

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

### **Decision notice**

**Date:** 11 September 2014

**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 about investigations into fuel laundering activity in County Armagh, Northern Ireland.
2. The Commissioner's decision is that HM Revenue and Customs correctly relied on section 31(1)(d) not to release the requested information.

#### **Request and response**

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3. On 3 December 2013, the complainant wrote to HM Revenue and Customs ("HMRC") and requested information in the following terms:
  1. Total number of fuel laundering operations (raids) carried out by the HMRC in County Armagh in 2013/14 to date?
  2. How many successful prosecutions were made in relations to those operations (raids) in question one?
  3. In relation to question one how many arrests were made?
  4. In relation to question one how many cases are pending in respect to fuel fraud?
4. HMRC responded on 23 December 2013. It stated as follows  
"I can confirm that HMRC holds information of the type specified in your request. However, we are withholding the information under section 31(1)(d) of the FOIA. This allows public authorities to withhold

information if its disclosure ... would be likely to prejudice the assessment or collection any tax or duty”.

5. Following an internal review the HMRC wrote to the complainant on 24 January 2014. It stated that it upheld its original decision.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 10 February 2014 to complain about the way his request for information had been handled.

### **Reasons for decision**

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7. Section 1 of FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities. These are:

- The duty to inform the applicant whether or not requested information is held and, if so,
- the duty to communicate that information to the applicant.

8. Section 31(1)(d) states that:

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

(d) the assessment or collection of tax or duty or of any imposition of a similar nature”

9. HMRC's position is that the requested information is exempt information under section 31(1)(d) as disclosure of such area specific information in this instance would likely to be used by those so minded to undermine HMRC's strategy in dealing with fuel fraud and as such have a detrimental impact on its ability to assess and collect tax.
10. HMRC confirmed that it has previously released similar information to the complainant for the financial year 2012 to 2013 but this was for Northern Ireland in its totality rather than a specific region.
11. Having viewed the withheld information and considered the matter the Commissioner finds that the exemption is engaged. The request is specific to one area of Northern Ireland and the detail sought would be likely to aid those that are or would be involved in fuel laundering in that

locality. The specifics sought would enable them to more effectively estimate how successful HRMC are in locating the said illegal activities and in pursuing prosecutions. This would be a valuable aid in deciding how likely it is or is not that they will be apprehended and this may lead to more unlawful tax evasion and fuel laundering.

12. Section 31 is a qualified exemption so the public interest test set out in section 2(2)(b) must be applied. That is, the information can only be withheld if the public interest in maintaining the exemption outweighs the public interest in disclosure.
13. The Commissioner notes that the only valid public interest arguments in favour of maintaining an exemption are those that relate specifically to that exemption, (Christopher Martin Hogan and Oxford City Council v Information Commissioner EA/2005/0026 and 0030 ("Hogan"), paragraph 59).
14. Conversely, the Commissioner notes, the above restriction when applying the public interest test does not apply to those factors favouring the release of information. The Information Tribunal in Hogan made this point at paragraph 60 where it said:

"While the public interest considerations against disclosure are narrowly conceived, the public interest considerations in favour of disclosure are broad-ranging and operate at different levels of abstraction from the subject matter of the exemption."
15. HRMC maintains there is also a strong public interest in it being able to enforce the law properly so that the tax burden is shared equally. Revealing location specific information about its activities that might assist those intent on avoiding tax is not in the public interest. Anything that puts at risk its compliance activities could undermine public confidence in the tax system. This could damage the general climate of honesty among the overwhelming majority of taxpayers who use the system properly. Therefore, on balance it believes that the public interest in withholding the information outweighs the public interest on disclosing the information.
16. HRMC acknowledges that there is strong public interest in ensuring that it is as transparent as possible about its activities. Publishing the information requested would, on the face of it reassure the public, that its compliance activities are fair and robust and applied equitably.
17. The Commissioner also recognises that there is a general public interest in promoting transparency, accountability, public understanding about public authorities. The FOIA is a means of helping to meet that public interest, so disclosure must always be given some weight in the public

interest test and it is accordingly relevant here. However, in this case the Commissioner is not aware of specific circumstances peculiar to this case which would favour disclosure. Nor that the withheld information itself is of such a nature to particularly warrant or need public dissemination. This reduces the weight afforded to the public interest in disclosure.

18. On balance the Commissioner finds that the public interest favours maintaining the exemption. The Commissioner appreciates that releasing the information will enable the public to determine the effectiveness of HRMC in tackling this kind of fraud in County Armagh. However counter-poised against this is that such a release will facilitate and assist those that will commit the fraud in question. This in turn means that the financial loss to the public purse will increase and to make it more difficult in preventing the said loss. On balance these factors outweigh the somewhat relatively limited factors in favour of release.

## Right of appeal

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19. 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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

20. 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.
21. 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 .....**

**Gerrard Tracey**  
**Principal Adviser**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**