

The Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 July 2023

Public Authority: HM Revenue and Customs
Address: 100 Parliament Street
London
SW1A 2BQ

Decision (including any steps ordered)

1. The complainant requested meta-data associated with an earlier information request of theirs to HM Revenue and Customs (HMRC).
2. The Commissioner's decision is that HMRC breached sections 10(1) and 17(1) of FOIA, because it failed to disclose information and issue its refusal for the withheld information within 20 working days of receiving the request.
3. The Commissioner does not require any further steps as a result of this decision notice.

Background

4. The request that is the focus of this case was made by the complainant within some correspondence about an earlier request of 25 October 2021 (which was itself a narrowed version of an even earlier request).
5. On 22 November 2021 HMRC had said to the complainant that it was considering the exemption at section 36(2) of FOIA (prejudice to effective conduct of public affairs) in relation to the complainant's 25 October 2021 request. The complainant replied (30 November 2021):

"Should you subsequently decide ... that either [section 36(2)(b) or section 36(2)(c)] will be used by the authority to prevent disclosure and to withhold this information, then please ensure that you provide in full the reasonable opinion of that qualified person, all advice and comment received by that qualified person as input to any decision, and all metadata associated with all related exchanges on the subject of this request".

6. HMRC responded to the 25 October 2021 request on 24 January 2022.

Request and response

7. On 11 March 2022, when requesting an internal review of their separate information request of 25 October 2021, the complainant referenced their 30 November 2021 correspondence (see above) and said to HMRC:

"Please supply this information as part of this internal review."

8. HMRC has provided information to the Commissioner indicating that HMRC accepted the complainant's 11 March 2022 comments as a valid information request, and attempted to respond to it on 18 July 2022 – HMRC has sent the Commissioner a copy of an email and attachment dated 18 July 2022, and seemingly sent to a relevant email address for the complainant.

9. However, the complainant never received the response, and went on to refer the matter to the Commissioner.

10. The Commissioner conveyed the complainant's concern about their meta-data request to HMRC. Subsequently, on 31 March 2023, HMRC sent some emails to the complainant about the meta-data request, with disclosures attached.

11. HMRC said:

"HMRC attempted to send this information to you on 28 July 2022 but this does not appear to have been received by yourself, possibly due to the size of the attachments [the Commissioner considers that this reference to 28 July 2022 is likely to be an error, and that HMRC meant to say 18 July 2022 – see above]".

12. The Commissioner's understanding, based on the documents he has seen, is that HMRC withheld some information under section 40(2) of FOIA; and some 'out of hours' contact details under section 36(2)(c).

13. He also noticed an 'email 4' containing some unlabelled redactions, however he can see that the email in question and its redactions match a redacted email that was disclosed by HMRC in response to the complainant's 25 October 2021 request – a request considered by the Commissioner under case reference IC-190938-Z1D0. The exemption that HMRC claimed for the redactions in that case was section 36(2)(b).

Scope of the case

14. The complainant contacted the Commissioner on 11 September 2022 to complain about the way their request for information had been handled.
15. They complained that the meta-data they had requested concerning HMRC's application of section 36 of FOIA had still not been provided.
16. As explained above, HMRC has now disclosed some information to the complainant.
17. On 5 April 2023, the complainant told the Commissioner that they were reviewing the disclosed information.
18. The Commissioner has received no contact from the complainant since then.
19. The Commissioner also notes that the complainant has not contacted HMRC either since 31 March 2023 with any complaint about the response and information that HMRC provided to the complainant that day.
20. Bearing in mind the complainant's 11 September 2022 complaint, the Commissioner considers that the scope of this case is to decide whether HMRC's response was late.

Reasons for decision

21. Section 1(1) of FOIA provides that a requester is entitled to be informed in writing by a public authority whether it holds the requested information, and to have that information communicated to them.
22. Section 10(1) of FOIA provides that a public authority must comply with section 1(1) promptly and in any event within 20 working days of receipt of the request.
23. Section 17(1) provides that a public authority relying on a claim that information is exempt must give a refusal notice within 20 working days.

24. HMRC's 18 July 2022 response to the complainant's 11 March 2022 request was in itself outside the statutory time for compliance.
25. Furthermore, it was not successfully provided to the complainant until 31 March 2023 (more than a year after the request), when HMRC sent it across three separate emails.
26. HMRC's delays in disclosing information and (for the withheld information) issuing its refusal respectively breached sections 10(1) and 17(1) of FOIA.

Right of appeal

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

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

Daniel Kennedy
Senior Case Officer
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Wycliffe House
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