



HM Revenue  
& Customs

Mr Michael Richards

By email:

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**Date** 7 July 2014  
**Our ref** FOI 2125/14

Dear Mr Richards,

**Freedom of Information Request**

I refer to your request under the FOIA, which was received on 08/06/2014, for the following information:

*The revised Naming Scheme for employers who fail to pay the National Minimum Wage came into effect from 1 October 2013 onwards. Under the scheme HMRC is responsible for issuing Notices of Underpayment to employers and, if an employer does not appeal against a Notice or if such an appeal is unsuccessful, HMRC should refer the employer to BIS for automatic naming.*

*On 5 June 2014, HMRC made an announcement of its 2013/14 figures for NMW enforcement:*

<https://www.gov.uk/government/news/hmrc-secures-record-46m-minimum-wage-arrears-for-underpaid-workers>

*HMRC's 5 June 2014 press release quoted the following four examples of employers against whom HMRC had recently taken action:*

- A Premier League football club
- A social care provider
- A recruitment agency
- A multi-outlet retailer

*Please could you advise if HMRC referred each of the above four employers to BIS under the naming scheme? If HMRC did not refer one or more of the employers please could you state the reasons why referrals did not happen?*

*Please could HMRC name each of the above four employers as I feel it is in the public interest for this information to be disclosed.*

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



I can confirm that HMRC holds some information within scope of your request, but it is covered by the exemption at section 44(1)(a) of the FOIA, which applies when the information is prohibited from disclosure under any enactment.

In this instance, the relevant enactment is section 23(1) of the Commissioners for Revenue and Customs Act 2005 (CRCA). To determine whether information is covered by section 23(1) of the CRCA, we are required to consider two questions:

- is the requested information held in connection with a function of HMRC? and
- does the information relate to a "person" who is identified, or who could be identified from the information requested?

If, as in this case, the answers to both questions is "yes", then the section 44(1)(a) FOIA exemption is engaged and our statutory duty of confidentiality (at section 18(1) of the CRCA) removes any possibility of disclosure on a discretionary basis.

Paragraph 110 of the explanatory notes to the CRCA makes clear that the term "person" includes not just living individuals, but also legal entities such as companies, trusts and charities.

The full exemption is set out in the attached Appendix.

The four cases that you outline above were considered as part of the pre-October 2013 scheme but did not meet the naming criteria for that scheme and were therefore not referred.

Under the pre-October 2013 scheme employers had to meet one or more of the following criteria before they could be named:

- there is evidence that the employer knowingly or deliberately failed to comply with their NMW obligations
- there is evidence that the employer has previously received advice from HMRC about the steps they need to take to ensure future compliance with national minimum wage and has not taken those steps
- there is evidence that the employer has failed to take adequate steps to keep or preserve NMW records
- there is evidence that the employer has delayed or obstructed a NMW compliance officer in the performance of their duties
- there is evidence that the employer has refused or neglected to answer questions put to them by a NMW compliance officer
- there is evidence that the employer has refused or neglected to provide information or produce documents to a NMW compliance officer
- there is evidence that the employer refused or neglected to pay arrears of the NMW to workers, following HMRC intervention, which has resulted in HMRC taking action against the employer to ensure payment of arrears to workers
- HMRC will not refer cases to the Department for Business, Innovation & Skills (who operate the scheme and make the decisions based on above criteria and publish the names) unless the total arrears owed to workers are at least £2,000 and the average arrears per worker are at least £500

I have enclosed a link to the enforcement policy document, which includes further information about the Government's naming policy operates and the criteria for the original and current naming scheme.

<https://www.gov.uk/government/publications/enforcing-national-minimum-wage-law>

HMRC is unable to provide any other information as it would breach HMRC's statutory duty of confidentiality under s18(1) of the Commissioners for Revenue and Customs Act 2005.

If you are not happy with this reply you may request a review by writing to HMRC FOI Team, Room 1C/23, 100 Parliament Street London SW1A 2BQ or email

[xxx.xxxxxx@xxxx.xxx.xxx.xx](mailto:xxx.xxxxxx@xxxx.xxx.xxx.xx) 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

**GOPAL BHACHU**  
FOI Team

To find out what you can expect from us and what we expect from you go to [www.gov.uk/hmrc/your-charter](http://www.gov.uk/hmrc/your-charter) and have a look at 'Your Charter'.

## **Appendix**

### **Freedom of Information Act 2000**

#### **Section 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,
  - (b) is incompatible with any Community obligation, or
  - (c) would constitute or be punishable as a contempt of court.
- (2) The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).