



HM Revenue & Customs

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Personal Tax Customer, Product & Process Directorate

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Date 25 May 2016
Our ref FOI 1681-16
Your ref

Dear Mr Courtney

Freedom of Information Act 2000 (FOIA)

Thank you for your email of 3 May 2016 asking HMRC to carry out an internal review of our response to your information request.

Your request

In your original email of 11 April 2016 to HMRC you requested information relating to the non-receipt of Form P60. With reference to specified persons, you asked:

"I would like to know if there have been any instances of failure to perform due diligence in this respect in the past or since, whether or not they have used 'starter check lists' for new employees in the past or since, whether or not they have operated emergency tax codes to avoid such a problem in the past or since relating to the following companies of which they are secretary and director respectively."

Our response

We responded on 22 April 2016 citing the exemption at section 44(2) of the FOIA to neither confirm nor deny whether we hold information within scope of your request. We explained that by virtue of the provisions of section 23(1) of the Commissioners for Revenue and Customs Act 2005 (CRCA), information held in connection with a function of HMRC that relates to an identifiable "person" is exempt from disclosure under FOIA.

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



We also explained that the term "person" includes legal entities such as companies, trusts and charities, as well as living individuals. (As set out in Schedule 1 of the Interpretation Act 1978.)

I have copied the links to the relevant legislation here:

<http://www.legislation.gov.uk/ukpga/2000/36/section/44>

<http://www.legislation.gov.uk/ukpga/2005/11/section/23>

<http://www.legislation.gov.uk/ukpga/1978/30/schedule/1>

Your request for an internal review

In your email of 3 May 2016, you stated:

I am gathering evidence in connection with civil proceedings. As such, I believe that the exemption you have quoted does not apply.

Please reconsider my request.

On 13 May 2016, you sent the following email:

Further to my previous comments, and in order to assist your internal review, my request has already identified a person, or persons, and I have previously pointed out this information is already within the public domain. An answer to my inquiry will not identify anyone, companies included, who has not already been identified.

I require no additional personal information, I just need to know if it was reasonable to expect the people identified to have operated the correct tax codes, based on their previous practices, in order to generate a correct P60 in accordance with their legal obligations.

Outcome of the internal review

The purpose of an internal review is to consider whether your request was handled correctly under the terms of the FOIA.

Our response was issued on 22 April 2016 which I note was within the statutory time period specified in section 10(1) of the FOIA.

In accordance with section 17(7) of the FOIA our response included details on how you could complain to the Information Commissioner.

During the passage of the Bill which created HMRC through Parliament (the CRCA), it was Parliament's clear intention that information about our customers would be removed from the right of access under the FOIA.

Responding to concerns that information about our customers might be disclosable under the FOIA the then Paymaster General, Dawn Primarolo, said:

"Taxpayer confidentiality remains of paramount importance in the new department. As I have said, for that reason, the Bill ensures that information connected with a taxpayer is not discloseable under the Freedom of Information Act. That was always the intention, but the new clause puts that beyond doubt - that information will not be discloseable under that Act. However, much of the information that Her Majesty's Revenue and Customs will hold is not taxpayer confidential - for example, information about the department's internal processes. The new clause clarifies that such information will be subject to the Freedom of Information Act. Therefore, if a person requests information that is not taxpayer confidential, that request will be considered under the Act."

The relevant enactment is at section 23(1) of the CRCA, the “new clause” referred to in Ms Primarolo’s statement above.

In your email of 3 May 2016, you state that you are gathering evidence in connection with civil proceedings. In your follow up email of 13 May 2016, you state that the persons mentioned in your request are already identified, so the exemption does not apply. You also mention again the reason for your request.

However, it is important to recognise that release of information under FOIA is release to the world. Public authorities are not allowed to take account of the identity of the person making the request, or their motives, when deciding whether information, if held, can be disclosed. Therefore the reason for your request is not a material consideration in determining whether information, if held, is exempt from disclosure. Whilst it is also correct that the persons mentioned in your request are already identified, the information you asked for in your original request (copied above) is new information about those persons and, if held, would be subject to our statutory duty of confidentiality.

Taking these points into account, I am satisfied that we were correct in our response of 22 April 2016 to engage the section 44(2) FOIA exemption to neither confirm nor deny whether we hold information within scope of your request. This is HMRC’s consistent position when dealing with requests for customer specific information under the FOIA.

Since we are relying on the absolute exemption under section 44(2) of the FOIA, we are not required to take into account the balance of the public interest. The fact that section 44 is an absolute exemption demonstrates that, whilst recognising that the public interest will generally be best served by openness, there is an overriding public interest in deferring to any existing statutory prohibitions against disclosure.

To be helpful, I have included in the annex below a paragraph about the limited circumstances in which HMRC may disclose customer information outside of the FOIA.

Appeal process

If you are not content with the outcome of an internal review, you can complain to the Information Commissioners Office (ICO). The ICO will not usually consider a case unless you have exhausted HMRC’s internal review procedure. You can make a complaint to the ICO by post to: The Information Commissioner’s Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Yours sincerely

John Evans

Senior Audit & Briefing Advisor

Annex

Discretionary disclosure outside of the FOIA

Although customer information is excluded from the FOIA regime, HMRC may disclose on a discretionary basis if one of the conditions set out in section 18(2) or (3) of the CRCA applies. These conditions do not affect the interaction between sections 18(1) and 23(1) CRCA so the disclosure is not made under FOIA. The absolute prohibition against disclosure contained in section 18(1) is the only relevant provision in this regard. An amendment to the CRCA was introduced in 2009 to make this explicit (See section 19(4) of the Borders, Citizenship and Immigration Act 2009).

<http://www.legislation.gov.uk/ukpga/2005/11/section/18>

<http://www.legislation.gov.uk/ukpga/2009/11/section/19>

HMRC publishes its guidance on disclosure of information relating to identifiable customers.

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