



Central Policy

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Date 4 December 2012
Our ref FOI 2838/12
Your ref

Dear Mr Jagger

Freedom of Information Act 2000

Thank you for your email dated 6 November 2012 to HMRC in which you made the following information request.

This request relates to an answer given by Exchequer Secretary David Gauke to a parliamentary question from Robert Buckland MP, where he stated:

"HMRC has identified around 1,900 individuals who used the avoidance scheme or one of its variants and whose tax returns are currently under inquiry."

<http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120717/text/120717w0003.htm#12071796002699>

Please can you provide a breakdown of the 1,900 individuals by scheme promoter.

If, for whatever reason, you are unable or unwilling to name the promoters, please refer to them anonymously as "A", "B", "C", "D", "E" etc. Some individuals may not have gone through a promoter or the promoter may not be known to HMRC. Please can you group all of these together under the category "Other".

To assist you, below is an illustration of what I'm looking for, although obviously I would prefer the actual names of the promoters.

A - 700
B - 600
C - 500
Other - 100

TOTAL - 1900 individuals

I would be astounded if the Special Investigations department investigating the scheme do not already hold this most basic of information on promoters and users in a readily available form.

However, if they do not and it would exceed the £600 cost limit to compile it, I am willing to personally cover all of their costs.

HMRC Response

I can confirm that HMRC holds information that falls within the description specified in your request. However, we estimate that the cost of complying with it would exceed the appropriate limit of £600. The appropriate limit is specified in regulations and for central government is set at £600 based on staff time at £25 per hour. This represents the estimated cost of one person spending 24 hours locating, retrieving and extracting the requested information. To provide the numbers of individuals broken down by scheme promoter would require a review of individual case records which would take significantly more than 24 hours.

By setting the limit at £600, HMRC believes that the right balance has been struck between an applicant's right to know and the amount of resource a public authority could reasonably be expected to apply to give effect to it. Consequently, under section 12(1) of the FOIA, the department is not obliged to comply with your request and we will not be processing it further.

Normally HMRC would explore with you how you might be able to narrow your request so that it did not exceed the fees limit. However, in this case, I cannot see any scope for doing this because, even if the information could be located and extracted within the fees limit, it would be exempt from disclosure under s44(1)(a) of the FOIA. Section 44 allows a public authority to withhold information which is itself prohibited from disclosure by some enactment.

HMRC has a duty of confidentiality in section 18(1) Commissioners for Revenue and Customs 2005 (CRCA) which says we may not disclose information held for a function of HMRC; the requested information is held for our function to assess direct taxes. Where information covered by section 18(1) relates to an identifiable person, which includes companies, section 23(1) CRCA applies section 44(1)(a) FOIA, as per the extract below.

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.

To provide the number of individuals broken down by named scheme promoter would be disclosing information about identifiable promoters - s23(1)(a) of CRCA. I note that you have requested an anonymised breakdown of the numbers, if we are unable to provide the breakdown by named scheme promoter. However, we consider that even providing anonymised figures, when put together with other information which is available in the public domain, would enable the identity of scheme promoters to be deduced - s23(1)(b) of CRCA. Furthermore, we consider that the identity of individual users might also be deduced if a breakdown by named scheme promoter or an anonymised breakdown were put together with other information available in the public domain - s23(1)(b) of CRCA.

I note that you have stated that, in the event that your request engages the fees limit, you are willing to cover the necessary costs incurred. Sections 12 and s13 of the FOIA set out the provisions whereby, if a request exceeds the appropriate limit, a public authority has the discretion to

- deal with the request and provide information free of charge,
- deal with the request and charge a fee,
- refuse to deal with the request as too onerous.

On this occasion, because the request significantly exceeds the appropriate limit and the information requested would, in any event, be exempt information, we are not prepared to issue a fees notice.

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 foi.review@hmrc.gsi.gov.uk. 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