

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 14 February 2019

**Public Authority:** HM Revenue and Customs

**Address:** 100 Parliament Street  
London  
SW1A 2BQ

#### Decision (including any steps ordered)

---

1. The complainant has submitted a request for the costs incurred by the public authority further to a concluded litigation in relation to the completion of tax returns. The public authority withheld the requested information on the basis of the exemption at section 44(1)(a) FOIA.
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

---

4. On 5 July 2018 the complainant submitted a request for information to the public authority in the following terms:

"In view of the decision today from the High Court, please advise me of the total costs incurred by HMRC in this litigation, to include (but not necessarily limited to):

1. The internal costs of contesting the original appeal to the First-tier Tribunal in April 2014.
  2. The internal costs of resisting the costs application made later that year.
  3. The totality of costs (internal, external legal and costs awards payable to the other side) in relation to the procedures before the Senior Courts Costs Office (provisional and final assessment).
  4. The totality of costs (court fees, internal, external legal and costs awards payable to the other side) in relation to the appeal to the High Court.
  5. The final costs payable as a result of the High Court's decision in relation to the original hearing in April 2014."
5. The public authority provided its response on 27 July 2018. It noted that from the subject line of the complainant's email (containing the request) the request relates to the case of "HMRC v Gardiner". It confirmed that it held the requested information which it considered exempt from disclosure on the basis of section 44(1)(a) FOIA by virtue of the provisions in sections 18(1) and 23(1) of the Commissioner's for Revenue and Customs Act 2005 (CRCA).
6. The complainant requested an internal review of that decision on the date it was provided – 27 July 2018.
7. On 28 August 2018 the public authority wrote to the complainant with details of the outcome of the review. The review upheld the original decision to rely on section 44(1)(a).

## Scope of the case

---

8. The complainant contacted the Commissioner on 29 August 2018 to, in his own words, complain "about the refusal of HM Revenue & Customs to provide information concerning the amounts of money they have spent pursuing a case involving three taxpayers through the First-tier Tribunal (Tax) and Civil Courts." The Commissioner has referred to his submissions in her analysis below.
9. 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).

## Reasons for decision

---

### Section 44(1)(a)

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

### Public authority's submissions

11. The public authority's position which is set out in the refusal notice of 27 July 2018 and the outcome of the internal review in the letter of 28 August 2018 is summarised below.
12. The public authority holds the requested information. The information is held in connection with the public authority's function relating to the general management and collection of tax.
13. The requested information is therefore prohibited from disclosure under section 18(1) CRCA by virtue of being held in connection with a function of the public authority.
14. Further, the requested information is specifically prohibited from disclosure under section 23(1) CRCA because its disclosure would effectively constitute answering a question(s) in relation to an identifiable person. The request is for costs incurred in litigating against

---

<sup>1</sup> For a full text of the exemption, visit <http://www.legislation.gov.uk/ukpga/2000/36/section/44>

a taxpayer and therefore relates to a person within the meaning of section 23 CRCA.

15. The definition of information relating to a person is set out in section 19(2) CRCA as follows:

"...revenue and customs information relating to a person means information about, acquired as a result of, or held in connection with the exercise of a function of the Revenue and Customs but it does not include information about internal administrative arrangements of Her Majesty's Revenue and Customs (whether relating to Commissioners, officers or others)"

### Complainant's submissions

16. The complainant's submissions are summarised below.
17. All that has been requested is a series of five amounts. There is no need for the public authority to specify the identity of the three individuals. The amounts would not specify any individual nor would disclosure of those amounts enable the identity of any person to be deduced.
18. He argued that the request seeks information about the public authority's internal processes which is not taxpayer confidential and therefore disclosable. In support, he drew attention to the following statement made by the then Paymaster General, Dawn Primarolo on the introduction of section 23 CRCA:

"Taxpayer confidentiality remains of paramount importance in the new department. As I have said, for that reason, the Bill ensures that information connected with a taxpayer is not disclosable under the Freedom of Information Act. That was always the intention, but the new clause puts that beyond doubt - that information will not be disclosable under the Act. However, much of the information that Her Majesty's Revenue and Customs will hold is not taxpayer confidential - for example, information about the department's internal processes. The new clause identifies that such information will be subject to the Freedom of Information Act. Therefore, if a person requests information that it is not taxpayer confidential, that request will be considered under the Act."

19. He explained that his request seeks to ascertain how much of public money was spent in a particular case. Withholding the requested information hinders the accountability of the public authority to its stakeholders.

Commissioner's considerations

20. 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.'*

21. The Commissioner shares the view that the information is held in connection with the public authority's function relating to the general management and collection of tax. It concerns a legal challenge of penalties imposed by the public authority on individuals in relation to the completion of tax returns.

22. 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.

23. 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.'*

24. Therefore, under section 23(1) CRCA information prohibited from disclosure by virtue of section 18(1) CRCA is specifically designated as exempt from disclosure under section 44(1)(a) FOIA if its disclosure would identify the person to whom it relates or would enable the identity of such a person to be deduced.

25. The term "person" includes both natural and legal persons.

26. The requested information clearly relates to identifiable persons. In the words used in section 19(2) CRCA, it is held in connection with the exercise of a function of the public authority and from that, the persons

to whom the information relates to are identifiable. The fact the complainant considers that the requested information is about the public authority's internal processes is immaterial to the test set out in section 23(1) CRCA. The test it should be noted is not whether the information sought is taxpayer confidential. It is whether the information would specify the identity of a person to whom it relates or would enable their identity to be deduced.

27. Similarly, whether withholding the information would hinder the accountability of the public authority to its stakeholders does not arise in determining whether the test in section 23(1) has been met. It also does not arise with respect to the consideration of the absolute exemption<sup>2</sup> at section 44(1)(a).
28. The Commissioner therefore finds that the public authority was entitled to withhold the requested information on the basis of section 44(1)(a) FOIA.

---

<sup>2</sup> By virtue of section 2(2)(a) FOIA, absolute exemptions are not subject to the public interest test set out in section 2(2)(b) FOIA.

## Right of appeal

---

29. 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)

30. 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.
31. 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**