

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 September 2022

Public Authority: His Majesty's Revenue & Customs
Address: 100 Parliament Street
London
SW1A 2BQ

Decision (including any steps ordered)

1. The complainant has requested information from His Majesty's Revenue & Customs ("HMRC") in relation to case numbers for proceedings issued against HMRC by self-employed people who have been refused payment of the SEISS grant. HMRC explained it holds the information, however, it was refusing it under section 44(1)(a) of FOIA, as it was prohibited from disclosure by other legislation.
2. The Commissioner's decision is that HMRC is entitled to rely on section 44(1)(a) of FOIA to withhold the requested information.
3. The Commissioner does not require HMRC to take any steps as a result of this decision notice.

Request and response

4. On 5 November 2021, the complainant wrote to HMRC and requested information in the following terms:

"Please supply a list of case numbers (and the name of the issuing court) for proceedings issued against HMRC by self employed people who have been refused payment of the SEISS grant."
5. HMRC responded on 23 November 2021. It stated that it holds the information but it is exempt from disclosure under section 44(1)(a) of FOIA, due to other legislation. It explained that the relevant legislation

is section 23(1) of the Commissioners for Revenue and Customs Act 2005 (CRCA). It explained that 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.

6. Following an internal review HMRC wrote to the complainant on 20 December 2021. It stated that it upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 23 December 2021, to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of this case is to determine if HMRC has correctly applied section 44(1)(a) of FOIA to the request.

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.”

Is disclosure of the requested information prohibited by or under any enactment

11. Information is exempt under section 44(1)(a) if its disclosure would breach any of the following:
 - i. primary legislation (an Act of Parliament); or
 - ii. secondary legislation (a Statutory Instrument).

12. The relevant legislation in this case is the Commissioners for Revenue and Customs Act 2005 (CRCA)¹.

13. Section 18(1) of the CRCA states:

"Revenue and Customs officials may not disclose information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs."

Section 18(2)(a)(i) of the CRCA states:

"But subsection (1) does not apply to a disclosure which is made for the purposes of a function of the Revenue and Customs...."

Section 23 of the CRCA states amongst other things:

"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....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.

(2) Except as specified in subsection (1), information the disclosure of which is prohibited by section 18(1) is not exempt information for the purposes of section 44(1)(a) of the Freedom of Information Act 2000."

HMRC's position

14. HMRC explained to the complainant that section 44(1)(a) of FOIA was applied to the request, as it required it to provide a listing of case numbers and the name of the issuing courts in reference to proceedings held against HMRC, for matters in relation to the SEISS grant.

15. HMRC went on to explain that the section applies, as they are legally required to keep taxpayer information confidential; information held in connection with one of its functions must be withheld as were it to be released it could lead to the identification of a person. It also explained that in the CRCA explanatory notes, it makes clear that the term "person", includes both natural and legal persons, so, for example, entities such as companies, trusts and charities.

¹ <https://www.legislation.gov.uk/ukpga/2005/11/contents>

16. HMRC also explained to the complainant that it adopts a cautious approach with taxpayer information, as the consequences of releasing information that inadvertently identifies a person carries legal consequences.
17. When the complainant asked for an internal review, they explained that they felt section 18(2) of the CRCA applies to their request, as civil proceedings are matters of public record and, therefore, they are entitled to access under the principle of "open justice". HMRC advised the complainant in its internal review response that whilst section 18(2) of the CRCA does list circumstances that allow for the disclosure of Revenue and Customs information, these do not apply to disclosure under FOIA.
18. HMRC went on to explain that disclosure under FOIA is governed by section 23 of the CRCA, which defines as 'exempt information', revenue and customs information that, if disclosed, would identify a person, or allow their identity to be deduced. It also added that section 23 (1A) of the CRCA states that section 18 subsections (2) and (3) are to be disregarded when considering a request.

The Commissioner's view

19. The Commissioner considers that the initial response adequately explains the interaction between the CRCA and FOIA and that it is clear that HMRC cannot, under FOIA, disclose any information which would identify a person or enable identification of a person. He is satisfied that this is explained further in the internal review response.
20. The Commissioner accepts that disclosing the withheld information would identify businesses and/or the individuals who own them, which, when combined with other publicly available information (such as the electoral register and other online sources), could lead to specific individuals being identifiable, as well as providing other personal information about them, such as their address and contact details.
21. Whilst the Commissioner is not aware of why the complainant wants such information, he can see that HMRC provided the complainant with a link in its original response, which is for the finance and tax Tribunal Judiciary site, where cases can be searched for.
22. Section 44(1)(a) FOIA is an absolute exemption so there is no requirement to conduct a public interest test as set out in section 2 of FOIA. It should also be noted that section 19 of the CRCA makes it a criminal offence for any member of staff to disclose any person's identifying information under FOIA.

23. In conclusion, the Commissioner's decision is that HMRC has correctly applied section 44(1)(a) to withhold all the requested information in this case.

Right of appeal

24. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

25. 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.
26. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF