

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 27 April 2011**

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

### Summary

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The complainant made a request to HM Revenue & Customs (HMRC) for information relating to the issue of fraudulently or dishonestly acquiring vehicles VAT-free through the disability scheme. HMRC provided some of the requested information but refused to provide all of the requested information. It explained that some of the information requested was exempt from disclosure under section 44(1)(a) and section 40(2) of the Freedom of Information Act 2000. In relation to its application of the exemption contained at section 44(1)(a) of the Act, HMRC cited section 18(1) with section 23(1)(b) of the Commissioners for Revenue and Customs Act 2005 as the relevant statutory bar on disclosure. The Commissioner considers that the section 44(1)(a) exemption was correctly engaged in this case. The Commissioner did not go on to consider HMRC's application of the section 40(2) exemption.

### The Commissioner's Role

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

## The Request

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2. The complainant made a request to HMRC on 12 May 2010. The request was for the following information:
  1. *How many criminal prosecutions have HMRC brought against people accused of fraudulently or dishonestly acquiring vehicles VAT-free through the disability scheme during 12<sup>th</sup> May 2005 – 12<sup>th</sup> May 2010?*
  2. *Of those prosecutions, how many have resulted in a conviction for that specified VAT offence during 12<sup>th</sup> May 2005 – 12<sup>th</sup> May 2010?*
  3. *How many civil recovery agreements has HMRC arranged during 12<sup>th</sup> May 2005 – 12<sup>th</sup> May 2010 where people are believed to have fraudulently or dishonestly acquired vehicles VAT-free through the disability scheme?*
  4. *How much money has been recovered as a result of the above specified civil recovery agreements where people are believed to have fraudulently or dishonestly acquired vehicles VAT-free through the disability scheme during 12<sup>th</sup> May 2005 – 12<sup>th</sup> May 2010?*
3. On 12 August 2010 HMRC responded to the request for information. It provided the complainant with the information he requested at points 1 and 2 of the request. It refused to provide the complainant with the information requested at points 3 and 4 as it stated this was exempt under sections 40(2) and 44(1)(a) of the Act.
4. On 10 September 2010 the complainant asked HMRC to carry out an internal review in relation to its application of section 40(2) and section 44(1)(a).
5. On 15 October 2010 HMRC wrote to the complainant with the result of the internal review it had carried out. It upheld its original response.

## The Investigation

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### Scope of the case

6. On 22 October 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether HMRC was correct in withholding the information requested at points 3 and 4 of the request under the above exemptions.

### Chronology

7. The Commissioner wrote to HMRC on 26 January 2010 to ask it to provide further submissions in relation to its application of section 40(2) and section 44(1)(a).
8. On 4 March 2011 HMRC responded to the Commissioner. It provided further submissions in relation to its application of section 40(2) and section 44(1)(a).

### Analysis

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#### Exemptions

##### Section 44(1)(a)

9. Section 44 states that:
  - (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
10. HMRC has explained that HMRC has a statutory duty of confidentiality under section 18(1) Commissioners Revenue and Customs Act 2005 (CRCA).
11. 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.
12. 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.
  13. 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).
  14. 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). The full text of sections 18, 19 and 23 CRCA is in the Legal Annex to this Notice.
  15. HMRC has explained that the requested information was held in connection with its function to assess and collect VAT. The Commissioner is satisfied the withheld information, 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.
  16. 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, "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.
17. HMRC has provided the Commissioner with the withheld information. It accepted that section 23(1)(a) was not applicable because the disclosure does not specify the identity of the person to whom the information relates. However, it did consider that section 23(1)(b) was engaged. It explained that the withheld information, when put together with other information relating to identifiable individuals which is publicly accessible, would enable the identity of the individuals to whom the withheld information relates, to be deduced.
  18. HMRC provided the Commissioner with a detailed explanation as to why the identity of the individuals could be deduced alongside other information which is publicly accessible. This is detailed in the Confidential Annex attached to this Notice.
  19. Upon considering HMRC's submissions, the withheld information and the other relevant information which is already in the public domain, the Commissioner considers that the withheld information relates to a person and that disclosure would enable the identity of that person to be deduced in accordance with section 23(1)(b). Therefore the Commissioner is satisfied that section 44 (1)(a) has been correctly applied. A more detailed account of HMRC's submissions and the Commissioner's considerations are detailed in the Confidential Annex attached to this Notice.
  20. In light of the Commissioner's finding in relation to section 44 he has not gone on to consider HMRC's application of section 40.

## **Procedural Requirements**

### **Section 10(1)**

21. Section 10(1) of the Act provides 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 the date of receipt."
22. The Commissioner has considered whether or not HMRC complied with section 10(1) of the Act.

23. As the HMRC failed to comply with section 1(1)(a) within the statutory time for compliance, it breached section 10(1) of the Act in its handling of the request.

### **The Decision**

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24. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- HMRC was correct to withhold the requested information under section 44(1)(a) of the Act.
25. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- HMRC did not comply with section 10(1) of the Act in its handling of this request.

### **Steps Required**

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26. The Commissioner requires no steps to be taken.

### **Right of Appeal**

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27. 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: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

28. 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.

29. 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 27<sup>th</sup> day of April 2011**

**Signed .....**

**Pamela Clements  
Group Manager, Complaints Resolution  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

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### Freedom of Information Act

#### Section 1 General right of access to information held by public authorities.

(1) 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.

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

(3) 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.

(4) 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.

(5) 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).

(6) 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”.



## **Section 10 Time for compliance with request.**

(1) 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.

(2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.

(3) If, and to the extent that—

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.

(4) The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with, the regulations.

(5) Regulations under subsection (4) may—

(a) prescribe different days in relation to different cases, and

(b) confer a discretion on the Commissioner.

(6) In this section—

- “the date of receipt” means—

(a)

the day on which the public authority receives the request for information, or

(b)

if later, the day on which it receives the information referred to in section 1(3);

- “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

## **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).

## **Commissioners for Revenue and Customs Act 2005**

### **Section 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.

### **Section 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).

## **Section 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.

<sup>1</sup>(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.

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<sup>1</sup> Inserted by section 19(4) of the Borders, Citizenship and Immigration Act 2009