

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

### **Decision notice**

**Date:** 13 January 2014

**Public Authority:** Her Majesty's Revenue & Customs (HMRC)

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

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to IVAs going back over a 10 year period. HMRC said that it does not hold the information requested prior to 2010. It said that it did hold the information after this date but to locate, retrieve and extract this information would exceed the cost limit under section 12 FOIA.
2. The Commissioner's decision is that HMRC is not obliged to comply with the complainant's request as it would exceed the cost limit under section 12 FOIA to do so. However HMRC breached section 16 FOIA as it did not provide the complainant with appropriate advice and assistance as to how the request could be refined.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with advice and assistance under section 16 FOIA.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## **Request and response**

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5. On 13 June 2013 the complainant made the following request for information under the FOIA for:

"I would be grateful if you could provide the following information:

- 1) How many Individual Voluntary Arrangements (IVAs) HMRC has approved in the last 10 years where the proposer did not have a perfect compliance history;
- 2) How many IVAs HMRC has approved in the last 10 years where not all tax returns have been filed by the date of the creditors' meeting;
- 3) Where IVAs were approved of proposers who did not have a perfect compliance history in the last 10 years, without needing to name the proposers or the details of the proposals, the extent of the non-perfect compliance history;
- 4) How many IVAs HMRC has approved in the last 10 years where the expected dividend was not 100 pence in the A£ to creditors;
- 5) How many IVAs HMRC has approved in the last 10 years where the expected dividend was 100 pence in the A£ to creditors.

If HMRC's records do not go back 10 years, then please explain why and please provide the requested information for as far back as HMRC's records go."

6. On 25 June 2013 HMRC responded. It denied holding the requested information.
7. The complainant requested an internal review on 2 July 2013. HMRC sent the outcome of its internal review on 2 August 2013. It said that it does not hold the information requested prior to 2010. It said that it did hold the information after this date but to locate, retrieve and extract this information would exceed the cost limit under section 12 FOIA.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 10 October 2013 to complain about the way his request for information had been handled.
9. The Commissioner has considered whether HMRC has correctly engaged section 12 FOIA in this case.

## Reasons for decision

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10. Section 12(1) FOIA states that, "Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."
11. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Regulations") sets the appropriate limit at £600 for the public authority in question. A public authority can charge a maximum of £25 per hour for work undertaken to comply with a request which amounts to 24 hours work in accordance with the appropriate limit set out above. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken 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.
12. HMRC explained that all closed case files (subject to its retention and destruction policies) are held in remote storage. For open cases there should be a file held by the case worker. To be able to provide all information requested by the complainant it would be necessary to review IVAs that have run their full course and have been settled in the last 3 years:-

2010/11	5573
2011/12	13173
2012/13	10005

Total	28751
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13. It said that as there are 28751 closed cases, potentially 28751 requests/phone calls need to be made to the remote storage repository. To allow a bare minimum of 3 minutes for each enquiry, this equates to 1438 hours to recall all files. It said that it could alternatively, create an EXCEL spreadsheet for each year and bulk transfer data to the repository which would drastically reduce the time to 3 hours.

14. It said that it would take approximately 10 minutes to locate, retrieve and attach each of the 28751 files in storage. It confirmed that this equates to 4792 hours. It said that it would then need to examine each of the files which would take 9584 hours.
15. It summarised the breakdown of the total time to provide the information requested as follows:

Initial request to remote repository (by bulk transfer)	3 hours
Locate and retrieve files	4792 hours
Examination of files	9584 hours
Total	14379 hours

16. HMRC confirmed that on this occasion, it had not carried out a sampling exercise because it considers just the number of cases involved clearly indicates the costs limit applies. For example, it explained that even if it restricted the request to the year 2012/13 there are still 10,005 cases. It said that just spending one minute per case comes to 166.75 hours. To complete an analysis for the 10,005 cases within the costs limit means it would have on average 9 seconds per case. It said that to extract the amount of data the complainant has asked for would take more than 9 seconds. It clarified that this does not include the costs of retrieving the files from storage.
17. Finally it confirmed that the estimate has been based upon the quickest method of gathering the requested information.
18. The Commissioner considers that HMRC has demonstrated that to comply with this request would vastly exceed the cost limit under section 12 FOIA due to the substantial number of files in which this information would need to be obtained. HMRC was not therefore obliged to comply with this request. The Commissioner is aware that the complainant has asked HMRC to explain why it does not hold information prior to 2010 within his request for information. As HMRC is not obliged to comply with the request under section 12 FOIA, as this part of the request is for the same or similar information the Commissioner has not considered this issue any further.

## Section 16

19. Under section 16 FOIA, public authorities are obliged to provide complainants with advice and assistance if a request would exceed the cost limit to comply with a request.
20. HMRC said that it asked the applicant to refine his request and offered him some information it held relevant to the topic of his request. It

acknowledged that it should however have provided a clear breakdown of how it had estimated the fees limit.

21. The Commissioner does not consider that HMRC fulfilled its obligations under section 16 FOIA. He considers that HMRC should have provided more specific advice as to how the request could be refined so that it could be dealt with within the cost limit.

## Right of appeal

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22. 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: [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)

23. 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.
24. 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 .....**

**Pamela Clements**  
**Group Manager, Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**