

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 February 2018

Public Authority: HM Revenue and Customs

Address: 100 Parliament Street
London
SW1A 2BQ

Decision (including any steps ordered)

1. The complainant has requested information regarding the introduction of a performance management system within HMRC.
2. The Commissioner's decision is that HMRC has breached section 10(1) of the Act by failing to respond to the complainant within 20 working days, and therefore also breached section 1(1)(a) by neither confirming nor denying whether it holds the requested information within the statutory timeframe.
3. As HMRC has provided a response to the complainant, the Commissioner does not require HMRC to take any further steps.

Request and response

4. On 15 August 2016, the complainant wrote to various members of staff at the Government Legal Department (GLD) and requested the following information as part of the disclosure process of her then current Tribunal proceedings:

"The full document states that there was an impact assessment carried out indicating the potential discriminatory aspects of the scheme against part time staff and that this has been confirmed by the subsequent review of markings since the scheme was rolled out. Please disclose the impact assessment and the Exceed, achieve and improvement markings for all HMRC staff and specifically RIS staff for 2014/15."

5. On the same day, a solicitor from GLD responded from an HMRC email account and advised the complainant that she would have to submit a formal Freedom of information request directly to HMRC for the "PMR markings".

6. On 17 August 2016, HMRC received a request from the complainant which requested information in the following terms:

"1. Please provide me with a copy of any impact assessment carried out in HMRC before the introduction of the new performance management regime introduced in 2013/14.

2. Please provide a copy of any post implementation report.

3. Please provide the analysis of performance management markings results for the year ended 31 3 2015.

- setting out the percentage of full time staff in the achieved, exceed and improvement needed categories across HMRC as a whole and within RIS directorate

- setting out the percentage of part time staff in the achieved, exceed and improvement needed categories across HMRC as a whole and within the RIS directorate."

7. On 14 March 2017, HMRC provided a response to the complainant's request which stated simply *"The information is attached"*. The complainant requested an internal review on 28 April 2017.

8. On 1 August 2017, HMRC provided the outcome of the internal review and acknowledged that the response had undergone an *"avoidable delay in our internal processes"*.

Scope of the case

9. The complainant contacted the Commissioner on 18 September 2017 to complain about the way her request for information had been handled.
10. The complaint confirmed that her complaint was solely focussed on the length of the time it took HMRC to provide a response and she wished to proceed to decision notice.
11. The Commissioner therefore considers the scope of the case to be whether HMRC has breached section 10 of the Act.

Reasons for decision

12. Section 1(1) of Act states:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it hold information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

13. Section 10(1) of the Act states:

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

14. The Commissioner has considered whether the date of receipt was the date the request was received by the solicitors acting for HMRC or the date the complainant contacted HMRC directly.
15. HMRC has confirmed that whilst GLD solicitors were acting for HMRC in a tribunal case, they were not employees of HMRC¹.
16. HMRC also confirmed that it is GLD and HMRC policy not to accept requests for information on behalf of other public authorities.

¹ <https://www.gov.uk/government/organisations/government-legal-department/about>

17. The Commissioner notes that the GLD solicitor contacted the complainant promptly to advise her to re-direct her request to HMRC and the complainant was not, therefore, disadvantaged by this. The Commissioner is satisfied that this was a reasonable approach to take in the circumstances of this case.
18. There appears to be some confusion over the date the request to HMRC was sent. Neither party has provided the original request to the Commissioner. From the correspondence sent by the complainant, she states she has sent the request on 15 August 2016. However, HMRC states in its formal response that it was received on 17 August 2016. The complainant has not disputed this date and, for the purposes of this notice, the Commissioner will take the date of receipt as 17 August 2016.
19. HMRC provided its response on 14 March 2017, almost seven months after receipt of the request.
20. The Commissioner's decision is that HMRC breached the statutory timeframe of 20 working days and therefore it contravened the requirements of section 10(1) and section 1(1)(a) of the Act.

Other matters

21. The Commissioner wrote to HMRC to set out her concerns regarding the timescale of this request, including the time taken to provide an internal review.
22. HMRC responded and said that the request had undergone an "*unacceptable delay*". HMRC provided a detailed explanation of the steps it had taken to improve its handling of requests under the Act.
23. The Commissioner acknowledges the steps taken and asks HMRC to ensure that no further requests are subject to such extended time frames in future.

Right of appeal

24. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

25. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
26. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Elizabeth Hogan
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF