

## **The Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 24 October 2022

**Public Authority:** **HM Revenue and Customs (HMRC)**  
**100 Parliament Street**  
**London**  
**SW1A 2BQ**

#### **Decision**

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1. The complainant asked HMRC a question about [name redacted]. The Commissioner's decision is that HMRC was correct to rely on section 44(2) of FOIA and thereby neither confirm nor deny (NCND) whether HMRC holds information of the description specified in the request.
2. The Commissioner does not require HMRC to take any steps as a result of this decision notice.

#### **Request and response**

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3. The complainant made the following information request to HMRC on 31 May 2022:

"How many times was [name redacted] ... checked with real verification/corroborator, (i.e. not self provided reports) and supervised by HMRC for money laundering compliance/financial irregularities?

[name redacted] was registered with HMRC from [dates redacted].

HMRC website states "You must meet certain day-to-day responsibilities if your business is covered by the Money Laundering Regulations [[www.gov.uk/guidance/money-laundering-regulations-who-needs-to-register](http://www.gov.uk/guidance/money-laundering-regulations-who-needs-to-register)]. These include carrying out 'customer due diligence' measures to check that your customers are who they say they are, and risk assessing your business [[1](http://www.gov.uk/guidance/money-laundering-regulations-risk-</a></p></div><div data-bbox=)

assessments]. You must also put in place internal controls and monitoring systems. The nature of these controls will depend on the size and complexity of your business, including the number of customers you have and the number and type of products and services you provide." ...".

4. The final position of HMRC, as expressed in its internal review response of 1 July 2022 to the complainant, was to cite section 44(2) of FOIA (the 'prohibitions on disclosure' exemption) and thereby NCND whether HMRC holds information of the description specified in the request.

## **Reasons for decision**

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5. This reasoning covers HMRC's reliance on section 44(2). The complainant disagrees with HMRC's position, and wants HMRC to answer the question of 31 May 2022.
6. Given the detailed comments that HMRC provided to the complainant in its original response (17 June 2022) and internal review response (1 July 2022), on this occasion the Commissioner felt it was not necessary or proportionate to seek further submissions from HMRC before issuing a decision.
7. For the avoidance of doubt, the Commissioner has not asked HMRC whether it holds the information that was requested. Nothing in this decision notice should be construed as indicating that the information is or is not held by HMRC.
8. Section 44(1)(a) of FOIA states that information is exempt if its disclosure "is prohibited by or under any enactment". This is commonly known as a statutory bar to disclosure. Section 44(2) of FOIA provides that the duty to confirm or deny whether information of the description specified in the request is held does not arise if the confirmation or denial would itself, likewise, be prohibited by or under any enactment.

### *HMRC's position*

9. HMRC made reference to the Commissioners for Revenue and Customs Act 2005 (CRCA) which prohibits the disclosure of information held by HMRC in connection with one of its functions, and provides that where information relates to a person (whether a natural or legal person) it will be exempt from disclosure under FOIA if its disclosure would specify that person's identity or enable the identity to be deduced. HMRC further explained that where simply confirming whether it holds the requested information could say something about an identifiable person

([name redacted]), section 44(2) of FOIA means that HMRC can NCND whether it is held.

*Complainant's position*

10. Although HMRC has told the complainant more than once that 'person' in the context of CRCA means both individuals and entities like companies, the complainant argued in the internal review request that "[name redacted] is a UK firm and is not an identifiable person", and queried how the firm's directors/anyone in the firm could be harmed by HMRC answering the question regarding "how the firm was supervised and checked" in relation to anti-money laundering between [dates redacted].

*The Commissioner's position*

11. The Commissioner is satisfied that the requested information, if held by HMRC, would be held in connection with HMRC's functions. The complainant asked how HMRC "checked ... and supervised" a firm; HMRC's [website](#) states that "anti-money laundering supervision" is one of HMRC's responsibilities; the complainant also mentioned "financial irregularities" in the original request and HMRC clearly has responsibilities around financial matters, including the administration of the tax system.
12. The Commissioner is also satisfied that the requested information, if held by HMRC, would identify a 'person' as defined by CRCA. This is because the request specifically refers to [name redacted]. The complainant requested information relating to that legal person – specifically "How many times" it was "checked"/"supervised" by HMRC.
13. Providing confirmation or denial as to whether information is held within scope of such a request would inevitably specify [name redacted]'s identity or enable its identity to be deduced, and would reveal whether HMRC holds information about [name redacted] in connection with its functions.
14. The Commissioner therefore agrees with HMRC's position and considers that HMRC was correct to cite section 44(2) of FOIA. The Commissioner also directs the complainant to previous decision notices on his website in which he has upheld HMRC's reliance on section 44(2) in similar circumstances (where requesters have sought information about a particular natural or legal person), and has explained the operation of section 44(2) of FOIA and its interaction with CRCA (some examples are [FS50895430](#) and [FS50681295](#)).

## Right of appeal

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15. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

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

16. 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.
17. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**