

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 21 January 2016

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

#### Decision (including any steps ordered)

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1. The complainant submitted a request to the public authority for a copy of the minutes of a meeting between a senior official and [named person] and copies of correspondence between the senior official and [named person]. The public authority withheld the minutes on the basis of the exemption at section 44(1)(a) FOIA, and explained that it did not hold information within the scope of the second part of the request for correspondence.
2. The Commissioner's decision is that the public authority was entitled to rely on section 44(1)(a).
3. No steps are required.

#### Request and response

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4. On 12 February 2015 the complainant submitted a request for information to the public authority in the following terms:

*'(1) Copies of any minutes or documentation concerning Dave Hartnett's<sup>1</sup> meeting with [named person] on 11 February 2010.....'*

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<sup>1</sup> Former Permanent Secretary, Tax, at HMRC.

*(2) Copies of any and all correspondence between Dave Hartnett and [named person].'*

5. On 8 April 2015 the public authority informed the complainant it held some information within the scope of his request which it considered exempt from disclosure on the basis of section 44(1)(a) FOIA.
6. On 5 May 2015 the complainant requested an internal review of the public authority's decision. He also informed the authority that his request should be restricted to '*only include material relating to the activities of [named person]...*'
7. On 22 July 2015 the public authority wrote to the complainant with details of the outcome of the review. It upheld the original decision.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 14 August 2015 to complain about the way his request for information had been handled.
9. On 27 August 2015 the Commissioner informed the complainant that his investigation would be restricted to information relating to the activities of [named person].
10. During the course of the Commissioner's investigation, the public authority clarified its position with regards to the second part of the request. It explained that it did not hold information falling within that part of the request.
11. The complainant subsequently informed the Commissioner that he was happy for the investigation to focus on the first part of his request only.
12. The focus of the Commissioner's investigation therefore was to:
  - Determine whether the public authority was entitled to rely on the exemption at section 44(1)(a) FOIA to withhold *a copy of minutes of a meeting on 11 February 2010 between Dave Hartnett and [named person] relating to the activities of [named person]*.

### **Reasons for decision**

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#### **Section 44(1)(a)**

13. The public authority has informed the Commissioner that the minutes in their entirety fall within the scope of the original request submitted by

the complainant on 12 February. Having inspected the minutes, the Commissioner finds that they fall within the scope of the original request as well as the refined request.

14. Information is exempt on the basis of section 44(1)(a) if its disclosure is prohibited by or under any enactment.<sup>2</sup>

*Public authority's submissions*

15. The public authority explained that it is prohibited from disclosing the minutes by virtue of the combined provisions in sections 18(1) and 23(1) of the Commissioners for Revenue and Customs Act 2005 (CRCA).
16. This is because the minutes are held by the public authority in connection with its functions and relate to a "person" who could be identified from the minutes.
17. The public authority also explained that it did not rely on section 44(2)(a) FOIA<sup>3</sup> and instead chose to confirm that it held information relevant to the request because it was already a matter of public record that the meeting in question took place. It was for this reason that it also chose to confirm the actual position with regards to the second request. If that request had been received separately, it would have relied on section 44(2)(a).

*Complainant's submissions*

18. The complainant's submissions challenging the public authority's reliance on section 44(1)(a) are summarised below.
19. He does not consider that the information requested concerns [named person]'s tax affairs.
20. He argued that there was a public interest in knowing what Dave Hartnett discussed with [named person] at the meeting for reasons which the Commissioner has not mentioned in this notice so as not to reveal information which could be used to identify [named person].

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<sup>2</sup> <http://www.legislation.gov.uk/ukpga/2000/36/section/44>

<sup>3</sup> By virtue of section 44(2)(a), a public authority is excluded from confirming or denying whether it holds information requested by an applicant if the confirmation or denial would also be prohibited by or under any enactment.

21. He argued that the public authority should not enjoy an automatic exemption from publishing information concerning meetings or communications with third parties by virtue of the CRCA.

*Commissioner's findings*

22. 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.'*

23. The Commissioner is satisfied that the withheld minutes which he has inspected are held by the public authority in connection with its function to assess and collect tax. It is sufficient that the minutes are held in connection with the authority's functions. The information does not have to relate to [named person]'s tax affairs.

24. Although there are exceptions to section 18(1) contained in sections 18(2) and (3) CRCA, section 23 CRCA was amended by section 19(4) of the Borders, Citizenship and Immigration Act 2009 to make clear that sections 18(2) and (3) are to be disregarded when considering disclosure of revenue and customs information relating to a person under FOIA.

25. Notwithstanding the above, section 23(1) CRCA 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....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.'*

26. Therefore, information prohibited from disclosure by virtue of section 18(1) CRCA is exempt information by virtue of section 44(1)(a) FOIA only if its disclosure would identify the "person" to whom it relates or would enable the identity of such a "person" to be deduced. The term "person" includes both natural and legal persons.

27. The request clearly refers to the person to whom it relates. The withheld minutes also clearly identify [named person]. Therefore disclosure under the FOIA would reveal the identity of [named person] and that is specifically prohibited under section 23(1) of the CRCA.
28. The fact that it is a matter of public record that the meeting in question took place does not remove the prohibition from disclosure under the FOIA imposed on the public authority by virtue of section 23(1) of the CRCA. Indeed, it would be a criminal offence by virtue of section 19(1) of the CRCA<sup>4</sup> for officials to disclose the withheld minutes (which have not been made public) under the FOIA.
29. The exemption at section 44(1)(a) is absolute. In other words, it is not subject to the public interest test set out in section 2(2)(b) FOIA<sup>5</sup>. Therefore, although the complainant has made compelling arguments in support of the disclosure of the minutes in the public interest, the Commissioner is unable to take those submissions into account in reaching his decision.
30. The Commissioner therefore finds that the public authority was entitled to withhold the minutes in reliance on section 44(1)(a) FOIA.

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<sup>4</sup> <http://www.legislation.gov.uk/ukpga/2005/11/section/19>

<sup>5</sup> <http://www.legislation.gov.uk/ukpga/2000/36/section/2>

## Right of appeal

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31. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

32. 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.
33. 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** .....

**Terna Waya**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**