

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 10 July 2008

**Public Authority:** Her Majesty's Revenue and Customs  
**Address:** 100 Parliament Street  
London  
SW1A 2BQ

### Summary

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The complainant requested statistical information from Her Majesty's Revenue and Customs (HMRC) regarding tax credit claims. HMRC responded explaining that the requested information was not held as it did not collate the statistical information requested. The Commissioner has investigated and found that the information is held but that to comply with the request would exceed the cost limit.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

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2. The complainant, on 28 April 2007, made the following request for information to Her Majesty's Revenue and Customs (HMRC):

*"In such cases (i.e. where the Board decides who has the main responsibility for a qualifying child or children) and for each of the last three years in respect of both working tax credit and child tax credit:*

*1. Please state how many such decisions were made in favour of the mother and how many were made in favour of the father.*

*2. In how many of these competing claim cases was care shared 50:50 between the mother and the father (i.e. the child or children spend an equal number of nights each year with each parent)?*

3. HMRC responded on 23 May 2007 stating that the requested information is not held as the statistical information requested is not available.
4. On 26 May 2007 the complainant requested an internal review of this decision. In his request he pointed out that the Tax Credits Manual states that the reasons for decisions on disputed shared care must be recorded on a shared care pro-forma and therefore that the information requested must be held.
5. HMRC completed its internal review and communicated the findings to the complainant on 18 July 2007. HMRC explained that the shared care pro-forma is unique to each case and they are not recorded or held in any collective database that will enable it to provide the statistics required. For this reason HMRC concluded that the statistical information is not held.

## **The Investigation**

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### **Scope of the case**

6. On 17 August 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider that it would not be a difficult task to collate the information required from the pro-forma.

### **Chronology**

7. The Commissioner began his investigation on 16 April 2008 by writing to HMRC requesting further detailed explanation about how shared care decisions are recorded and why it would not be possible to answer the request. The Commissioner provided information about previous decisions where data would need to be collated from paper and electronic files in order to assist HMRC in responding.
8. HMRC responded on 14 May 2008 explaining that it was maintaining its position that the information requested is not held. However, in the alternative HMRC explained that if the Commissioner found that the information was held, that to provide the information would exceed the cost limit.

## **Analysis**

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### **Procedural matters: Section 1 'Right of Access'**

9. Section 1 provides that any person making a request for information to a public authority is entitled (a) to be informed in writing by the public authority whether it

- holds information of the description specified in the request and (b) if that is the case to have that information communicated to him.
10. HMRC state that the statistical information requested is not held as to provide the complainant with the statistics he has requested would be creating 'new information'. HMRC explained that when two parents make a claim for tax credits for the same child and where there is a dispute over the care of the child, it completes a 'shared care' pro-forma. This pro-forma asks both parents a number of questions and is designed to assist the tax credit case worker in reaching a decision. Once completed the case worker makes his or her decision and this is recorded in the paper file. The decision as to which party is allocated care of the child for tax credits purposes and how much, is only held within the file and not recorded in any computerised database. The only information input into the database is the overall award amount.
  11. HMRC explained that it deals with each individual tax credit claim on its own merits and there is no business need to compare one case with another or compile statistics about how awards are divided between parties. HMRC explained that to provide the statistics requested a person familiar with the tax credits system would need to review each file and read the decision to determine in whose favour the decision went and the number of nights shared care awarded to each party. HMRC argue that this requires skill and judgment.
  12. The Commissioner takes the view that where information is held in a paper or electronic form the information is held. However, where information is held in the form of manual records and the requested information has to be collated from the raw data the Commissioner considers that it is held only if the work involved in retrieving or extracting it does not involve the exercising of more than a minimal degree of skill and judgement. In *Johnson v the ICO and Ministry of Justice EA/2006/085* the Tribunal considered the extent to which a public authority would need to manipulate the information in order to comply with the request. It concluded that where the levels of 'skill and judgement' in collating information were minimal or where the substantive manipulation of the constituent information were not necessary to comply with a request, information should be considered to be held.
  13. In this case HMRC has explained that the information is recorded as a decision in the paper files held in its 'Iron Mountain' storage facility. HMRC state that each file would need to be looked at to see if the 'shared care' pro-forma is included and whether the claim relates to a joint tax credit claim. Once the papers relating to a joint claim are identified they would need to prepare a list recording which ones favoured the mother, the father or were shared equally. HMRC state that to undertake the work necessary the individual would need to understand the issues involved in tax credits.
  14. The Commissioner accepts that the individual would need to take time to read the file to identify the relevant files and pick out the overall decisions so that the relevant statistics can be collated. The Commissioner considers that this task only requires a little skill and judgement and that it would be easy to explain to an employee how to complete this task.

15. The Commissioner finds that the information is held and that HMRC breached the requirements of section 1(1) (a) by failing to inform the complainant that requested information is held. The Commissioner has not reached a conclusion as to whether section 1(1) (b) has been complied with and this will be considered later in the decision.

### Section 12 'Cost Limit'.

16. Section 12 of the Act does not oblige a public authority to comply with a request if the authority estimates the cost of complying with the request would exceed the appropriate limit. HMRC state that it is likely to take more than three days to retrieve the information and therefore complying with the request would exceed the appropriate limit as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. These Regulations set a limit of £600 to the cost of complying with a request for all public authorities listed in Schedule 1 part I of the FOIA. In estimating the cost of complying a public authority can take the following into account:

- determining whether it holds the information requested,
- locating the information or documents containing the information,
- retrieving such information or documents, and
- extracting the information from the document containing it.

The Regulations state: *'any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour'*.

17. HMRC explained that because there is no database which lists the number or names of claimants claiming tax credits on a joint basis i.e. for the same child it would need to go through all manual files for each of the three years to establish which related to joint claims and those in which the care of the child was disputed. Once a file was located for one party it would then need to locate the corresponding file and read through both to determine in whose favour the decision on shared care went and how much shared care was allocated to each party.
18. HMRC explained that as soon as a claim is determined the file is sent to its Iron Mountain storage facility where it is filed alphabetically by claimant's name. HMRC further explained that there are currently 5.7 million families with children claiming tax credits and as there is no database showing which claims were in any specific year it would need to go through each file for each claim to comply with the request. HMRC also pointed out that claims are renewed each year so the request would relate to existing as well as new claims as even if in one year a claim was not joint or there was no dispute, this could have changed in intervening years.

19. The Commissioner notes that the request sought the statistical data for the 'last three years', however he considers that the time and resource implications for HMRC to identify the information sought for any given time period would be substantial. As HMRC has explained that files are not stored by date of claim but by surname, even if the request were for a one week period HMRC would still need to examine the same number of files to find all those relating to that period. The Commissioner therefore considers that there are no section 16 implications (advice and assistance) as the complainant could not usefully refine his request.
20. The Commissioner accepts the explanation provided by HMRC as to the actions required by it to extract the information. The Commissioner confirmed the number of people currently claiming tax credits and the number of new claims received each year via the statistics published on HMRC's website and is satisfied that for HMRC to comply with the request it exceed the appropriate limit and the information is therefore exempt under section 12 of the Act.

## The Decision

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21. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
  - (i) The application of section 12(1) to the information requested
  - (ii) The public authority has not breached section 1(1) (b) as it was not required to provide the information.
22. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
  - (i) Breached the requirements of section 1(1) (a) by failing to inform the complainant that the information requested is held.
  - (ii) Breached the requirements of section 17(5) by failing to issue a refusal notice informing the complainant of the exemption being relied upon to withhold the requested information.

## Steps Required

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23. The Commissioner requires no steps to be taken.

## Right of Appeal

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24 Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 10<sup>th</sup> day of July 2008**

**Signed .....**

**Gerrard Tracey  
Assistant Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### **General Right of Access**

**Section 1(1)** provides that -

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

**Section 1(2)** provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

**Section 1(3)** provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

**Section 1(4)** provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

**Section 1(5)** provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

**Section 1(6)** provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

## **Exemption where cost of compliance exceeds appropriate limit**

**Section 12(1)** provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

**Section 12(2)** provides that –

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

**Section 12(3)** provides that –

“In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.”

**Section 12(4)** provides that –

“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

**Section 12(5)** – provides that

“The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.

## **Refusal of Request**

**Section 17(1)** provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and



(c) states (if that would not otherwise be apparent) why the exemption applies.”

**Section 17(2)** states –

“Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
  - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
  - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.”

**Section 17(3)** provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

**Section 17(4)** provides that -

“A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

**Section 17(5)** provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

**Section 17(6)** provides that –

“Subsection (5) does not apply where –

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.”

**Section 17(7)** provides that –

“A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.”