

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 11 September 2013

**Public Authority:** HMRC  
**Address:** 100 Parliament Street  
London  
SW1A 2BQ

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from Her Majesty's Customs and Revenue ("HMRC") concerning VAT overpaid on investment funds, investment trusts and pension funds. In the request the complainant referred to a number of lawsuits which had been heard in court regarding the issue. HMRC interpreted the request to mean the complainant required the actual total VAT paid by the specific investment fund companies and investment trusts involved in the litigation. It refused this information under section 44(1)(a). It also explained it did not hold a general figure relating to VAT paid on fund administration and accounting fees not related to the investment funds and trusts specified in the request. The Commissioner began his investigation on the basis of HMRC's interpretation of the request. However during the course of that investigation it became clear that the complainant required an estimated total VAT liability figure in the light of the precedent set by the listed court cases. He did not require the VAT figure directly involved in the litigation. Once the different interpretation of the request was confirmed with HMRC, it responded to this clarified request as a new request.
2. The Commissioner's decision is that both the complainant's and HMRC's interpretation of the request were valid interpretations. To the extent that HMRC did not confirm whether it held the information required in the complainant's objective reading of the request within the required time for compliance, the Commissioner finds HMRC to be in breach of section 1(1)(a) of the FOIA. However, once it was informed of the complainant's interpretation of the request, HMRC correctly responded to it as a new request. The Commissioner therefore does not require any further steps to be taken.

## Request and response

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3. On 14 December 2012, the complainant wrote to HMRC and requested information in the following terms:

*"I wish to obtain information about HMRC's liability from overpaid VAT by investment funds, investment trusts and pension funds (I do not require information about the individual cases, which I know is against HMRC policy).*

*Since May, there have been at least 60 lawsuits filed at the London High Court by investment funds, investment trusts and pension funds trying to reclaim VAT, which a European Court ruled should not have been paid.*

*Those claims fall into three categories:*

- 1) VAT paid on fund administration and accounting fees.*
- 2) VAT paid on management fees paid by funds (the Investment Trusts in Liquidation case)*
- 3) VAT paid on fund managements fees by pension funds (the Wheels Common Investment Fund case)*

- 1) has been already been resolved in court and HMRC is liable for overpaid VAT.*
- 2) and 3) are still going through the courts.*

*If, as the lawyers involved suspect, courts rule against HMRC in 2) and 3), it will be liable to repay VAT to all eligible investment funds, investment trusts and pension funds, along with interest.*

*I wish to obtain a figure as to what HMRC calculates its liability will be from 1), 2) and 3) (assuming that courts rule against HMRC in 2) and 3).*

*In short, what is the maximum HMRC will have to return to investment funds, investment trusts and pension funds in overpaid VAT stemming from these issues?*

*In our view there is a clear public interest from the impact on the public purse of adverse judgment in these VAT disputes, and a real need for information about what HMRC's exposure is.*

*There is also a public interest from the point of view of funds, which*

*contain savings and pensions, and which will be materially affected by these issues.*

*This data must exist. HMRC must know how much VAT it has received from investment companies on management, administration and accounting fees, and therefore how much it may have to return."*

4. HMRC responded on 10 January 2013. It confirmed that it held some of the requested information but explained it was being withheld under section 44(1)(a) of the FOIA (information withheld if prohibited from disclosure by enactment). HMRC explained that it considered disclosure of the requested information was prohibited by the Commissioners of Revenue and Customs Act 2005.
5. HMRC provided an internal review on 7 February 2013. It reviewed its original response. It explained it did not hold a general figure relating to VAT paid on fund administration and accounting fees not related to the investment funds and trusts specified in the request. It upheld its application of section 44(1)(a) of the FOIA to the other requested information concerning the actual VAT paid by the specific investment fund companies and investment trusts involved in the litigation.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 12 February 2013 to complain about the way his request for information had been handled.
7. During the course of the Commissioner's investigation of this complaint it became apparent that the complainant's interpretation of the request was not the same as that of HMRC and the Commissioner.
8. The Commissioner clarified the request with the complainant and it was agreed by both parties that the complainant's clarification of the request, which made his interpretation clear, would be submitted as a new request to HMRC.
9. HMRC has asked the Commissioner to consider in this decision notice whether it complied with the original request. The scope of this case is therefore concerned with the interpretation of the original request and with HMRC's response to that request under section 1 of the FOIA.

## Reasons for decision

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10. Section 1(3) of the FOIA states that a public authority is not obliged to comply with a request if:
  - it reasonably requires further information before it can identify and locate the information requested; and
  - it has asked the applicant for this further information.
11. However, in this case, HMRC did not consider that it required clarification of the request. In such circumstances a public authority is under no obligation to ask the requester for clarification. Nor is there an obligation under section 16 of the FOIA to offer advice and assistance regarding the request.
12. HMRC's initial response to the complainant repeated the request and confirmed that it wished to apply section 44(1)(a) of the FOIA to the information. There was nothing to suggest in either the request or the response that the interpretations of the request were or might be different.
13. When the complainant requested an internal review he did clarify what he required and explained that his question "*relates to HMRC's and therefore the taxpayers' liability to return VAT, in light of the numerous lawsuits*". However the Commissioner considers that this clarification still did not identify the misunderstanding.
14. He confirmed that he was not seeking any information about any individual taxpayer or company. He explained that his question "*relates to a specific type of tax, the VAT paid on administration, accounting and management fees by investment trusts, funds and pension schemes*". He stated that he required "*information about how much HMRC calculates it will have to pay back under the three categories I described in my initial request WITHOUT information about the individual disputes or claims.*"
15. This clearly stated that the complainant did not require figures for individual companies. However the Commissioner is satisfied that the request could still be interpreted as meaning the total figure related to the lawsuits (not broken down into individual claims). He considers that the points made by the complainant could reasonably be seen as an argument about the scope of his request, not the interpretation of it.
16. Therefore, despite the extra explanation provided by the complainant, the Commissioner considers that it still remained unclear that he

required a single universal figure. The Commissioner considers that even at this point it was not obvious that HMRC's interpretation of the request was different to the complainant's. It was therefore reasonable for HMRC to proceed on the assumption that its interpretation was correct.

17. The internal review provided by HMRC outlined its interpretation of the request and its response. This interpretation was based upon the three categories set out by the complainant in the original request. It explained that:
  - To the extent that part one of the request was for general information relating to VAT paid on fund administration and accounting fees and not directly related to the investments and trusts specified in the request, it clarified that it did not hold this information. It confirmed:
    - It does hold information returned by VAT registered businesses on their quarterly VAT returns. This cannot be broken down into particular categories of purchases made by that business.
    - It does hold information on its VAT register. However this cannot be broken down into VAT paid in respect of any given category of business expenses.
  - To the extent that requests two and three related to specific investment fund companies and investment trusts involved in the litigation referred to in the requests, it upheld the application of section 44(1)(a) of the FOIA to parts two and three of the request.
18. The Commissioner considers that at this point it was clear that HMRC had interpreted the requests numbered two and three to mean figures directly related to the investment fund companies and investment trusts involved in the litigation.
19. However although, in the early stages of this investigation, the complainant again clarified what he required in his complaint to the Commissioner, he did not explicitly address the interpretation of HMRC as outlined in its internal review. He made two points:
  - i. He did not accept that HMRC does not hold information on specific categories of VAT, like management fees. He did not accept that HMRC will not have attempted to estimate its total liability in this matter.
  - ii. He did not accept that HMRC is correct to refuse the information because of taxpayer confidentiality. He explained that all he requires is a total liability figure for overpaid VAT on

find management and accounting fees. He has argued this gives no indication of tax paid or owed to a particular firm.

20. The Commissioner interpreted these points to mean that the complainant required the total liability figure for the companies involved in the court cases without indicating the amount of tax paid or owed to a particular firm. This was in accordance with HMRC's interpretation.
21. However at a later stage it became apparent that the complainant required one estimated total VAT liability figure in the light of the precedent set by the specified court cases. He did not require the amounts claimed in the listed court cases but the total figure HMRC may have estimated it will have to pay following on from these decisions.
22. This is therefore a different interpretation of the request compared to that understood by HMRC. It is a 'ballpark' figure which the complainant considers HMRC must have estimated for its own strategic accounting and budgeting purposes. This is what the complainant meant when he stated he did not want a breakdown of the figures requested.
23. The Commissioner appreciates that HMRC informed the complainant that it does not hold VAT paid by companies in respect of services such as fund management or administration services because this is not recorded on VAT returns. It also explained that some of these investment trust companies and pension funds may not be registered for VAT so will not have made returns to HMRC of their VAT payments to their suppliers.
24. However, the request was not asking for such a detailed breakdown. Instead, in the light of the precedent set by the listed court cases, the complainant required "*the maximum HMRC will have to return to investment funds, investment trusts and pension funds in overpaid VAT stemming from these issues*".
25. In the light of the above, the Commissioner considers that there are two objective interpretations of the same request and that HMRC handled its interpretation of the request in accordance with the FOIA. However to the extent that HMRC did not confirm whether it held the information required by the complainant's interpretation of the request within the statutory time for compliance, the Commissioner finds HMRC to be in breach of section 1(1)(a) of the FOIA.

## **Other matters**

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26. The Commissioner notes that HMRC responded in detail to his initial enquiries and spent a significant amount of time in dealing with this

request before the complainant's meaning was made clear. He notes that HMRC agreed to progress the new request as soon as the clarification regarding the complainant's interpretation was received.

## 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,  
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)

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.

**Signed .....**

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