

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 April 2024

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

Decision (including any steps ordered)

1. The complainant has requested information from HM Revenue and Customers (HMRC) in relation to the impact of changes to the National Minimum Wage on the Tax Gap and Compliance Yield.
2. The Commissioner's decision is that, on the balance of probabilities, HMRC does not hold information within the scope of the request.
3. The Commissioner does not require HMRC to take any steps as a result of this decision.

Request and response

4. On 10 August 2023, the complainant wrote to HMRC in the following terms:

"Under the Freedom of Information Act, I would like to request the following information:

(1) A summary and any available details of any past work (particularly findings and results as well as methods/methodologies, where feasible) regarding the impact of changes to the National Minimum Wage on the 'Tax Gap' (as defined by HMRC)

(2) A summary and any available details of any past work (particularly findings and results as well as methods/methodologies, where feasible) regarding the impact of changes to the National Minimum Wage on 'Compliance Yield' (as defined by HMRC)."

5. HMRC responded on 4 September 2023 and stated:

"HMRC has not carried out any research on the impact of changes in the National Minimum Wage (NMW), therefore we do not hold the information requested.

The tax gap is the difference between the amount of tax that should, in theory, be paid to HMRC, and what is actually paid. The tax gap estimates only cover the taxes administered by HMRC, so they exclude any taxes and duties administered elsewhere. The NMW is not a tax and is therefore not included in the tax gap.

HMRC enforces the NMW on behalf of the Department for Business and Trade. Any non-compliance with the NMW is not recorded as 'Compliance Yield'."

It also included further advice and assistance in the form of links to published information.

6. The complainant requested an internal review on 6 September 2023 setting out their reasons and arguments as they believed HMRC had misunderstood their request.
7. HMRC responded on 24 October 2023 and further explained its role in relation to the complainants questions and stated: "I am satisfied that there is no information held to satisfy your request. None of the types of

work you have suggested has taken place in any of our compliance teams, or the wider HMRC.”

Reasons for decision

8. This reasoning covers whether HMRC is correct when it says that it does not hold information within the scope of the request.

The complainant's position

9. The complainant considers HMRC to hold information within the scope of their request.
10. The complainant said that: “I disagree, or I believe it holds more information than it has sent, I disagree with the public body's refusal to provide the information I requested. I remain sceptical that HMRC does not hold any information at all that's relevant to my request.”

HMRC's position

11. In its submissions to the Commissioner, HMRC maintained its position that it does not hold any information within the scope of the request. It stated that: “The FOI drafting team responsible has consulted with all relevant subject matter experts who confirmed they were not aware of any work in this area and were not aware of any evidence that we hold the information requested.”
12. HMRC explained that: “We would expect that if this information was held, there would be a report either held within HMRC systems (electronically), or potentially published.” It further explained: “While changes to the NMW may affect the amount of tax that is legally due, this does not in itself have a direct effect on either our compliance yield, or the tax gap. For that reason, there is no business reason for us to hold this information.”
13. HMRC also explained that: “The request was allocated to an FOI drafting team within our Compliance Operations Directorate. They shared the request and consulted with subject matter experts in the National Minimum Wage (NMW) compliance team, the team within Knowledge Analysis and Information that completes the tax gap analysis work and our Individuals and Small Business Compliance unit's performance team to understand whether any of this work has been completed, or whether NMW is considered for the tax gap or compliance yield.

If HMRC held this information, it is reasonable to conclude that one of the subject matter experts on these teams would be aware of it or would

be able to suggest further reasonable searches that might locate it as the work would have been conducted by those teams. Our published information on the tax gap confirms that NMW is not considered as part of that work.”

The Commissioner's position

14. The Commissioner notes that the complainant considers HMRC should hold information within the scope of the request as they believe the information is relevant to HMRC's work and functions. However, the Commissioner is satisfied that HMRC has carried out reasonable enquiries with the relevant experts in order to locate and confirm if any information was held within the scope of the request. He also considers that when conducting its enquiries, HMRC used appropriate and relevant terms to help locate any information that may have been held.
15. Furthermore, the Commissioner notes that as above, HMRC stated that: “the subject matter experts on these teams would be aware of it or would be able to suggest further reasonable searches that might locate it as the work would have been conducted by those teams.”
16. The Commissioner is not required to prove beyond doubt that HMRC do or do not hold information but can only make a decision based on the civil standard of the “balance of probabilities” that information within the scope of the request is more likely than not held
17. Therefore, the Commissioner's decision is that on the balance of probabilities, HMRC does not hold information within the scope of the request.

Right of appeal

18. 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

19. 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.
20. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Susan Duffy
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Information Commissioner's Office
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