

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice**

Date: 7 July 2022

Public Authority: HM Revenue and Customs

Address: 100 Parliament Street
London
SW1A 2BQ

Decision (including any steps ordered)

1. The complainant has requested information from HM Revenue and Customs ('HMRC') relating to the Eat Out to Help Out scheme. HMRC refused to disclose the requested information, citing section 44(1)(a) of FOIA as a basis for non-disclosure.
2. The Commissioner's decision is that HMRC has correctly applied section 44(1)(a) of FOIA to the withheld information.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 1 February 2021, the complainant wrote to HMRC and requested information in the following terms:

"Please could you tell me the total amounts paid to the five companies that received the most money from HMRC as a rebate under the Eat Out to Help Out scheme.

Please note what I am asking for is the five separate amounts paid to the companies that received the most money under the scheme, but NOT the names of the actual companies."

5. On 25 February 2021, HMRC responded. It refused to disclose the requested information, citing section 44(1)(a) of FOIA as a basis for non-disclosure.
6. The complainant requested an internal review, a response to which was provided by HMRC on 31 March 2021. The reviewer upheld the original decision.

Scope of the case

7. The complainant contacted the Commissioner on 13 June 2021 to complain about the way their request for information had been handled.
8. The Commissioner has considered HMRC's handling of the complainant's request, in particular its application of section 44(1)(a) of FOIA to the withheld information.

Reasons for decision

Section 44 – Prohibitions on disclosure

9. Section 44 is an absolute exemption. This means that if information is covered by any of the subsections of section 44 it is exempt from disclosure. It is not subject to a public interest test.
10. Section 44 of FOIA states that:

“(1) Information is exempt information if its disclosure (otherwise than 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

Commissioners for Revenue and Customs Act.”
11. Section 18 of the Commissioners for Revenue and Customs Act 2005 ('CRCA') refers to the duty of confidentiality by which all HMRC officials are bound. It specifies however that such confidentiality only applies to information held by HMRC for the purposes of fulfilling its core purposes and not information held for administrative purposes.

12. HMRC has explained that the relevant prohibition in this case is section 23(1) of the CRCA which states:

“Revenue and customs information relating to a person, the disclosure of which is prohibited by section 18(1), is exempt information by virtue of section 44(1)(a) of the Freedom of Information Act 2000 (prohibitions on disclosure) if its 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.”

The Commissioner’s analysis

13. Firstly, the Commissioner is satisfied that the requested information is held by HMRC in connection with its function of assessing and collecting tax. Therefore the information falls under section 18 of the CRCA and is prohibited from disclosure.
14. The Commissioner must now consider if disclosure would, as section 23(1) of the CRCA states, identify the person or persons to whom the information relates. If this is not the case then section 18 of the CRCA and by extension, section 23(1) of the CRCA and section 44(1)(a) of FOIA cannot be engaged.
15. The Commissioner understands that the term ‘person’ includes both individuals and legal persons such as organisations. Therefore, if compliance with the complainant’s request could identify any of these persons, the information is exempt.

HMRC’s position

16. HMRC states that 93% of claims and 52% of the total discount claimed under the Eat Out to Help Out scheme were for businesses with one participating outlet. Less than 1% of claims were for businesses with more than 25 outlets. However, these businesses made up 34% of the meals claimed for and 27% of the total discount claimed.
17. It is HMRC’s position that disclosing the five largest payments claimed under the Eat Out to Help Out scheme would risk identifying specific businesses by allowing people to combine this data with other information already available in the public domain. Information on the biggest restaurants, their turnover and whether they participated in the Eat Out to Help Out scheme is easily accessible by individuals who could then cross-reference the information with the five largest payments if disclosed, which would be likely to result in the identification of the businesses.

18. Public authorities are entitled to look at the effect of the disclosure in the context of existing information already in the public domain. In this case, disclosure of the information in isolation would not necessarily serve to identify individual persons, i.e. businesses. However, disclosure would likely lead to identification when combined with pre-existing material.

The Commissioner's view

19. The Commissioner has studied the information already in the public domain and freely accessible to all, regarding the relevant businesses, their turnover etc. The Commissioner accepts that a simple cross-referencing exercise and analysis is very possible to carry out and would be likely to result in the deduction of the identity of the relevant businesses.
20. The Commissioner is mindful that section 44 is an absolute exemption and, therefore, he cannot take into account whether or not it is within the public interest for these businesses to be identified. If the disclosed information could, as section 23(1) of the CRCA states, lead to the identification of the businesses to whom the request relates, or allow their identity to be deduced from said information, it is exempt under section 44(1)(a) of FOIA.
21. Since the Commissioner is satisfied that the identity of the businesses could likely be deduced from the requested information when combined with other information already in the public domain, section 23(1)(b) of the CRCA is engaged and, by extension, the information is exempt from disclosure in accordance with section 44(1)(a) of FOIA.

Right of appeal

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@justice.gov.uk

Website: 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

Deirdre Collins
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Information Commissioner's Office
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