified by the public interest test. Even if an exemption is engaged, departments can only withhold the

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information if the public interest in maintaining the exemption outweighs the public interest in disclosure.

The ICO recognise that there is a public interest in maintaining a safe space for officials to consider policies away from distraction and external interference. The need for a safe space will be strongest when the issue is still live. Once the government has made a decision, a safe space for deliberation will no longer be required and this public interest will carry little weight. The timing of the request will therefore be an important factor.

I have balanced the public interest of maintaining this safe space against the public interest of authorities being transparent and accountable for their actions. I have also taken into account the level of information which has already been made available through the Government's published response to the review.

In this case I have judged that the public interest does favour disclosure of the majority of the requested information.

Where requested documents or sections of documents are still subject to scrutiny from both officials and the Office of Budgetary Responsibility, I am of the view that there remains a strong public interest in maintaining a safe space and not disclosing this information.

Information within the scope of your request is held in the format of a number of emails and attachments, other information requested is not held by HMRC.

Due to the volume of information held, emails have been condensed in to a single document, the corresponding attachments have been indexed and provided separately.

Whilst the public interest favours disclosure of the majority of information held with reference to section 35(1)(a), some documents or sections of documents have been withheld by virtue of other FOIA exemptions, details of these have been provided below:

Where requested information either identifies a 'person' or would enable the identity of a 'person' to be deduced, this has been withheld pursuant to section 44(1)(a) FOIA.

Section 44 of FOIA states that:

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. T

The enactment in this case is the Commissioners of Revenue and Customs Act 2005 (the CRCA).

Section 18(1) of the CRCA states that HMRC officials may not disclose information which is held by HMRC in connection with one of its functions.

Section 19 of the CRCA makes it a criminal offence for any member of HMRC's staff to disclose information relating to a person whose identity can be deduced from such information without a lawful basis for doing so.

For the purposes of FOIA, section 18(1) only acts as a statutory prohibition where section 23(1) of the CRCA is also satisfied.

Section 23 provides that the section 44 exemption in FOIA will apply where 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.

Where requested information contains the personal information of officials to a degree which is contrary to their expectation of privacy, this has been withheld under section 40(2) FOIA.

Section 40(2) of the FOI Act, by virtue of section 40(3A) provides an absolute exemption for third party personal data, where disclosure would contravene any of the data protection principles set out in Article 5 of the General Data Protection Regulation. The first data protection principle requires the disclosure of third party personal data to be lawful, fair and transparent. We believe that releasing the information would breach the first data protection principle, since it would be unlawful and unfair to release the information.

The exemption in section 40(2) is absolute, meaning that there is no need to weigh up the public interest in releasing the information against the public interest in maintaining the exemption. On this basis, all identifying information relating to junior officials or private individuals has been withheld and that of Senior Civil Servants and special advisers has been disclosed.

Where requested information reveals specific compliance methodology which would allow an individual to arrange their affairs in such a way or disguise their circumstances in such a way in order to avoid paying tax owed, this has been withheld under section 31(1)(d) FOIA.

31(1)(d) states that:

Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice - the assessment or collection of any tax or duty or of any imposition of a similar nature,

Section 31 is a qualified exemption which means that I must consider whether the balance of the public interest favours withholding or disclosing the information.

I accept that there is strong public interest in ensuring that HMRC is accountable for its activities and is as transparent as possible.

Publishing the information requested would, on the face of it, reassure the public that our compliance activities are fair and robust, and applied equitably across the range of customers served by HMRC.

Against that, I have taken into account that there is a strong public interest in HMRC being able to enforce the law properly so that the tax burden is shared equally and fairly.

Providing this information may put at risk our compliance activities which could undermine public confidence in the tax system. This could damage the general climate of honesty among the overwhelming majority of taxpayers who use the system properly and that too is not in the public interest.

Taking a balanced view, I conclude that it is not in the public interest to disclose this information.

If you are not satisfied with this reply you may request a review within two months by emailing foi.review@hmrc.gov.uk, or by writing to the address at the top right-hand side of this letter.

If you are not content with the outcome of an internal review you can [complain to the Information Commissioner's Office](#).

Yours sincerely,

Freedom of Information Team