

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 November 2017

**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 from HM Revenue and Customs ("HMRC") information relating to a particular company.
2. HMRC stated that the information, if held, would be exempt under section 44(1)(a) of the FOIA and explained that the duty to confirm or deny whether the information is held does not arise under section 44(2) of the FOIA.
3. The Commissioner's decision is that HMRC was correct to refuse to confirm or deny that it holds the requested information under section 44(2).
4. The Commissioner therefore does not require the public authority to take any steps.

#### Request and response

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5. On 2 November 2016, the complainant wrote to HMRC and requested information in the following terms:

*"1. What is the difference between, Individuals and small business, mid-sized business and wealthy and mid-sized business? As HMRC are sending letters to [redacted name] from all three compliance departments. Can [redacted name] have an explanation why this is happening and what they all refer to and mean please?"*

*2. Under the data protection act you have a responsibility to use the information you receive fairly and lawfully.*

- 3. On the 28<sup>th</sup> September 2016, I told you of HMRC's criminal, serious misconduct. Using [redacted name] to carry out discriminable bias activities, to make amendments and calculations for monies that HMRC and [redacted name] know are not owed. Is there an investigation into this?*
- 4. Under the Freedom of Information act, data protection [redacted name] requests all information and communications HMRC has used to conclude its enquiry and make its amendments for [redacted name]. This information being from [redacted name] and all other parties. These are to include all records and communications provided by [redacted name]. Showing a total figure comprising the sum of total sales made to [redacted name], Sales invoices issued to [redacted name], A copy of the sales day book listing all sales made to [redacted name] and any electronic sales records such as spreadsheets. In fact any information and communications in its entirety that HMRC has for this assessment ([redacted name]), that [redacted name] has not yet been given. This may include explanations given, statements made, recordings, any other third party audited accounts, statements and receipts since this assessment as started and over the period the assessment conclusion was made.*
- 5. This Freedom of information request is to give [redacted name] a clear understanding into the final amendments and actions made by [redacted name] of HMRC on [redacted name], and for [redacted name] or representation to ask questions and provide a fair defence to these decisions and actions. Without all the information requested [redacted name] is unable to move this case forward."*
6. HMRC responded to points 1, 2 and 3 on 11 November 2016. In response to point 1, it stated that Individual and Small Business (ISBC) and Mid-size and Wealthy Business (WMBC) are two different strands to their compliance work. It explained that due to a reorganisation of staff, the complainant's request moved from one department to another.
7. In response to point 2, HMRC explained that it believed that they had acted fairly and lawfully.
8. In response to point 3, HMRC stated that there is no evidence to support the complainant's argument that there had been any element of criminal or serious misconduct carried out by the public authority.
9. HMRC then responded to point 4 on 1 December 2016. It stated that under section 18(1) of the Commissioners for Revenue and Customs Act 2005 (CRCA) it had a statutory duty of confidentiality which prevented the disclosure of information about identifiable persons including living individuals and legal entities, except in specific circumstances. Citing

section 44(2) of FOIA, HMRC stated they could neither confirm nor deny whether they held information falling within the scope of the complainant's request.

10. Following an internal review HMRC wrote to the complainant on 23 March 2017. It upheld its original position.

## **Scope of the case**

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11. The complainant contacted the Commissioner on 4 May 2017 to complain about the way his request for information had been handled.
12. The Commissioner considers that the scope of the case has been to consider whether HMRC dealt with point 4 of the request correctly in accordance with section 44 of the FOIA.

## **Reasons for decision**

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### **Section 44- Prohibitions on disclosure**

13. Any disclosure under the FOIA is to the world at large and not restricted to the requester.
14. Section 44(1)(a) of the FOIA states that information is exempt from disclosure if it is prohibited by any enactment. This is commonly known as a statutory bar to disclosure. Section 44(2) of the FOIA states that the duty to confirm or deny does not arise if the confirmation or denial is likewise prohibited by any enactment.
15. The Commissioner accepts HMRC's view that the enactment that applies in this case is 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.
16. Section 23 of the CRCA further states that information prohibited from disclosure by section 18(1), is exempt by virtue of section 44(1)(a) of the FOIA if its disclosure would specify the identity of the person to whom it relates or would enable the identity of such a person to be deduced. The Commissioner notes that section 18(1) of the CRCA states that the term "person" includes legal entities such as companies.
17. In its submissions to the Commissioner, HMRC outlined that section 23(1) of the CRCA effectively requires the consideration of two questions. Firstly, HMRC state it is their duty to consider whether the requested information is held in connection with a function of HMRC.

Secondly, HMRC also have to ask whether or not the information relates to a "person" who is identified, or who could be identified from the information requested.

18. The Commissioner is satisfied that the requested information, if held, would be held by HMRC in connection with its tax related functions.
19. The Commissioner is also satisfied that confirming or denying whether the requested information is held would identify a *person* within the meaning in section 23(1) of the CRCA. This is because the request specifically refers to the person to whom it relates and consequently the complainant is plainly seeking information about a "legal" person.
20. Confirming or denying that the requested information (about a "person") is held would therefore fall within sections 18(1) and 23 of the CRCA. This is because issuing a confirmation or denial in response to a request relating to a specified person's tax affairs would inevitably specify the identity of the person or enable their identity to be deduced by the general public. It would therefore also confirm whether HMRC holds information relevant to its functions in relation to that person. Thus, by virtue of section 44(2) of the FOIA, the duty to confirm or deny contained in section 1(1)(a) of the FOIA does not apply.
21. The Commissioner is therefore satisfied that HMRC is correct to refuse to confirm or deny whether it holds the requested information under section 44(2) of the FOIA.

## Right of appeal

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22. 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)

23. 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.
24. 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 .....**

**Alun Johnson**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**