

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 11 October 2012

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

### Decision (including any steps ordered)

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1. The complainant has requested information relating to an officer's notebook.
2. The Commissioner's decision is that Her Majesty's Revenue & Customs ('HMRC') has correctly engaged section 44 of the FOIA.
3. The Commissioner does not require HMRC to take any steps.

### Request and response

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4. On 3 January 2012, the complainant wrote to HMRC and requested information in the following terms:  
  
*"The Officer's Notebook with Serial Number A19174 which Her Majesty's Revenue & Customs produced at the ex parte hearing of claim no HC09C00297 before Mr Justice Blackburne on 4 February 2009 (part of which was at page 264 of PEX3, behind Tab 22)".*
5. HMRC responded on 1 February 2012. It refused to confirm or deny whether the requested information was held.
6. Following an internal review HMRC wrote to the complainant on 27 March 2012. It stated that section 44(2) of the FOIA was engaged and therefore it maintained its original position.

## Scope of the case

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7. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. The complainant considered that section 44(2) had not been engaged and that HMRC should either confirm or deny if the information was held and if held disclose it as requested.
9. The Commissioner considers that the scope of this case is to determine if section 44(2) has been engaged and correctly applied.

## Reasons for decision

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10. Section 44 of FOIA states that:
  - 1) Information is exempt information if its disclosure (otherwise that 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.
11. The enactment in this case is the Commissioners of Revenue and Customs Act 2005 (the CRCA). Section 18(1) of the CRCA states that HMRC officials may not disclose information which is held by HMRC in connection with one of its functions.
12. Section 19 of the CRCA makes it a criminal offence for any member of staff to disclose such information.
13. 'Revenue and customs information relating to a person' is defined in section 19 of the CRCA as *"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).*

14. In this case HMRC has argued that s.44(2) is engaged because the act of confirming or denying if the requested information is held would, in itself, involve the disclosure of information covered by a statutory prohibition.
15. HMRC has confirmed that section 18(1) is the relevant statutory bar.
16. Section 18(1) provides that Revenue and Customs officials may not disclose information which is held by HMRC in connection with one of its functions.
17. However section 18(1) only acts as a statutory prohibition where section 23(i) of the CRCA is also satisfied. This part of the legislation provides that the section 44 exemption will only apply where 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.
18. The first thing to consider is, if the information was held, would it be held by HMRC in connection with one of its functions.
19. HMRC has explained that the information, if held would be held in connection with its function of assessing and collecting tax and/or duty. The Commissioner is satisfied that that information, if held, would be held in connection with a function of HMRC and that therefore, s.18(1) applies.
20. The Commissioner has now gone on to consider whether confirming or denying if the information is held would satisfy the requirements of s.23(i) of the CRCA by either specifying the identity of a person or allowing the identity of a person to be deduced. It is important to note that in this context 'person' includes both natural persons and legal entities.
21. HMRC has explained that confirming or denying if it holds the notebook referred to by the complainant would allow the identity of an individual to be deduced since it could be linked to the claim referred to in the request.

Reference: FS50450755



22. In this case confirming or denying the requested information is held would reveal to the public something about the affairs of a person who is related to that information.
23. If the information were held, confirming its existence would reveal that HMRC holds information in relation to a particular investigation in connection with its function of assessing and collecting tax and or duty and this could be linked to an individual whose identity could be deduced.
24. Therefore the Commissioner has decided that both s.18(1) and s.23(i) of the CRCA are satisfied and consequently s.44 of the FOIA is engaged.

## Right of appeal

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25. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

26. 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.
27. 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** .....

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