



HM Revenue  
& Customs

Mr G Taylor  
By email: [request-513627-4ca78da5@whatdotheyknow.com](mailto:request-513627-4ca78da5@whatdotheyknow.com)

## Freedom of Information Team

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Date: 18 October 2018  
Our ref: IR2018/02046

Dear Mr Taylor

### Freedom of Information Act 2000 (FOIA)

I am writing with reference to your email of 12 September 2018 regarding our response of the same date to your requests for information under references: FOI2018/01915, FOI2018/01916, FOI2018/01917 and FOI2018/01918.

You have requested an internal review of HM Revenue and Customs (HMRC) handling of your FOI request saying:

*"I would like to appeal all 4 of these FOI request rejections. I appeal these on the basis that the estimates are not accurate and for any organisation this would be a relatively straight forward search or database query taking far less than 3 ½ days to complete all and respond. Therefore, on this basis I would like appeal this decision."*

### Original requests for information:

**FOI2018/01915** - In relation to the disguised remuneration legislation in the year Financial Year to March 2010. Could you please advise, how many individuals declared the use of loan schemes on their tax returns in this year?

**FOI2018/01916** - In relation to the disguised remuneration legislation, please provide me with details of how many scheme operators/providers who have been investigated by HMRC and have subsequently been shut down or stopped from trading in relation to scheme arrangements.

**FOI2018/01917** - In relation to the disguised remuneration legislation, please provide me with details of how many scheme operators/providers who have been identified, how many of these, including those domiciled outside of the UK have submitted VAT payments to HMRC in the years 1999 to 2018?

**FOI2018/01918** - In relation to the disguised remuneration legislation, please provide me with details of how many scheme operators/providers who have been investigated by HMRC and where the arrangements have subsequently been found not to be compliant.

## Internal Review

The purpose of an Internal Review is to assess how your FOI request was handled in the first instance and to determine whether the original decision given to you was correct. This is an independent review.

The Act gives applicants two rights in respect of information held by a public authority:

- (1) a right to be told if the information is held (known as the duty to confirm or deny); and
- (2) a right to have that information communicated subject to any exemption or exemptions that might apply.

Each of these rights is subject to exemptions under the FOIA.

HMRC received your requests on 28 August 2018 and responded on 12 September 2018. This was within the statutory deadline in compliance with section 10(1) of the FOIA.

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

In the course of this review I will be considering if HMRC was entitled to rely on section 12(1) FOIA (cost of compliance exceeds appropriate limit) to refuse your requests and that it was entitled to aggregate your four requests under section 12(4) FOIA and the Fees Regulations.

I will also be considering if you have been provided with sufficient advice and assistance in narrowing down the scope of your requests to have complied with section 16(1) FOIA (duty to provide advice and assistance).

Section 12(1) FOIA allows a public authority to refuse a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 SI 2004 No 3244 ("the Fees Regulations.")

The appropriate limit is set in the Fees Regulations at £600 for central government departments and £450 for all other public authorities. The Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour of staff time, meaning that section 12(1) FOIA effectively imposes a time limit of 24 staff hours for HMRC for an individual request.

However, under section 12(4) FOIA, when a public authority is estimating whether or not the cost of compliance with the legislation would exceed the appropriate limit, it may aggregate two or more requests if the conditions laid out in regulation 5 of the Fees Regulations can be satisfied.

Regulation 5 of the Fees Regulations provides that:-

"(1) ... where two or more requests for information... are made to a public authority—

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

(2) This regulation applies in circumstances in which –

(a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and

(b) those requests are received by the public authority within any period of sixty consecutive working days."

On 28 August 2018, HMRC received your four requests for information under the FOIA, all of your requests were with regard to disguised remuneration. I therefore find the above conditions to be satisfied and that HMRC are entitled to consider your request under section 12(4) FOIA.

As provided above, the estimated cost of complying with any of your four requests is now to be taken to be the total costs which may be taken into account by HMRC of complying with all of your requests.

For the purpose of this review I have considered the estimated cost of compliance for your request under reference FOI2018/01917 in detail, the wording of which I have provided below:

*'In relation to the disguised remuneration legislation, please provide me with details of how many scheme operators/providers who have been identified, how many of these, including those domiciled outside of the UK have submitted VAT payments to HMRC in the years 1999 to 2018?'*

To quantify HMRC's estimated cost of compliance I have initially sought to determine the total number of operators/providers to which you refer. I can advise that there are in excess of 250 disguised remuneration schemes and that these can be operated, provided or promoted by multiple entities.

Your request requires the individual VAT status of each of these entities to be determined and then checked against a separate VAT database.

HMRC still relies on a number of legacy IT systems as well as manual records. To extract, cross-check and analyse the data you have requested would mean interrogating multiple databases and financial systems as well as some manual viewing of case level data that is not easily extractable.

Even if it were taken that each scheme was operated, provided and promoted by just a single entity this would allow just over five minutes to manually review the associated VAT records in order to provide the requested information within the FOIA cost limits.

For the reasons explained above, I therefore find HMRC are entitled to rely upon section 12(1) FOIA with regards this request and that in accordance with the previously provided Fees Regulations are entitled to rely upon section 12(4) FOIA for all four of your aggregated requests.

I will now turn to the section 16(1) FOIA advice and assistance aspect of your initial response. I note that for the above request HMRC were unable to provide you with any assistance to narrow the scope of your request.

Having reviewed the circumstances in detail, I agree that due to the number of schemes involved and the multiple entities associated to them no further advice can be provided for this request.

With regards your requests FOI2018/01916 and FOI2018/01918, I am satisfied that HMRC had previously provided responses to identical or similar requests within a reasonable period of time to your request and that by directing yourself to these documents HMRC met their obligations under section 16(1) FOIA.

For your request FOI2018/01915, I recognise that whilst you were directed to similar information which had previously been provided in response to a separate request it was not for the time period you requested.

On a discretionary basis I would advise that 1,620 individuals declared the use of a loan scheme on their Self Assessment (SA) tax return during the tax year 2009/10. This information is obtained from SA data where the individual has declared a 'Scheme Reference Number' (SRN) related to a disguised remuneration scheme declared under the

Disclosure of Tax Avoidance Schemes (DOTAS) regime. It does not include declarations which may have been made in the notes/other information sections of the SA tax return.

## **Conclusion**

In conclusion, I am satisfied that HMRC's response of 12 September 2018 was correct and compliant with the FOIA.

However, I do find that further explanation and costs estimates could have been provided. I hope that the further detail I have now provided along with the additional information in response to FOI2018/01915 addresses your concerns.

## **Appeal process**

If you are not content with the outcome of this internal review, you can complain to the Information Commissioner's Office (ICO). You can make a complaint to the ICO by post to: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF. Instructions about this process are available at the following link:

<https://ico.org.uk/concerns/>

Yours sincerely,

Freedom of Information Team