

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 12 September 2012

**Public Authority:** HM Revenue & Customs

**Address:** Millbank Tower  
25<sup>th</sup> Floor  
21/24 Millbank  
London  
SW1P 4XL

### Decision (including any steps ordered)

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1. The complainant has requested information from HM Revenue & Customs ("HMRC") relating to responses it sent to subject access requests ("SAR") made under the Data Protection Act 1998 (the "DPA") and when those were delivered within certain timescales. HMRC refused to deal with this request, stating that to comply with it would exceed the cost limit under section 12 of the FOIA.
2. The Commissioner's decision is that HMRC has correctly applied section 12(1) to the request. However, he finds that HMRC breached section 1 of the FOIA by not confirming that it held information which was relevant to the request within the statutory time for compliance.
3. The Commissioner does not require HMRC to take any steps.

### Request and response

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4. On 20 January 2012, the complainant wrote to HMRC and requested information in the following terms:

*'In each of the two years ended 31 March 2011 and from 1 April 2011 to the current date how many Data Protection Act requests were DELIVERED to the Data Subject within (of the request being received and fully satisfying the received criteria in the DPA 1998) each of the following periods: 10 days, 15 days, 20 days, 25 days, 30 days, 35 days, 40 days and over 40 days.'*

5. HMRC responded on 16 February 2012 and denied holding the information requested.
6. The complainant requested an internal review on 16 February 2012 within which he clarified his request. He stated that he considered HMRC would use tracked delivery and that the date of delivery should be regarded as the last working day the Royal Mail 'promises delivery' following posting.
7. HMRC wrote to the complainant on 17 February 2012 and informed him that it was waiving its right to carry out an internal review of its handling of his request. However, after the complainant had initially contacted the Commissioner, HMRC provided such a review on 4 July 2012.
8. In that internal review HMRC explained that to comply with the request would exceed the appropriate limit and applied section 12(1) of the FOIA.
9. In respect of a refined request, HMRC wrote that it may be able to comply with a request narrowed to a time period of one month, where the number of timeframes was reduced or the request restricted to the team which issues responses only by a trackable method.

### **Scope of the case**

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10. The complainant contacted the Commissioner to complain about the way his request for information had been handled. Specifically, he complained that HMRC had not provided the information requested.
11. The Commissioner's investigation therefore focused on whether HMRC handled the request in compliance with the FOIA.

### **Reasons for decision**

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#### *Objective meaning*

12. The Commissioner has considered the request and its objective meaning. HMRC responded to the complainant's request by stating that it was not possible to establish when a response was physically delivered to a requester.
13. In his internal review request the complainant informed HMRC that he regarded a SAR response as being recorded as delivered on the last date

after posting that the Royal Mail 'promises delivery by.' He also stated that tracked items would provide information on delivery.

14. The Commissioner considers that the complainant's reading of the request in regard to when a response may be regarded as being delivered is not an objective one. The Commissioner has referred to Royal Mail's service standards and has noted that it states it aims to deliver second class post *within* three working days, including Saturday and that delivery by any particular date is not guaranteed. He is also aware that there is information in the public domain which indicates it is possible for second class post to be delivered on the next working day after posting.
15. However, the Commissioner has noted that HMRC accepted the complainant's meaning of his request in regard to trackable responses.

*Section 12(1)*

16. Section 12(1) states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
17. When considering whether section 12(1) applies, the authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations').
18. Paragraph 4(3) of the Regulations states:

*"In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in -*

  - (a) determining whether it holds the information,*
  - (b) locating the information, or a document which may contain the information,*
  - (c) retrieving the information, or a document which may contain the information, and*
  - (d) extracting the information from a document containing it."*
19. The Regulations state that the appropriate cost limit is £600 for central government, legislative bodies and the armed forces, and £450 for all other public authorities. As HMRC is a central government department, the cost limit in its case is £600, which is equivalent to 24 hours' work.

20. Section 12 of the FOIA makes it clear that a public authority only has to estimate whether the cost of complying would exceed the appropriate limit. It is not required to provide a precise calculation.

*Records held and method of issue*

21. HMRC stated that its records focus on the date of issue of the SAR response and not on the date of receipt by the data subject. HMRC said that it does not hold the total figures requested as it would not generally hold a record of when a SAR response was physically delivered to the requestor. However, it noted that occasionally it uses a trackable service when issuing SAR responses and that very occasionally responses may be sent out electronically. However, it stated it uses second class post to issue the majority of SAR responses.
22. It informed the complainant that it holds some records from 1 January 2010 onwards which evidence when some SAR responses were received by the applicant. HMRC stated for each response it sends out it records the date it received the SAR and the date the response is issued.

*Objective meaning*

23. HMRC explained to the complainant that it did not consider a record which shows when a response was issued by second class post as being evidence that it was received in any specified timeframe. It stated that the only exception to this would be if the record showed that the response was issued by second class post on the 40th calendar day following receipt of the request. In such a case, it considered it would be reasonable to assume that the response was received in the "over 40 days" timeframe as it would not reasonably be possible for the requestor to have received the response on the same day it was posted.

*Extraction of information*

24. HMRC wrote that because the information is held in the records of 12 different teams and because those teams use a variety of independent recording systems, it would not be possible for it to run a report or query to extract the information held across all those teams. It stated that because the method of issue is generally recorded by way of a note in a free text box in individual case records, it was also not possible to run a report or query to extract the requested information from the records held by individual teams. The individual case records would have to be checked.

*Number of records to be checked and cost estimate*

25. HMRC stated that it holds central records from 1 January 2010 to 31 December 2011 showing the number of SAR responses which were issued after 40 calendar days. It explained that this information could be easily extracted, and it provided figures for 2010 and 2011. Specifically, it stated that:
- in 2010, HMRC responded to 16,813 requests, 1,682 of these were answered after 40 days;
  - 15,131 responses were issued within 40 days following receipt of a request. Of these, 1,322 were issued by one particular SAR team which issues all its responses by a trackable service;
  - in 2011, HMRC responded to 20,635 requests, 1,795 of these were answered after 40 days of receipt of a request and 18,840 responses were issued within 40 day days following receipt of the request;
  - 1,519 of those responses were issued by a team which sends all its responses by a trackable service.
26. HMRC informed the complainant that based on this information 31,130 issued responses would require checking through their respective individual case records. It stated that this would need to be done to establish the method of issue and then see if a trackable service was used or, alternatively, to see if there was any other recorded information concerning the date of receipt of the response by the applicant.
27. As an estimate of time taken to check each response, HMRC stated that it conservatively judged this to be 1 minute per response to open and read each relevant record. It therefore concluded that this on its own would significantly exceed the fees limit. It went on to state that further analysis would then be required in order to arrive at totals for each of the specified timeframes.
28. The Commissioner has considered HMRC's estimate of complying with the request. Due to the nature of the information requested by the complainant and the way in which it is recorded and held within HMRC, it is his view that HMRC has provided adequate explanations – as referred to above – to demonstrate that it would significantly exceed the appropriate limit of 24 hours to locate, retrieve and extract the requested information. His conclusion is, therefore, that section 12(1) was appropriately applied and that HMRC was not obliged to comply with the request.

*Sections 16 and 1*

29. Section 16(1) imposes an obligation on a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the section 45 Code of Practice in relation to the provision of advice and assistance in that case.
30. Whenever the cost limit has been applied correctly, the Commissioner must consider whether it would be possible for the public authority to provide advice and assistance to enable the complainant to obtain information without attracting the costs limit, in accordance with paragraph 14 of the Code.
31. The Commissioner notes that HMRC provided advice and assistance to the applicant in regard to a possible refined request within its internal review. The Commissioner therefore considers that HMRC has discharged its responsibility to provide reasonable assistance to the complainant in respect of his request and that no further action is required.
32. However, in its internal review HMRC explained that it did hold some relevant information within the scope of the request, if not the total number for each time period. The Commissioner considers that HMRC should have informed the complainant that it held some information relevant to his request. As it did not do so within the statutory time for compliance this was a breach of section 1 of the FOIA.

## Right of appeal

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34. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

35. 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.
36. 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 .....**

**Rachael Cragg  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
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SK9 5AF**