

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 6 October 2021

**Public Authority:** HM Revenue and Customs  
**Address:** 100 Parliament Street  
London  
SW1A 2BQ

#### Decision (including any steps ordered)

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1. The complainant submitted a request to HM Revenue and Customs (HMRC) describing a scenario where an accountant is aware that a client failed to submit a tax return and sought any information, policies and guidance HMRC held about such a scenario. HMRC explained that it did not hold any information in the scope of the request. The complainant disputed this position.
2. The Commissioner's decision is that on the balance of probabilities, HMRC does not hold any recorded information falling within the scope of the request.
3. No steps are required.

#### Request and response

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4. The complainant submitted the following request to HMRC on 27 May 2020:

*'Please could you provide all relevant information, policies and guidance relating to the following scenario. An account [accountant] prepares a draft self-assessment for their client several months in advance of the 31st January deadline. The accountant then seeks approval from their client to submit the self assessment to HMRC. But the client refuses to approve the submission, meaning the tax return is not submitted by 31st January and tax evasion is committed. As the*

*accountant allowed the facilitation of tax evasion, wouldn't they be duty-bound to report it to HMRC?'*

5. HMRC responded on 16 June 2020 and explained that:

*'Section 84 of the FOIA clarifies that the term 'information' under the Act means information recorded in any form. For example, a valid request would be for a copy of a policy, rather than an explanation as to why we have that policy in place. On occasion, we receive requests that do not ask for recorded information, but ask more general questions about, for example, a policy, opinion or a decision. Your scenario based question is complex and falls under this criteria. Usually, we would be unable to answer it under the FOIA, however, in an attempt to be helpful we have provided the following information.*

*There are no specific policies specifically relating to the scenario you have provided.'*

6. The complainant contacted HMRC on the same day as follows:

*'I understand that ultimately it is the client rather than accountant that is responsible for ensuring their tax return (and tax owed) is submitted on time. However, my point related to the accountant being duty bound to report any suspicion of tax evasion by their clients. A simple Google search on the topic suggests accountants are duty bound to report such suspicions. For reference, the links below are the top two results on Google. These list various acts including the Taxes Management Act 1970 which impose a duty on both accountants and solicitors to report such matters. I also note that 60% of tax evasion requires facilitation by accountants or solicitors which is why the 1970 Act, and other more recent acts, exist.*

<https://blackandwhiteaccounting.co.uk/contact-us/surrey/accountant-in-addlestone/>

<https://www.google.co.uk/url?q=https://www.handp>

*I'd appreciate if you would confirm whether the information referred to above is accurate or incorrect? If it is accurate, please would you clarify why HMRC contradict this position in many FOI responses.'*

7. HMRC responded on 22 June 2020 and explained that FOIA only covered recorded information and it was not obliged to create new answers to specific questions. It therefore declined to respond to the complainant's email of 16 June 2020.
8. In response, the complainant contacted HMRC on the same day and asked it conduct an internal review of its original response.

9. HMRC informed him of the outcome of the review on 29 September 2020. The response confirmed HMRC's position that it did not hold information or guidance falling within the description of the situation described in the request and set out a number of reasons why this was the case.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 29 September 2020 in order to complain about HMRC's handling of his request. He explained that he disagreed with HMRC's position that it did not hold information falling within the scope of his request.
11. The Commissioner wishes to make it clear at this stage that in her view the complainant's email of 27 May 2020 does constitute a valid request for information. Section 8(1) of FOIA states that a valid request will be one that '*describes the information requested*'. In the Commissioner's view the email of 27 May 2020 does do that as it asks for '*information, policies and guidance*' on a particular scenario. It may be the case that (as HMRC suggests) the scenario described is a complex one, but that does not make the request invalid.
12. Therefore, the focus of this notice is to determine whether HMRC holds any recorded information falling within the scope of the complainant's request of 27 May 2020.

## **Reasons for decision**

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### **Section 1 – Right of access to information**

13. In cases such as this where there is some dispute as to whether information falling within the scope of the request is held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
14. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request.
15. In applying this test the Commissioner will consider the scope, quality, thoroughness and results of the searches, and/or other explanations offered as to why the information is not held.

### The complainant's position

16. As part of her investigation of this complaint, the Commissioner contacted the complainant and asked him to explain why he believed that HMRC would hold information falling within the scope of the request. The complainant did not provide the Commissioner with any submissions in response.

#### HMRC's position

17. As noted above, in its internal review response HMRC set out a number of reasons why it did not hold information falling within the scope of the request. These were as follows:
- *'It is the responsibility of the customer to send in the return, not the responsibility of the agent. If, in the terms of engagement between the agent and client, the agent agrees to send in the return and this does not happen the next steps are a matter between the agent and the customer/client and does not change the fact that onus remains with the customer and is therefore not a matter for HMRC to have guidance about.'*
  - *'The fact that a return has not been submitted does not necessarily mean that 'tax evasion' has occurred. While returns can show that tax is due, some indicate that a repayment is due and some returns show business losses. As stated above, the legal responsibility to submit a return remains with the customers not with the agent. As there is no automatic direct link between the non-submission of a return and tax evasion, there is no guidance specifically on this matter.'*
  - *'Although the client may have not authorised the agent to submit the return, the agent would not necessarily know whether or not the customer/client had decided to send the return in themselves because, as above, it is the customer's responsibility to send in the return. Again, this is not a HMRC matter, as the responsibility rests with the customer, so there is no guidance on this issue.'*
  - *'There is of course an obligation on the agent to make a Suspicious Activity Report if they are aware of potential criminal activity or money laundering, but there is no indication of that here. S106A of TMA 1970 [Taxes Management Act 1970] specifically refers to 'fraudulent evasion' and again the non-submission of tax return by the due date is unlikely to meet this bar.'*

#### The Commissioner's position

18. The Commissioner is satisfied that on the balance of probabilities HMRC does not hold any information falling within the scope of the request.

19. The Commissioner has reached this conclusion on the basis of the explanation provided in HMRC's internal review response which explains why there is no business need, or any requirement, for it to have any guidance on the scenario described in the request. She considers HMRC's explanation to be clear, logical and reasonable.
20. The Commissioner appreciates that the complainant made a number of points in his email to HMRC of 16 June 2020 to support his view as to why information would be held. However, in the Commissioner's view the final bullet point of HMRC's response quoted at paragraph 17 above explains why the obligations placed on agents by the Taxes Management Act 1970 would be very unlikely to mean that HMRC holds information about agents needing to notify it simply if clients failed to submit their tax returns. That is to say, because the failure to submit a tax return does not meet the bar of '*fraudulent evasion*'.
21. Furthermore, as noted above, the Commissioner asked the complainant to submit any submissions he wished to make to support his view that HMRC was likely to hold information in the scope of his request. The complainant did not provide any such submissions.

## Right of appeal

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22. 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: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

23. 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.
24. 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 .....**

**Jonathan Slee**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**