



HM Revenue
& Customs

Mr Geoffrey David Green

By email: request-670569-a5289e4a@whatdotheyknow.com

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Our ref: IR2020/01260

Dear Mr Green

Freedom of Information Act 2000 (FOIA)

Thank you for your email of 9 July, which seeks a review of our original response to your information request.

Original request

On 15 June, you asked for the following information:

"I would like to see the correspondence between officials regarding the withdrawal of APNs when drafting the Finance Act (2014) to understand why the phrase "...it is to be treated as to never having had effect..." was added, and therefore to better understand the true consequences of adding that clause."

Our response

We replied on 9 July, saying:

We can confirm we hold information within the scope of your request consisting of correspondence between HMRC officials and the Office of Parliamentary Counsel (OPC). This information is being withheld on the basis of the exemptions in sections 35(1)(a) and 42 of the Freedom of Information Act 2000.

Internal review request

On 9 July you asked us to review our handling of your request:

"Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of HM Revenue and Customs' handling of my FOI request 'correspondence regarding the drafting of the withdrawal of APNs in the Finance Act (2014)'.

My FOI was refused citing "information is being withheld on the basis of the exemptions in sections 35(1)(a) and 42 of the Freedom of Information Act 2000"

A full history of my FOI request and all correspondence is available on the Internet at this address:

<https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.whatdotheyknow.com>

Information is available in large print, audio and Braille formats.
Text Relay service prefix number – 18001



.com%2Frequest%2Fcorrespondence_regarding_the_dra_2&data=02%7C01%7Cfoi.re
quest%40hmrc.gov.uk%7Cfad34e305aba4efbe2f308d823fc731e%7Cac52f73cfd1a4a9a8e7
a4a248f3139e1%7C0%7C0%7C637298914454136741&sdata=TxE9r75GDd8V4%2BI
%2F6mVPrhvjGMySWXMdmribn6SbE8%3D&reserved=0"

Internal review

The purpose of this review is to assess how your request was handled and to determine whether the original decision given to you was correct.

We received your request on 15 June and replied by email on 9 July. This was within the statutory deadline in compliance with section 10(1) of the FOIA.

The response also set out our review procedure and your right to complain to the Information Commissioner, as required by section 17(7) of the FOIA.

Considerations

The initial response to your request confirmed that we do hold some information within the scope of your request. As explained in the original response, I can confirm that this information does not make any reference to the specific phrase you quoted in your request. The information we hold does not explain why this particular wording was used. However, I can confirm that the purpose of this clause is to ensure that any consequences attached to an Accelerated Payment Notice are also removed if the notice is withdrawn.

The information held relates to the formation and development of government policy, as such, I am satisfied that the exemption under section 35(1)(a) is applicable. I can also confirm the information held amounts to legal advice, as such, I am satisfied that the exemption under section 42 of FOI Act is also applicable.

The public interest test was considered under each exemption to establish if the public interest in maintaining the exemptions outweighed the public interest in disclosing the information.

As the initial response explains, there is a strong public interest built into the legal professional privilege exemption, which has been recognised by the courts. The response also takes into account the public interest of ensuring legislation is prepared effectively. On this basis, I am satisfied that the public interest in upholding the section 42 exemption outweighs the public interest in disclosing the information.

For the section 35 exemption there may be a stronger case for disclosure in the public interest. The formation and development of the policy is no longer a live process, as it was introduced in 2014, which has an impact on the justification for withholding the information. The original response could have considered this further. However, this would not have affected the outcome as the information remains undisclosed as it does not pass the public interest test for the section 42 exemption of legal privilege.

Conclusion

Having carefully considered how we handled your original request I am upholding the decision made to withhold the information under section 42 of FOIA.

Appeal process

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

Yours sincerely,

HM Revenue and Customs