

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 28 June 2010

Public Authority: Her Majesty's Revenue and Customs
Address: 1 Parliament Street
London
SW1A 2BQ

Summary

The complainant made two requests for information from HMRC about direct tax disclosure statistics. HMRC stated it did not hold the information covered by the first request, which asked for separate information about the number of disclosures made by the "big 4"¹ accountancy firms, but provided relevant information it did hold. HMRC refused the second request on the basis the requested information was exempt under section 44 of the Act. During the Commissioner's investigation, HMRC released further information in response to the first request and stated it now regarded the rest of the information as exempt under section 44. In addition, HMRC's position on the second request had changed and it now stated it did not hold information in the format requested and that to produce it would be over the appropriate limit. During the Commissioner's investigation the complainant changed the scope of his second request to limit the information requested.

The Commissioner is not satisfied section 44 applies to all of the information withheld as exempt in response to the first request and directs that the non exempt information should be disclosed within 35 days of the date of this notice. With regard to the second request, the Commissioner is satisfied that even after the scope of the request was limited during the course of his investigation the information requested was correctly withheld as exempt under section 44.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the

¹The "big 4" accountancy firms are Deloitte Touche Tohmatsu, Ernst & Young, KPMG and PricewaterhouseCoopers.

requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. The request concerns direct tax disclosure statistics. Since 1 August 2004 statutory provisions have been in place requiring organisations to make a disclosure to HMRC when arrangements are put in place enabling a person to obtain a tax advantage. Further information can be found at: <http://www.hmrc.gov.uk/avoidance/avoidance-disclosure-statistics.htm>.

The Request

3. On 19 August 2008, the complainant emailed HMRC and requested:

"a breakdown of the statistics shown in the "historic" section of the direct tax disclosure statistics, i.e. the numbers shown generally in 6 month periods, showing the numbers promoted by -

- *the big 4 accountancy firms*
- *other accountancy firms*
- *banks*
- *other financial institutions*
- *law firms*
- *others*

Please also supply a list of promoters with the number of schemes promoted in each period and the type of schemes (e.g. firm x promoted y schemes of sort A and z schemes of sort B in period April 200X to Sep 200X).

I appreciate that the latter part of this request would cover the former information but have included the former in case you refuse the latter. The summary information seems fairly uncontroversial.

4. HMRC replied on 11 September 2008 and considered as two separate requests. The first was the request for information on the number of schemes promoted by each type of promoter as specified in the bulleted list of promoter types. The second was the more detailed information seeking a list of promoters with the number of schemes each promoted in each period sub-divided into the types of schemes.

5. On the first request, HMRC stated it did not hold the information and added if it had held the information in respect of the "big 4" it was likely this would have been exempt under section 44 of the Act. In line with its duty to advise and assist, HMRC provided the information it held on the number of disclosures made by promoter type from 1 August 2004 to 31 March 2008, but this did not divide the disclosures into six month periods as specified in the request. In addition it showed only one combined figure for accountancy firms rather than the requested sub division into accountancy firms and the "big 4" and one combined figure for financial institutions rather than the sub-division into banks and other financial institutions as specified in the request. The information did list disclosures by the types of schemes (e.g. employment, stamp duty land tax).
6. With regard to the second request, HMRC confirmed it held the information but it was exempt under section 44 of the Act with reference to sections 18(1) and 23 of the Commissioners of Revenue and Customs Act 2005 (CRCA).
7. The complainant requested an internal review on 12 September 2008 and highlighted the following points:
 - With regard to the information provided in response to the first request what had been sought was a breakdown into 6 month periods not just the total number of disclosures since the disclosure regime was introduced.
 - Also on the first request, previously HMRC had disclosed information to the complainant about the numbers of schemes promoted by the "big 4" as distinct from other accountancy firms. It was unclear what had changed that meant this information was not held now or unavailable. The complainant suggested HMRC would have to record who the promoter of each scheme was if only to target its anti-avoidance efforts. As information on the "big 4" was disclosed previously it was clear HMRC had not considered the information exempt under section 44 at that time. The information sought was about the "big 4" as a group and would not identify particular firms.
 - On HMRC's response to the second request, the complainant queried its reliance on section 44 and suggested it might be taking too wide a view of its functions as well as questioning whether it had properly considered the purpose of the relevant sections of the CRCA, which were to protect the confidentiality of taxpayers' tax affairs. No such information had been sought in the request.

8. HMRC replied on 10 October 2008 and in relation to the first request confirmed HMRC did not hold the breakdown of disclosure information requested. HMRC explained it held details of the individual disclosures made and also held details of the cumulative totals of the numbers of disclosures broken down into types of scheme and types of promoter. Information of this type/in this format was provided with HMRC's initial reply dated 11 September 2008.
9. HMRC's reply noted cumulative figures for the types of schemes disclosed were published on its website and these could be broken down into (6 month) periods by subtracting the previous period's total. HMRC updated and used cumulative figures for the types of promoters when needed. HMRC did not keep totals for previous periods that would allow it to readily produce a breakdown. HMRC did not keep a running total of the numbers of disclosures made by the "big 4" because it had no necessity to analyse information in this way.
10. HMRC noted the complainant had been provided with figures for disclosures received until 30 June 2006 and stated he could make some deductions for the period July 2006 to March 2008 by subtracting the figures provided previously from the information disclosed to him on 11 September 2008. HMRC referred to the complainant's comment that previously he had been provided with a breakdown showing the numbers of schemes promoted by the "big 4". Previously this had been available because there had been some specific research on the disclosure statistics. This research had not been repeated. In HMRC's view this meant further consideration of whether section 44 applied to this information was unnecessary.
11. Regarding the second information request, HMRC had considered the application of section 44(1)(a) of the Act and was satisfied that with reference to sections 18, 19 and 23 of the CRCA the information requested was exempt.

The Investigation

Scope of the case

12. On 16 October 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically drew the Commissioner's attention to what he described as the outstanding issues:

- HMRC's refusal to supply information about the schemes promoted by the "big 4"
- HMRC's refusal to specify who all the promoters were and the types of scheme they promoted.

Chronology

13. On 22 June 2009, the Commissioner wrote to both the complainant and to HMRC to begin his substantive investigation. The complainant was asked to confirm he still wished to proceed with the complaint. HMRC was asked to provide a copy of the withheld information.
14. HMRC replied on 16 July 2009 and invited the Commissioner to visit HMRC to inspect the withheld information. The visit took place on 12 August 2009 and the Commissioner wrote to HMRC on the same date to summarise the results of the visit and seek HMRC's agreement that this represented an accurate record. The key points of the summary and issues arising were:
 - On the first request, although HMRC's original response had been that it did not hold the information requested since then tables had been created as part of the consideration of the request, which contained the information in the form requested. HMRC had produced two tables, the first one following the headings in the request exactly and the second showing the "big 4" and other accountancy firms together under one heading of "accountants". Subject to obtaining internal agreement, HMRC would be prepared to release the second version of this table but not the first as HMRC had decided that section 44 of the Act applied to this version.

HMRC was invited to set out the reasons why it felt section 44 applied. Previously this had not been explained as its original decision was that it did not hold the information.
 - On the second request, originally HMRC refused this because the information was held but was exempt under section 44(1)(a) of the Act with reference to the CRCA. Having also reconsidered the second request HMRC's thinking was moving away from section 44 and towards "do not hold". HMRC's revised thinking was informed by some preliminary work done in connection with the present information request. One sample promoter had been selected and work had been carried out to produce the information in the form specified in the second request. It had taken a specialist in anti-avoidance 3 hours to produce the information in the form requested for the one sample promoter. Specialist knowledge was required

- because there were ten types of scheme and individual schemes could fall into more than one type. Producing information in the form requested for all promoters would also be over the appropriate limit as there were hundreds of promoters.
- HMRC did publish information that listed types of scheme disclosed by type of promoter and it was unclear why it was possible to do this without the need for specialist knowledge and without encountering the classification problems referred to in the preceding bullet point. HMRC was invited to explain this apparent discrepancy, although it was noted HMRC's published information only subdivided into four types of scheme and not ten types.
 - HMRC agreed to try to provide the Information Commissioner with a 'for information' copy of the information disclosed to the complainant previously, which had shown the "big 4" separately. HMRC had also undertaken to investigate and report why information of this type had been released in the past but why HMRC took a different view now.
15. HMRC replied on 18 September 2009 and confirmed it had no objection to the release to the complainant of the second version of the table. HMRC refused to disclose the first version because it believed the small sample size of four "would allow the identity and information about particular firms to be deduced". In refusing to release the first version of the table HMRC relied upon section 44(1)(a) of the Act with reference to sections 18, 19 and 23 of the CRCA.
16. With regard to the second request, HMRC confirmed it had changed its decision. Rather than rely on section 44(1)(a) as set out in the original refusal now it stated it did not hold information in the form requested. In support of this position HMRC confirmed the detail of the sample exercise described in the second bullet point of paragraph 14 above. In addition, HMRC confirmed the number of promoters and the number of types of scheme meant producing information in the form requested would be over the appropriate limit.
17. HMRC had been unable to establish what information had been sent to the complainant previously that listed the "big 4" separately but would investigate further. On 25 September 2009, HMRC wrote again to state it had been unable to establish why information listing the "big 4" separately had been released in the past. However, HMRC explained the reason why it felt section 44(1)(a) of the Act (with reference to CRCA) should apply to information that listed the "big 4" separately was that one of the firms in question had made this point to HMRC in relation to some figures it had released. HMRC cited a hypothetical

example to explain its thinking. If figures were published that showed the "big 4" had made 3 stamp duty land tax (SDLT) disclosures and one firm had made all 3 disclosures then it could conclude none of the other "big 4" was selling SDLT schemes in the period in question.

18. In addition in its reply of 25 September 2009 HMRC clarified the position regarding the apparent discrepancy between the information it published routinely on its website and the difficulties it had described in providing information in the form requested in the second request (see penultimate bullet point of paragraph 14 above). HMRC explained it was not a question of the level of skill or judgement required that was the difference between the two sets of information but rather the length of time needed to extract a full set of information in the form requested to satisfy the second information request. On that basis, as the sample exercise had taken over 3 hours to produce information on one promoter and there were hundreds of promoters HMRC's position was that providing information in the form requested would exceed appropriate cost limits.
19. The Information Commissioner contacted the complainant on 19 March 2010 to explain the outcome of his enquiries with HMRC and explained HMRC had reconsidered its reasons for refusing to disclose all of the information requested. With regard to the first request, HMRC accepted it did hold the information requested. The Commissioner forwarded the copy of the table prepared by HMRC that provided all of the information requested in the first request, with the exception that it contained only one column for all accountancy firms, rather than the sub-division into "big 4" and "other accountancy firms" specified in the request. The table did include the breakdown into six month periods specified in the first request.
20. The Commissioner explained HMRC was still refusing to disclose the information that sub-divided the "big 4" from other accountancy firms because it argued it was exempt under section 44 of the Act. The complainant was asked whether he was satisfied with the information now released in response to his first request or whether he still required the separate information on the "big 4".
21. The Commissioner explained how HMRC's decision on the second request had changed as well and noted HMRC's current position was that the information was not held in the form requested and that to provide it would be over the appropriate limit. In view of HMRC's inability to locate the information listing the "big 4" separately that had been disclosed to the complainant in the past he was asked to provide the Commissioner with a copy. In addition, the complainant was

offered the opportunity to provide any comments on HMRC's revised decisions on his requests.

22. The complainant responded on 23 March 2010 and confirmed with regard to his first request he wanted to pursue his complaint about HMRC's failure to disclose separate information on the "big 4". On the second request he understood the difficulty about collating information in the form requested in view of the numbers of promoters and numbers of types of scheme, but would still be interested to know the number of users that the HMRC was aware of with regard to each promoted scheme.
23. On the same day the Commissioner queried the complainant's reference to information about the number of users of each promoted scheme as this information had not been requested in either request covered by the current complaint. Later the same day, the complainant noted this point and confirmed he wanted the Commissioner to investigate his complaint on his first request with regard to HMRC's failure to provide the separate information about the "big 4". On the second request, the complainant wanted to pursue his complaint with regard to HMRC's failure to disclose a list of promoters with the number of schemes promoted but understood "the details of the schemes themselves were not available".

Analysis

Exemptions

First request - Section 44

24. During the Commissioner's investigation, HMRC changed its position with regard to the information covered by the first request. As noted in paragraphs 5 and 8 above, HMRC's position when it first decided the request and later when it held an internal review of that decision was that it did not hold the breakdown of the disclosure information requested. During the course of the investigation HMRC acknowledged that it did hold the information requested and provided a table that contained the information requested, albeit with the figures for the "big 4" and "other accountancy firms" combined together under one heading of "accountancy firms". HMRC has not indicated it had any difficulty creating the table provided and nor has it suggested that the creation of the table required any particular level of skill, knowledge or judgement. No suggestion has been made that the creation of the table required a degree of effort that meant the appropriate limit in

section 12 of the Act would be exceeded. Having considered all of these points, the Commissioner is satisfied that the breakdown of disclosure information requested was held at the time of the request.

25. As a consequence of producing and disclosing the table referred to in the previous paragraph, HMRC has disclosed all of the information sought in the first request with the exception of sub-dividing the information on accountancy firms into “big 4” and “other accountancy firms”. In refusing to disclose the sub-divided information, HMRC has relied on section 44(1)(a) of the Act, with reference to sections 18, 19 and 23 of the CRCA. Section 44(1)(a) of the Act states information is exempt if its disclosure is prohibited by or under any other enactment.
26. Section 18(1) of CRCA prohibits Revenue and Customs officials from disclosing information held by the Revenue and Customs in connection with a Revenue and Customs’ function. Section 18(2) sets out the exceptions to the prohibitions on disclosure of information. Section 18(3) states the prohibition in section 18(1) is subject to any other enactment permitting disclosure.
27. Section 23(1) states 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 if its disclosure would specify the identity of the person to whom the information relates or would enable the identity of such a person to be deduced. Section 23(2) makes clear that information not falling within section 23(1) is not exempt.
28. Sections 23(3) and 19(2) of CRCA provide that “revenue and customs information relating to a person” means information about, acquired as a result of, or held in connection with the exercise of a function of the Revenue and Customs in respect of the person, but it does not include information about internal administrative arrangements of Her Majesty’s Revenue and Customs (whether relating to Commissioners, officers or others).
29. Section 23(1A) was added by section 19(4) of the Borders, Citizenship and Immigration Act 2009. It states subsections 18(2) and 18(3) are to be disregarded in determining for the purposes of section 23(1) whether disclosure of customs and revenue information relating to a person is prohibited by section 18(1). Section 23(1A) was added to CRCA after this information request had been decided and after the complainant had lodged his complaint with the Commissioner. However, following the decision of the First-Tier Tribunal (Information Rights) in the case of *Price Waterhouse Coopers v the Information Commissioner EA/2009/0049*, the Commissioner has considered this

case as if section 23(1A) was in force prior to its commencement date of 22 July 2009. The full text of sections 18, 19 and 23 CRCA is in the Legal Annex to this Notice.

30. The Commissioner is satisfied the withheld information, namely the information that would allow the sub-division of the number of schemes promoted by accountancy firms into "big 4" and "other accountancy firms", is information held by HMRC in connection with one of its functions, namely the collection and management of revenue including taxes. Therefore in the Commissioner's view the withheld information comes within the scope of section 18(1) of CRCA.
31. However, as noted above, for the purposes of the Freedom of Information Act, section 23(1) of CRCA makes clear that information will only be exempt under section 44(1)(a) of the Act if it is information "relating to a person" and disclosure would specify the identity of the person to whom the information relates or would enable the identity of such a person to be deduced. Therefore, the issue in the present case is whether disclosure of the withheld information, that is the sub-division of the information into headings of the "big 4" and "other accountancy firms" "relates to a person" within the meaning of section 19(2) and would specify the identity of the (legal) person to whom the information relates or would enable the identity of such a person to be deduced.
32. The Commissioner is satisfied that in the first of these scenarios set in CRCA disclosure of the withheld information would not specify the identity of the person to whom the information relates because the information was requested about the "big 4" as a group and not about each of the four firms individually.
33. The second case, namely where disclosure would enable the identity of such a person to be deduced is less clear cut. As noted at paragraph 17 above, HMRC quoted a hypothetical example where in one six month period one of the "big 4" firms had made 3 disclosures about SDLT schemes. If the information requested was disclosed and showed that only 3 SDLT scheme disclosures had been made in that six month period then the "big 4" firm that had made the disclosures could conclude that none of the other "big 4" firms was marketing SDLT schemes in the period in question.
34. The Commissioner largely agrees with the conclusion that HMRC drew with regard to this hypothetical example. The Commissioner notes that in the example it would only be possible for the one of the "big 4" firms that held the relevant information, which when combined with the disclosed information, to make deductions about the identity of

another person, in this case other “big 4” firms. The key information would be available only to that “big 4” firm but not available to the public at large. However, section 23(1)(b) of CRCA does not specify who or how many people must be able to deduce the identity of a person as a result of a disclosure. It states it is an offence if customs and revenue is disclosed relating to a person whose identity can be deduced from it. It does not matter for the purposes of section 19(1)(b) of CRCA that it is only one of the “big 4” that holds other relevant information that can make the deduction about the identity of a person.

35. Furthermore, in the Commissioner’s view, this is not a case where information that may be available to someone somewhere could be put together with the disclosed information to enable the identity of (another) person to be deduced. HMRC has been able to identify a specific set of circumstances where disclosure would enable the identity of such a person to be deduced and the Commissioner agrees with HMRC’s analysis as far as it goes with regard to this example. Therefore the Commissioner is satisfied that some of the information held by HMRC within scope of the first request would, if disclosed, enable the identity of such a person to be deduced
36. Where the Commissioner disagrees with HMRC’s analysis with regard to the example quoted in paragraph 17 is about whether or not it applies to all of the withheld information within scope of the first request. HMRC’s argument is the small sample size of the “big 4” as a group means all of the information in the first request is covered by the exemption at section 44(1)(a) with reference to the CRCA. The example at paragraph 17 referred to a situation where one of the “big 4” had made all of the disclosures of a particular type of scheme in one of the 6 month periods covered by the first information request. The Commissioner has given his reasons above for being satisfied that in those circumstances the information requested would be exempt under section 44(1)(a). The Commissioner is satisfied that in addition any 6 month period where none of the “big 4” had made any disclosures of a particular type of scheme would be exempt under section 44(1)(a) with reference to section 23(1)(b) of CRCA. If this information was disclosed it would enable the identity of such a person to be deduced, namely that none of the “big 4” had made any disclosures of a particular type of scheme during the 6 month period in question. This deduction could be made by any person once the disclosure was made.
37. Furthermore, the Commissioner is satisfied that 6 month periods when two of the “big 4” made disclosures of particular types of scheme would also be exempt. This is because for any periods where one of the “big 4” had disclosed particular types of schemes that firm would still be

able to deduce from the fact that the figures are not being released that they must have been the only firm to disclose schemes of that type during the period in question. To prevent disclosure that would enable the identity of such a person (the other “big 4” firms) to be deduced it would also be necessary to treat as exempt any periods where only two of the “big 4” reported particular types of schemes.

38. For these reasons, the Commissioner is not satisfied that any information held by HMRC on 6 month periods where three or more “big 4” firms made disclosures of particular types of scheme would be exempt information under section 44(1)(a) with reference to section 23(1)(b) of CRCA.

Second Request – Section 44

39. Originally, the second information request sought

..... a list of promoters with the number of schemes promoted in each period and the type of schemes (e.g. firm x promoted y schemes of sort A and z schemes of sort B in period April 200X to Sep 200X).

40. As noted at paragraph 23, during the course of the Commissioner’s investigation, the complainant confirmed he wanted to pursue his complaint with regard to HMRC’s failure to disclose a list of promoters with the number of schemes they promoted but understood details of the schemes themselves were not available. Therefore the details of the schemes have not formed part of the Commissioner’s investigation.
41. Initially, HMRC refused this request under section 44 of the Act with reference to the CRCA, but during the course of the Commissioner’s investigation changed its position and stated it did not hold the information in the form requested and that to produce the information in that form would exceed the appropriate limit in section 12 of the Act. As HMRC made clear in a response to the Commissioner on 25 September 2009, it was not a question of the level of skill and judgement necessary to produce the information in the form requested but rather the length of time needed to extract the information and present it in the form requested.
42. The Commissioner has noted HMRC’s revised reasons for refusing to disclose the information but is satisfied, in the light of HMRC’s explanation, that the information was held even though producing the information in the form requested was likely to exceed the appropriate limit in section 12 of the Act. However, considering HMRC’s original reasons for refusing to disclose the information, the Commissioner is satisfied that the list of promoters with the number of schemes they

promoted in each period would be exempt information under section 44(1)(a) of the Act, with reference to 23(1)(a) of CRCA. If disclosed, a list of promoters with the number of schemes they promoted in each period would clearly specify the identity of each person to whom the information relates, contrary to section 23(1)(a) of CRCA.

Procedural Requirements

43. Section 1(1) of the Act states that:
'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 holds information of the description specified in the request, and
(b) if that is the case, to have that information communicated to him.'
44. Section 10(1) of the Act states that:
'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 receipt.'
45. HMRC's original decision on the first request was that it did not hold the information requested. However the Commissioner is satisfied that the breakdown of disclosure information requested was held at the time of the request and HMRC's failure to inform the complainant in writing that it held the information constitutes a breach of section 1(1)(a) of the Act.
46. Furthermore, as the Commissioner has decided some of the information within the scope of the first request is not exempt from disclosure on the basis of section 44(1)(a) of the Act the Commissioner believes that this information should have been provided in line with the duty at section 1(1)(b) of the Act. HMRC's failure to do so therefore constitutes a breach of section 1(1)(b). Furthermore, by failing to provide this information within 20 working days of the request HMRC also breached section 10(1) of the Act.

The Decision

47. The Commissioner's decision is that the public authority dealt with the second request in accordance with the requirements of the Act. However, the Commissioner has also decided that the following

elements of the first request were not dealt with in accordance with the Act:

- HMRC failed to inform the complainant that it held information of the description specified in the first request; and
- HMRC failed to disclose information within the terms of the first request, which was not exempt under section 44(1)(a) of the Act with reference to section 23(1)(b) of CRCA.

Steps Required

48. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
 - HMRC should disclose to the complainant a breakdown of the statistics shown in the "historic" section of the direct tax disclosure statistics, showing separately for each 6 month period the numbers of different types of scheme promoted by the "big 4" accountancy firms and other accountancy firms.
 - However HMRC should not include in this breakdown any 6 month period where none or only one or two of the "big 4" made disclosures of a particular type of scheme. Information for these 6 month periods should be combined and made under the general heading of "Accountants".
49. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

50. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

51. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email:

Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 28th day of June 2010

Signed

**Steve Wood
Head of Policy Delivery**

**Information Commissioner's Office
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SK9 5AF**

Legal Annex

Freedom of Information Act

Section 1(1) provides that -

"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 holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

Section 1(2) provides that -

"Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14."

Section 1(3) provides that –

"Where a public authority –

- (a) reasonably requires further information in order to identify and locate the information requested, and
- (b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information."

Section 1(4) provides that –

"The information –

- (a) in respect of which the applicant is to be informed under subsection (1)(a), or
- (b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request."

Section 1(5) provides that –

"A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b)."

Section 1(6) provides that –

"In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as "the duty to confirm or deny"."

Prohibitions on disclosure

Section 44(1) provides that –

“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.”

Commissioners for Revenue and Customs Act 2005

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.

(2) But subsection (1) does not apply to a disclosure—

(a) which—

- (i) is made for the purposes of a function of the Revenue and Customs, and
 - (ii) does not contravene any restriction imposed by the Commissioners,
- (b) which is made in accordance with section 20 or 21,
- (c) which is made for the purposes of civil proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Revenue and Customs have functions,
- (d) which is made for the purposes of a criminal investigation or criminal proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Revenue and Customs have functions,
- (e) which is made in pursuance of an order of a court,
- (f) which is made to Her Majesty's Inspectors of Constabulary, the Scottish inspectors or the Northern Ireland inspectors for the purpose of an inspection by virtue of section 27,
- (g) which is made to the Independent Police Complaints Commission, or a person acting on its behalf, for the purpose of the exercise of a function by virtue of section 28, or
- (h) which is made with the consent of each person to whom the information relates.

(3) Subsection (1) is subject to any other enactment permitting disclosure.

(4) In this section—

- (a) a reference to Revenue and Customs officials is a reference to any person who is or was—
 - (i) a Commissioner,
 - (ii) an officer of Revenue and Customs,

- (iii) a person acting on behalf of the Commissioners or an officer of Revenue and Customs, or
- (iv) a member of a committee established by the Commissioners,
- (b) a reference to the Revenue and Customs has the same meaning as in section 17,
- (c) a reference to a function of the Revenue and Customs is a reference to a function of—
 - (i) the Commissioners, or
 - (ii) an officer of Revenue and Customs,
- (d) a reference to the Scottish inspectors or the Northern Ireland inspectors has the same meaning as in section 27, and
- (e) a reference to an enactment does not include—
 - (i) an Act of the Scottish Parliament or an instrument made under such an Act, or
 - (ii) an Act of the Northern Ireland Assembly or an instrument made under such an Act.

19 Wrongful disclosure

(1) A person commits an offence if he contravenes section 18(1) or 20(9) by disclosing revenue and customs information relating to a person whose identity—

- (a) is specified in the disclosure, or
- (b) can be deduced from it.

(2) In subsection (1) “revenue and customs information relating to a person” means information about, acquired as a result of, or held in connection with the exercise of a function of the Revenue and Customs (within the meaning given by section 18(4)(c)) in respect of the person; but it does not include information about internal administrative arrangements of Her Majesty’s Revenue and Customs (whether relating to Commissioners, officers or others).

(3) It is a defence for a person charged with an offence under this section of disclosing information to prove that he reasonably believed—

- (a) that the disclosure was lawful, or
- (b) that the information had already and lawfully been made available to the public.

(4) A person guilty of an offence under this section shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
- (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both.

(5) A prosecution for an offence under this section may be instituted in England and Wales only—

- (a) by the Director of Revenue and Customs Prosecutions, or
- (b) with the consent of the Director of Public Prosecutions.

(6) A prosecution for an offence under this section may be instituted in Northern Ireland only—

- (a) by the Commissioners, or
- (b) with the consent of the Director of Public Prosecutions for Northern Ireland.

(7) In the application of this section to Scotland or Northern Ireland the reference in subsection (4)(b) to 12 months shall be taken as a reference to six months.

(8) This section is without prejudice to the pursuit of any remedy or the taking of any action in relation to a contravention of section 18(1) or 20(9) (whether or not this section applies to the contravention).

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 (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.

²(1A) Subsections (2) and (3) of section 18 are to be disregarded in determining for the purposes of subsection (1) of this section whether the disclosure of revenue and customs information relating to a person is prohibited by subsection (1) of that section.”

(2) Except as specified in subsection (1), information the disclosure of which is prohibited by section 18(1) is not exempt information for the purposes of section 44(1)(a) of the Freedom of Information Act 2000.

(3) In subsection (1) “revenue and customs information relating to a person” has the same meaning as in section 19.

² Inserted by section 19(4) of the Borders, Citizenship and Immigration Act 2009