



HM Revenue & Customs

Dr Colin Iain Campbell

By email:

request-508212-c77c291e@whatdotheyknow.com

Freedom of Information Team

S1715

6 Floor

Central Mail Unit

Newcastle Upon Tyne

NE98 1ZZ

Email foi.request@hmrc.gsi.gov.uk

Web www.gov.uk

Date: 24 August 2018

Our ref: FOI2018/01731

Dear Dr Campbell

Freedom of Information Act 2000 (FOIA)

Thank you for your request, which was received on 7 August, for the following information:

"Please disclose:

1) All communications/emails/documentation of discussion between the VAT team handling IHPA's request and the IR35 team related to the handling of IHPA's letter about Direct Engagement of 1st May 2018, and referred to in this newspaper article:

<https://www.thetimes.co.uk/article/nhs-hands-over-millions-to-tax-avoidance-firms-kfqmn87fp>

and this press briefing:

<https://ihpa.org.uk/press-release/nhs-bosses-unlawful-multi-million-pound-tax-dodge/>

Some information held by HMRC is exempt from release under FOIA. This is because it relates to an identifiable person, including living individuals and legal entities, that we are legally required to keep confidential under the Commissioners for Revenue and Customs Act 2005 (CRCA). The FOIA therefore acknowledges that, where another law prevents the release of information, it is exempt and should not be released. There are specific circumstance in the CRCA where confidential information can be released, but this would never be under the FOIA. We will always respond to a request under the FOIA, but where the information being sought is exempt, we will ensure our reply does not release any confidential information or even indicate if anything is held.

Your request seeks information that, if held, would relate to an identifiable entity. For this reason under section 44(2) of the FOIA HMRC can neither confirm nor deny it holds information within scope of your request. The legal position for this is provided below.

Outside of the FOIA, you may find our Information Disclosure Guide useful as it explains the restrictions around disclosing HMRC information and the limited circumstances in which we can lawfully disclose information about our customers.

<https://www.gov.uk/hmrc-internal-manuals/information-disclosure-guide/idg40000>

Legal position

Section 44 of the FOIA applies when the requested information, if held, would be prohibited from disclosure by another piece of legislation.

In this instance, section 18(1) of the CRCA 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.

When deciding whether we are prohibited from releasing information under FOIA by our duty of confidentiality, CRCA section 23(1) sets the following two questions:

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

The term "person" includes legal entities such as companies, trusts and charities, as well as living individuals (see Schedule 1 of the Interpretation Act 1978).

In this case, the answers to both questions is "Yes". Our duty of confidentiality therefore applies under CRCA section 18(1) and we are exempt from releasing the information under FOIA section 44(1)(a).

Sometimes even just confirming whether we hold the information could tell you something about this person. So FOIA section 44(2) exempts us from either confirming or denying whether we hold information as it would also breach the duty of confidentiality set out in section 18(1) of the CRCA.

If you are not satisfied with this reply you may request a review within two months by emailing foi.review@hmrc.gsi.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 make a complaint to the Information Commissioner's Office (ICO). Instructions about this process are available at the following link: <https://ico.org.uk/concerns/>

Yours sincerely,

Freedom of Information Team