



**HM Revenue
& Customs**

By email to:
Francis Irving
request-365xxxxxxxxxx@xxxxxxxxxxxxxxxx.xxx

Teresa Chance
Central Policy - Freedom of Information
1C/25
100 Parliament Street
London SW1A 2BQ

Tel

Fax 020 7147 0666

Email

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Our Ref FOI 1699/10
Your Ref

www.hmrc.gov.uk

Dear Mr Irving

Freedom of Information Act 2000

On 2 July 2010, we responded to your request, which HMRC received on 4 June 2010, for the following information:

I understand the HMRC runs the Government Banking Service (GBS).

*Can you please send me a list of the accounts that are in the GBS.
For each account, please give the following information:*

- * The public authority the account is for, e.g. "MHRA"*
- * The account name, e.g. "GBS Re MHRA"*
- * Any other description of the account you have available*
- * The bank the account is with, e.g. "Citibank"*

Having received our response, you asked for the following clarification on 14 July 2010:

*HMRC has chosen to use section 18(1) of the Commissioners for Revenue and Customs Act 2005 to refuse to release the information that I have requested. Can you explain to me *why* you are choosing not to release this particular information?*

Unlike an exemption on, say, security grounds, the reasoning is not immediately obvious.

I am therefore providing clarification as to why HMRC used the s44 exemption (prohibitions on disclosure) under the FOIA. I have not treated this as a request for an internal review.

Information is available in large print, audio tape and Braille formats.
Type Talk service prefix number – 18001



INVESTOR IN PEOPLE



My original response explained your rights regarding requesting a review or making a complaint to the Information Commissioner.

Exemption – s44(1)(a)

The FOI exemptions can be divided into absolute and qualified exemptions; they can also be divided into class and prejudice exemptions. S44(1)(a) is an absolute exemption and it is a class exemption.

44 Prohibitions on disclosure

(1) 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,

S44 is a class exemption which means that it is engaged if the information requested falls into the category described by the particular exemption. In this case, s44(1)(a) has been cited because the information within scope is subject to a statutory prohibition on disclosure. The FOIA effectively defers to existing legislation so that, if disclosure of certain information is prohibited by another statute, then FOIA does not override that piece of legislation.

In this regard, s44 works in a similar way to s40(1) of the FOIA which exempts the personal information of the applicant from disclosure under FOIA because the Data Protection Act 1998 governs the rules for disclosure of personal information to the data subject. With regard to the information which you have requested, disclosure is governed by the Commissioners for Revenue and Customs Act 2005 (CRCA).

http://www.opsi.gov.uk/acts/acts2005/ukpga_20050011_en_1

As I already explained in my original response, s44 is an absolute exemption under section 2(3) of the FOIA and therefore does not require a consideration of the public interest. The fact that s44 is an absolute exemption demonstrates that, whilst recognising that the public interest will generally be best served by openness, it must always be in the public interest to defer to any existing statutory prohibitions against disclosure. The ICO reconfirmed this in a Press release in 2007.

http://www.ico.gov.uk/upload/documents/pressreleases/2007/section_44_exemptions_140907_final.pdf

Section 18(1) Commissioners for Revenue and Customs Act 2005 (CRCA)

You have asked why we have chosen to cite s18(1) of the CRCA. My original response set out how the information you requested was covered by HMRC's statutory duty of confidentiality under s18(1).

18 Confidentiality

(1) Revenue and Customs officials may not disclose information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs.

I explained how s23(1) CRCA further provides that, where the information covered by s18(1) relates to a 'person' who is identified or who could be identified, the exemption in s44(1)(a) FOIA applies. 'Person' includes both living persons and legal entities such as, in this case, public authorities (see paragraph 110 of the explanatory notes to the CRCA).

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 make a disclosure of information which is prohibited under s18(1) of the CRCA is unlawful. S19 of the CRCA sets out the sanctions in place in the event of wrongful disclosure. Outside of the FOIA, HMRC is able to make discretionary disclosures if any of the exceptions to our duty of confidentiality set out in s18(2) or (3) of the CRCA apply. None of these exceptions apply in relation to your particular request.

You may be interested to know that HMRC publishes its Information Disclosure Guidance to staff regarding lawful disclosure and this can be found at the following link:

<http://www.hmrc.gov.uk/manuals/idgmanual/Index.htm>

I hope that this explanation has helped to clarify our use of the s44 exemption.

Yours sincerely

Teresa Chance