

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 August 2014

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

Decision (including any steps ordered)

1. The complainant has requested information relating to a named individual in respect of whom a Seizure Notice dated 6 August 1982 had been issued. HM Revenue and Customs (HMRC) stated, in accordance with FOIA section 44(2), that it could neither confirm nor deny if any information was held within the scope of the request.
2. The Commissioner's decision is that HMRC was entitled to refuse to confirm or deny whether it holds the requested information on the basis of the exemption at section 44(2).
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 7 March 2014 the complainant wrote to HMRC and requested information of the following description:

"On August 6 1982, Customs and Excise published a notice of seizure of indecent or obscene materials sent to the UK by [a named individual] of [a specified address]. I hereby request any information, held in the files of HMRC or its predecessor organisation, Customs and Excise, relating to [the named individual] of the above address".

5. HMRC responded on 2 April 2014. It refused to confirm or deny, in accordance with FOIA section 44(2), that it held the requested information.
6. Following an internal review, HMRC wrote to the complainant again on 1 May 2014. It upheld its original decision to rely on section 44(2).

Scope of the case

7. The complainant contacted the Commissioner on 1 May 2014 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of the investigation is to determine whether HMRC correctly engaged the exemption at section 44(2) to refuse to confirm or deny whether it held information within the scope of the request.

Reasons for decision

9. Section 1(1)(a) FOIA requires a public authority to inform any person making a request whether it holds information of the description specified in the request. This is commonly referred to as 'the duty to confirm or deny'.
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.

(2) The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1)."
11. HMRC has asserted that in this case it is excluded from complying with the duty to confirm or deny whether it holds the information requested because, to do otherwise is prohibited under the Commissioners for Revenue and Customs Act 2005 (CRCA).

12. Section 18(1) 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".

13. Section 18(2)(a)(i) states:

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

14. Section 23(1) CRCA further provides that where information falling within section 18(1) relates to a 'person' who is identified, or who could be identified, the exemption in section 44(1)(a) FOIA applies. 'Person' includes both living persons and legal entities. HMRC said that taken together, if it were held, the above removes information about HMRC's customers from the right of access under FOIA.

15. The complainant has argued that HMRC has relied on section 23(1) CRCA yet this section of the legislation makes no mention of a requirement to refuse requests if the information would be held in connection with a function of HMRC.

16. He also argued that HMRC has misdirected itself in refusing the request on the basis that the identity of the person to whom the information relates could be revealed. His argument centres around the fact that the identity has already been revealed by virtue of a published Notice of Seizure. The complainant has provided a copy of the notice to the Commissioner.

17. HMRC has asserted that any information which might be held about the named individual would be held for the purpose of its functions. HMRC cited as examples, the function to seize prohibited items, articles or goods, and the function to assess and collect tax. To confirm or deny whether it holds information would mean HMRC revealing information about that individual.

18. With regard to the seizure notice which the complainant stated was in the public domain, the Commissioner agrees that the existence of publicly available information is relevant in terms of the application of the FOIA but in the context of this particular case does not consider that the application of the exemption is undermined. The Commissioner notes that even in the event that the Notice of Seizure had been issued by HM Customs and Excise in 1982, it has no bearing on HMRC's duty to

confirm or deny whether, at the time of this request, it held information within the scope of the request.

19. Whilst the request refers to the Notice of Seizure, it specifically relates to any information held in relation to functions of HMRC and about a named individual.
20. With regard to the complainant's assertions about section 23(1) CRCA, the Commissioner is satisfied that the refusal notice issued by HMRC adequately explained the position as set out in section 23(1) and section 18(1) CRCA.
21. The Commissioner would note also that an amendment to section 23 CRCA was made in 2009 to clarify that the exceptions to the public authority's duty of confidentiality set out in sections 18(2) and (3) of that Act are to be disregarded when considering disclosure of Revenue and Customs information relating to a person under the FOIA. This amendment is contained in section 19(4) of the Borders Citizenship and Immigration Act 2009. What this therefore means is that access to customer specific information is excluded from the FOIA. The complainant's request seeks customer specific information and the Commissioner accepts that the exceptions at sections 18(2) and (3) should be disregarded (for the purposes of responding to a request under the FOIA) by virtue of the 2009 amendment.
22. The Commissioner is satisfied that the requested information, if held, would be held by HMRC in connection with its functions. He accepts that disclosure under the FOIA is not a function of HMRC described in section 5 CRCA. It is therefore not a function envisaged by section 18(2)(a)(i).
23. It is therefore the Commissioner's position that HMRC was entitled to rely on the exemption at section 44(2) FOIA to refuse to confirm or deny whether it held the requested information.

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: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.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

Alexander Ganotis
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF