



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 12 June 2006

(This replaces the Decision Notice dated 24 May 2006 which is hereby revoked.)

Public Authority: HM Revenue and Customs

**Address: 100 Parliament Street
London SW1A 0AA**

Summary Decision and Action Required

The Commissioner's decision in this matter is that the Public Authority has acted in accordance with Part I of the Act in respect of its application of section 1 to the request for the release of the information sought.

1. Freedom of Information Act 2000 (the 'Act') – Applications for a Decision and the Duty of the Commissioner

1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the Complainant's request for information made to the Public Authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').

1.2 Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

2. The Complaint

- 2.1 The Complainant has advised that on 24 June 2005 the following information was requested from the Public Authority by letter in accordance with section 1 of the Act.
- 2.2 "A copy of the documents held on your files, in respect of the enquiry into the company's corporation tax affairs."

The Public Authority received this request on 29 June 2005. On 7 July 2005 they sought clarification of the request, which was received from the Complainant on 20 July 2005. The Public Authority responded to the request on 9 August 2005. They refused to release the information, citing 31(1)(d) of the Act. The Complainant sought a review. The Public Authority reviewed the decision but, in a letter dated 20 September 2005, wrote to the complainant to endorse it.

Section 31(1)(d) states that:

"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

(d) the assessment or collection of tax or duty or of any imposition of a similar nature,"

3. Relevant Statutory Obligations under the Act

Section 1(1) provides that –

"Any person making a request for information to a public authority is entitled-

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

4. The Commissioner's Investigation

The Complainant requested that the Commissioner review the decision not to release the information sought.

As part of that review the Commissioner sought access to the Public Authority's files and examined the relevant papers. The Complainant is acting on behalf of a company whose corporation tax position was (and remains) the subject of an inquiry by the Public Authority. The Public Authority refused to release the

information requested, citing section 31(1) (d) (see above). The Public Authority said that to release the information sought by the Complainant could potentially prejudice the outcome of the specific enquiry currently in train and could also prejudice other enquiries by making available to the public the Public Authority's risk assessment strategies in respect of such cases. The possession of such information could hinder the assessment and the collection of the correct amount of tax.

The Public Authority recognised that there was a public interest in the release of general information about how taxes work and in increasing transparency in respect of the enquiry process where this would not inhibit current or future enquiries into individual returns. However, the information sought in this case was not general in nature: it was specific to one particular enquiry only. Releasing information about a current enquiry could enable the company to hinder progress or develop strategies which might prevent or delay the assessment of the correct amount of tax. The Public Authority took the view that the public interest lay in their enquiries being carried out in a way that ensured the assessment and collection of the proper amount of tax and that release of the information sought would hinder that process. The Public Authority therefore concluded that the public interest in the information being released was in this case outweighed by the public interest in maintaining the exemption.

4.1 The Exemption

Section 31 1(d) of the Act relates specifically to the disclosure of information which, if released, would be likely to prejudice the assessment or collection of tax. The documents provided to the Commissioner by the Public Authority confirm that the information at issue concerns a current investigation into the payment of corporation tax. The Commissioner is therefore satisfied that the exemption is engaged. This exemption, however, is a qualified exemption and therefore attracts the public interest test.

4.2 The Public Interest Test

The Commissioner accepts that there is a general public interest in the release of information that will lead to a better understanding of the taxation system. However, he is of the view that the information sought in this case is not of that kind and he believes that the exemption has been correctly applied. The Complainant is acting on behalf of a company currently under enquiry by the Public Authority and the information sought relates specifically to that investigation. The Commissioner is of the view that release by the Public Authority of all the information they hold about a particular taxpayer during the course of such an enquiry into that particular taxpayer would hinder the Public Authority's enquiry and would cause prejudice to similar enquiries in the future. The Commissioner does not believe that this would be in the public interest and has concluded that the public interest in the information being released is in this case outweighed by the public interest in maintaining the exemption.

5. The Commissioner's Decision

5.1 For the reasons set out above, the Commissioner's decision in this matter is that the Public Authority correctly applied section 31(1) (d) to the information requested and supports their judgement that the public interest in the information being released is in this case outweighed by the public interest in maintaining the exemption.

6. Action Required

In view of the Commissioner's decision that section 31(1) (d) has been correctly applied in this case, he does not require any remedial steps to be taken by the Public Authority.

7. Right of Appeal

7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated 12 June 2006

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**