

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 October 2012

Public Authority: Her Majesty's Revenue and Customs
Address: 100 Parliament Street
London
SW1A 2BQ

Decision (including any steps ordered)

1. The complainant has requested information from Her Majesty's Revenue and Customs ("HMRC") about the number of civil servants who had faced disciplinary action for making complaints of inappropriate behaviour within HMRC in 2007 and how many were dismissed. HMRC refused to provide the information requested on the basis that it had estimated that the cost of compliance with the request, and other requests that had been aggregated with it, would exceed the appropriate limit under section 12.
2. The Commissioner's decision is that HMRC has correctly applied section 12 to the complainant's request and he therefore does not require the public authority to take any further steps to ensure compliance with the legislation.

Request and response

3. On 25 December 2011 the complainant requested the following information under FOIA from HMRC:

"How many Civil Servants were charged with breach of contract for raising concerns of inappropriate behaviour within HMRC to Dave Hartnett under the Civil Service Code in 2007? How many were sacked?"

4. HMRC responded on 12 January 2012 and refused to provide the requested information citing section 12 of FOIA. It aggregated a number of requests from the complainant and other requesters under section 12(4), including his request of 25 December 2011, and argued that the cost of complying with these requests would exceed the appropriate limit.
5. The complainant requested an internal review on 18 January 2012. HMRC sent the outcome of its internal review on 20 February 2012. It upheld its original decision.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
7. The Commissioner considered whether HMRC was entitled to rely on section 12 as a basis for refusing to provide the information that the complainant had requested.

Reasons for decision

Section 12 – Exceeding the appropriate cost limit

8. Section 12(1) of FOIA states that:

Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

(i) Aggregation of two or more requests

9. Section 12(4) states that:

The Secretary of State may by regulation provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority-

(a) by more than 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 request is to be taken to be the estimated total cost of complying with all of them.

10. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations") are relevant regulations made by the Secretary of State pursuant to section 12. Regulation 5 of the Fees Regulations provides that multiple requests can be aggregated in circumstances where the two or more requests relate to any extent, to the same or similar information.
11. The Commissioner notes the Tribunal's view in *Ian Fitzsimmons v Information Commissioner & the Department for Culture, Media and Sport (EA/2007/0124)* that:

"The test in Regulation 5 of the Fees Regulations seems to us to be very wide; the requests need only relate to any extent to the same or similar information". (para 43)
12. In this case HMRC aggregated a total of nine sets of requests, three of which were from the complainant. These are detailed in Appendix 1 at the end of this notice.
13. All of the requests aggregated by HMRC appear to be seeking information which is connected with disciplinary action taken by the HMRC against the complainant who was employed at its Preston office. Consequently the Commissioner accepts HMRC's argument that all of the requests that it aggregated satisfy this part of the test under regulation 5 of the Fees Regulations as they relate to some extent to the same or similar information.
14. Three of the requests that have been aggregated by HMRC are from the complainant and therefore satisfy the requirement of regulation 5, that to be aggregated the relevant requests must be made by one person.
15. Requests may also be aggregated by a public authority where they are made by different people who appear to the public authority to be acting in concert or in pursuance of a campaign.
16. The Commissioner acknowledges the complainant's assertion that he has not been acting as part of a campaign and that he has not been orchestrating requests to HMRC from other people. However, HMRC have argued that the requests that it has aggregated are from people acting in pursuance of a campaign in relation to the complainant's dismissal from his post at its Preston office.
17. Regulation 5 does not require a public authority to provide any strict evidential proof that the requesters, whose request have been

aggregated, are acting in concert or in pursuance of a campaign. It only requires that this appears to be the case to the public authority. Given that all of the requesters were seeking information linked to disciplinary action taken against the complainant and that all of the request were received within a relatively short time frame, the Commissioner does not believe that it is unreasonable for HMRC to form the opinion that these requesters were acting in concert or in pursuance of a campaign. He therefore accepts that this part of regulation 5 has been satisfied.

18. Regulation 5 also requires that the aggregated requests must be received by the public authority within a period of 60 consecutive working days. The Commissioner is satisfied that the requests that have been aggregated by HMRC were received within the required time period.
19. The Commissioner has therefore determined that HMRC was entitled to aggregate all of the requests set out in Appendix 1 under regulation 5 of the Fees Regulations. He went on to consider whether compliance with these requests would exceed the appropriate cost limit.

(ii) Exceeding the appropriate cost limit

20. Section 12(3) states that:

"In subsections (1) and (2) "the appropriate limit" means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases."

21. The appropriate limit is currently set out in the Fees Regulations. A public authority may take into account the cost of locating, retrieving and extracting the requested information in performing its calculation. The cost limit is currently set at £600 for central government departments. Under the Fees Regulations public authorities are required to cost their spending on the relevant activities at £25 per person per hour. Consequently the appropriate limit would only be exceeded if a central government department estimated that it would take longer than 24 hours to carry out the relevant activities in order to comply with a request or a number of aggregated requests.
22. Under regulation 4(3) a public authority may, for the purposes of estimating the cost of complying with a request, only take account of the costs it reasonably expects to incur in:
 - determining whether it holds the information;
 - locating a document containing the information;
 - retrieving a document containing the information; and
 - extracting the information from a document containing it.

23. HMRC provided the Commissioner with a breakdown of the time it had estimated that it would take to answer each of the three requests made by the complainant. It believed that compliance with these three requests would significantly exceed the cost limit and therefore did not provide estimates of the time that it would take to comply with the other requests that had been aggregated with his requests. The Commissioner considered HMRC's estimates for the time that it would take to respond to each of the complainant's requests.

(a) Request of 25 December 2011

24. In his request of 25 December 2011, the complainant asked for details of how many civil servants were charged with breach of contract for raising concerns of inappropriate behaviour within HMRC to Dave Hartnett, a former Civil Service Commissioner, under the Civil Service Code in 2007 and how many of these were sacked.

25. HMRC informed the Commissioner that its Human Resources teams ("HR") are based in Nottingham. For the year in question there were 1181 cases that concerned employment related disputes that would need to be searched to locate the information that the complainant was seeking. These were made up of cases related Employment Tribunal appeals, Civil Service Appeal Board hearings, disciplinary issues, disciplinary appeals, grievance issues, grievance appeals and discrimination questionnaires. The cases were not recorded by office location. There was a separate electronic log for each month of the year. However, the log did not go into the level of detail to be able to identify whether it contained information relevant to the request.

26. HMRC explained that the files that might contain information relevant to the complainant's request were the disciplinary files. It would therefore have to filter data to identify all of these case files. It estimated that it would take 5 minutes for each month, a total of one hour for a twelve month period, to do this. It would then need to create a new list of all these disciplinary cases which would show the file reference and name. This would take 10 minutes. It would take a further 15 minutes to request by email these disciplinary files from its remote storage in Middlesbrough.

27. HMRC went on to explain that at its file storage location in Middlesbrough, staff would have to locate, retrieve, package and send files to HR. HMRC had determined that out of 1181 case files that concerned employment related disputes for the period in question, there were 253 disciplinary cases which could hold relevant information.

28. HMRC informed the Commissioner that all the relevant files were kept on shelves arranged by year and in numerical order. However, the files for former staff were stored separately from those related to employees who were still currently employed by HMRC. It suggested that it would take approximately 3 minutes to locate and retrieve each file. It would therefore take a total of approximately 12 hours 39 minutes (3 minutes per file x 253 files = 759 minutes) to locate and retrieve all the relevant files.
29. Once all the relevant files had been located and retrieved, HMRC explained that each file would have to be examined to determine whether it contained information that fell within the scope of the request and then any relevant information extracted. It informed the Commissioner that a disciplinary file could contain a wide range of papers related to the dispute in question. It could be anything from twenty to over a thousand pages in length. HMRC had therefore estimated that it would take on average 3 minutes to search each file to locate any relevant information. This would mean that it would take a total of approximately 12 hours 39 minutes (3 minutes per file x 253 files = 759 minutes) to identify and extract any relevant information.
30. HMRC therefore estimated that the total time to respond to the request would be made up of 1 hour to identify all the disciplinary cases for a twelve month period, 10 minutes to create a list of these files, 15 minutes to request the files from storage, 12 hours 39 minutes to locate and retrieve the files from storage and 12 hours 39 minutes to examine each file to identify and extract relevant information. This resulted in an estimated total time to respond to the request of 26 hours and 43 minutes (1603 minutes).
31. The complainant, after being provided with details of HMRC's estimate for the time that would be required to respond to this request, argued that it could obtain the information he was seeking quickly and easily by contacting the Civil Service Commissioners' office which should be able to provide details of any civil servants who had been alleged to have breached their contracts for raising concerns of inappropriate behaviour within HMRC to Dave Hartnett in 2007.
32. The Commissioner notes that the role of the Civil Service Commission, which includes the Civil Service Commissioners, is to ensure that appointments to the Civil Service are made on the basis of merit and open competition and also to hear and determine appeals under the Civil Service Code. The Code forms part of the terms and conditions of every civil servant and sets out the core values of the civil service. The Commission is independent of Government and the Civil Service. The Civil Service Commission is a public authority in its own right under

FOIA. It is therefore independent of government departments, such as HMRC, for the purposes of the Act.

33. Under FOIA, there is no obligation on a public authority to carry out searches to assist another public authority to identify and locate information that it may hold that falls within the scope of a request. Consequently, the Civil Service Commission, as a separate public authority, is under no obligation to carry out searches in order to assist HMRC to identify and locate information that HMRC holds that falls within the scope of the complainant's request.
34. The Commissioner's view is that, in determining whether section 12 is applicable to a request or a number of aggregated requests, the relevant issue is how long it might take a public authority, such as HMRC, to search its own records in order to respond. Any records held by the Civil Service Commission, even if they might assist the HMRC in carrying out its own searches, are not relevant to the application of section 12 by HMRC. Therefore, whilst the Commissioner understands the reasons for the complainant's suggestion that HMRC should have sought assistance from the Civil Service Commission in locating information relevant to his request, there is no obligation on HMRC to do so and it is not a factor that he can take into account in assessing whether HMRC's estimate of the costs likely to be incurred in responding to his requests under section 12 is a reasonable one.

(b) Request of 25 November 2011

35. In his request of 25 November 2011, the complainant requested any information given to Sir Gus O'Donnell by HMRC in relation to any civil servants who were charged with breach of contract for raising concerns within HMRC under the Civil Service Code to Dave Hartnett in 2007. The complainant explained that he was only seeking information concerning civil servants based at the Tax Credit Office in Preston.
36. HMRC informed the Commissioner that it was not aware of any information falling within the scope of the complainant's request being given to Sir Gus O'Donnell. However, to be certain of this it would need to search its disciplinary records for 2007 to try to locate any reference to Sir Gus O'Donnell. It would therefore have to go through the same process as for the complainant's request of 25 December 2011. It therefore estimated that it would take the same amount of time to respond to this request as it would to respond to the request of 25 December 2011, 26 hours 43 minutes.
37. The Commissioner notes that there is clearly a very close link between the information the complainant asked for in this request and the information that he was seeking from his request of 25 December 2011.

Consequently HMRC would need to retrieve and search the same disciplinary case files for both requests. As these two requests have been aggregated for the purpose of section 12, the Commissioner's view is that the time that would be required to retrieve the files, and the resultant estimate of the costs involved, can only be allowed for once, not twice. He has therefore not taken into account, for the purposes of section 12, the time that HMRC believed that it would take to retrieve the relevant files in respect of this request.

38. Similarly, the case files that were identified as containing information relevant to the request of 25 December 2011, would presumably be the same case files that would be relevant for identifying information that was held that was pertinent to this request. So HMRC would only need to search those files to identify and retrieve information falling within the scope of this request. Without knowing how many files might be relevant to the request of 25 December 2011, it is impossible to accurately estimate the time that would be required to identify and retrieve information for this request. The Commissioner has therefore taken into account a conservative estimate of one hour to search any relevant files.
39. The Commissioner has assumed that, if there had been any communications with Sir Gus O'Donnell about any case falling within the scope of the request, copies of all of the relevant communication would have been kept in the disciplinary files. If there was a possibility that any communications would not, then clearly HMRC would need to carry out further searches to identify any additional information that may be held. This would increase the estimate of the amount of time needed to comply with the request.
40. The complainant, as with the previous request, suggested that HMRC should have contacted the Civil Service Commission for assistance in responding to his request. As explained in relation to his request of 25 December 2011, in assessing the reasonableness of HMRC's estimate of costs, the Commissioner is not able to take into account the information that might be held by the Civil Service Commission and whether this might assist HMRC in responding to the complainant's requests.

(c) Request of 6 January 2012

41. In his request of 6 January 2012, the complainant requested details of how many civil servants at the Tax Credit Office in Preston had been sacked for breach of contract for raising concerns with the Civil Service Commissioners in the last seven years and how many of these were Asian.

42. HMRC informed the Commissioner that it would need to follow the same process as for the request of 25 December 2011. It had identified 735 files that related to disciplinary matter for the period 2007 to 2011. It explained that it no longer had records for 2005 and 2006.
43. HMRC explained that it would therefore have to filter data to identify all the relevant case files for 2007 to 2011 which would take 50 minutes. It would take a further 15 minutes to request by email these files from its remote storage in Middlesbrough. It informed the Commissioner that of the 735 relevant files, 715 were in remote storage whilst the remaining 20 were not and therefore did not need to be retrieved.
44. At its file storage location in Middlesbrough, staff would have to locate, retrieve, package and send the relevant files to HR. It suggested that it would take approximately 3 minutes to locate and retrieve each file. It would therefore take a total of approximately 35 hours 45 minutes (3 minutes per file x 715 files = 2145 minutes) to locate and retrieve the relevant files.
45. HMRC explained that, once the relevant files had been located and retrieved, each file would have to be examined to determine whether it contained information that fell within the scope of the request and then extract any relevant information. It estimated to do this would take on average 3 minutes for each file. It would therefore take a total of approximately 36 hours 45 minutes (3 minutes per file x 735 files = 2205 minutes) to identify and extract relevant information.
46. HMRC therefore estimated that the total time to respond to the request would be made up of 50 minutes to identify all the relevant cases for 2007 to 2011, 30 minutes to create a list of these files, 15 minutes to request the files from storage, 35 hours 45 minutes to locate and retrieve the files from storage and 36 hours 45 minutes to examine each file to identify and extract relevant information. This makes an estimated total time to respond to the request of 74 hours and 5 minutes (4445 minutes).
47. HMRC also informed the Commissioner that, as the request was for information specific to one particular office, it was possible that any cases that it identified as falling within the scope of the request would be low in number and consequently possibly could be identified by someone working at the Preston office. However, as employees frequently moved between offices, it would need to examine every file to ensure that it provided a complete and accurate response.
48. HMRC also informed the Commissioner that it might not be able to identify from its records how many of its former employees, that it had identified in relation to the first part of the request, were Asian.

49. As with the request of 25 November 2011, the Commissioner notes that there is clearly a close link between the information asked for in this request and the information that the complainant was seeking from his request of 25 December 2011. However, whereas the request of 25 November 2011 was for information for 2007, this request covered a much longer period of time, the seven years prior to the request.
50. Consequently, it appears to the Commissioner that for this request HMRC would need to retrieve and search the same case files for the year 2007 as it would for the request of 25 December 2011. It would still, though, have to retrieve and search potentially relevant files for the other years covered by the request. The Commissioner has therefore not taken into account in relation to the estimate of time for complying with this request, the estimate of time for retrieving and searching for the case files for 2007, a total of 26 hours 43 minutes. This reduces HMRC's estimate of time for responding to this request to 47 hours 22 minutes
51. The complainant argued that HMRC would have notified the Civil Service Commissioners about relevant cases and that the Civil Service Commission would have information which would, if provided to HMRC, have meant that his request could have been responded to relatively easily and quickly.
52. As explained previously in relation to the complainant's two other requests, the Commissioner is not able to take into account the information that might be held by the Civil Service Commission, and whether this might assist HMRC in responding to the complainant's request, in assessing the reasonableness of HMRC's estimate of the costs likely to be incurred in responding to his requests.

Conclusions regarding the application of section 12

53. The Commissioner has examined the evidence and made enquiries with HMRC as to whether its estimates of time that would be required to respond to the complainant's three requests are reasonable. As a result of this investigation, the Commissioner is satisfied that HMRC's assessment in relation to the request of 25 December 2011, that it would require approximately 26 hours to respond, is reasonable based on the number of files that it would have to locate and search through to identify the information that the complainant has requested. In relation to the request of 25 November 2011, he is of the view that a reasonable estimate of time for compliance would be approximately 1 hour and for the request of 6 January 2012, a reasonable estimate would be approximately 47 hours. This results in a total estimated time for compliance with the complainant's three requests of approximately 74 hours. At a cost of £25 per hour, this equates to an overall cost of

£1850. This figure significantly exceeds the appropriate limit of £600 for central government departments.

54. On the basis of the above, the Commissioner is satisfied that HMRC has correctly applied section 12(1) as compliance with the requests that it has aggregated would exceed the appropriate cost limit.

Right of appeal

55. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

56. 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.
57. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Appendix 1

Request aggregated by HMRC under section 12

Request 1 - 25.11.11 (From the complainant)

Any information given to Sir Gus O'Donnell by HMRC in relation to any Civil Servant who was charged with breach of contract for raising concerns within HMRC under the Civil Service Code to Dave Hartnett in 2007. I'm only referring to Civil Servants who were based at the Tax Credit Office in Preston in 2007. Please include in this request any documents, e-mails, or advice given

Request 2 - 12.12.11

Please provide the legal costs HMRC have incurred in taking legal action against the HMRC whistleblower Andi Ali's bestselling book, Dead Paki Walking: A Study of the BNP. A book which discusses how Mr Ali ended up the number one target on a Neo Nazi hit list and charged by HMRC with holding 'extreme political views' for heckling the BNP at a lawful demonstration in Burnley.

Request 3 - 12.12.11

Under the Freedom of Information Act 2000 I seek the following information about the Director of HMRC in Northern Ireland investigation into a complaint by a white Civil Servant that an Asian colleague at the Tax Credit Office in Preston had 'extreme political views' for heckling the Neo Nazi British National Party (BNP) at a peaceful protest outside of work. (The investigation concluding in October 2005) Specifically, I need:

1. A copy of the Director's report on why she upheld this bizarre complaint and why she concluded that heckling this Neo Nazi party at a peaceful protest outside work meant the Asian employee had 'extreme political views'.
2. Whether the Director has since been promoted and to what grade?
- 3 Total costs, including hotel bills incurred in pursuit of this investigation.
4. The grade of the highest ranking Civil Servant who authorised this investigation?
5. The grade both then and now on any Civil Servant who assisted her during the investigation.
6. The number of White Civil Servants she has found guilty of holding 'extreme political views' for heckling the British National Party at a peaceful protest outside work.
7. Did she have managerial responsibility, either directly or in directly, for of any of the seven staff at the contact centre in Belfast who were found guilty

of gross misconduct for tampering with computer records, which meant that a number of people from ethnic minority backgrounds across the UK were paid less money than they were entitled to in 2010.

Request 4 - 19.12.11

Is it an offence under the Official Secrets Act for an Internet site, MRCLEAKS, run by a HMRC Whistleblower, to publish internal HMRC documents on to the internet without the permission of HMRC?

Provide the legislation which allows HMRC Whistleblowers to published confidential HMRC documents without contravening the Official Secrets Act when they have not been given permission to do so.

Request 5 - 19.12.11

I would like to know how many staff at the Tax Credit Office in Preston used internal grievance procedures to complain an Asian colleague expressed support for suicide bombers, while at the same time using internal grievance procedures to complain they had 'extreme political views' for heckling the vile Neo Nazi British National Party (BNP) at a lawful protest outside of work? How many of these complaints were upheld? I am only asking for statistics for the years 2003, 2004, 2005.

Request 6 - 20.12.11

Please tell me what Her Majesty's Revenue and Customs policy is regarding Civil Servants (with over two years experience) who are sacked for breach of contract for raising concerns under the Public Interest Disclosure Act 1998 and then reinstated on condition they resign. Would these Civil Servants be eligible for reinstatement if it was found or recognised at the time that the concerns the Civil Servant raised were genuine under the PIDA.

Please tell me if HMRC accept that under the Public Interest Disclosure Act 1998, Civil Servants should never suffer a detriment for raising genuine concerns under the PIDA, such as dismissal or being forced to resign
Please provide the legislation which allows HMRC to sacked and then reinstated on condition they resign Civil Servants who raise genuine concerns under the Public Interest Disclosure Act 1998 – I emphasised the words 'genuine' concerns.

Request 7 - 25.12.11 (From the complainant)

How many Civil Servants were charged with breach of contract for raising concerns of inappropriate behaviour within HMRC to Dave Hartnett under the Civil Service Code in 2007? How many were sacked?

Request 8 - 6.1.12

How many Civil Servants within HMRC have been reinstated on the advice of the Civil Service Commissioners in the last five years? How many of these were Asian.

Request 9 - 6.1.12 (From the complainant)

How many Civil Servants at the Tax Credit Office in Preston have been sacked for breach of contract for raising concerns with the Civil Service Commissioners in the last seven years? How many were Asian. Is it not the case that under paragraph 15 of the Civil Service Code, HMRC has a duty to consider their employee's concern, and make sure that they are not penalised for raising it. para. 15).