

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 October 2014

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

Decision (including any steps ordered)

1. The complainant requested information relating to a child benefit claim. The public authority neither confirmed nor denied whether it held the information requested on the basis of section 44(2) FOIA.
2. The Commissioner's decision is that the public authority was entitled to neither confirm nor deny whether it held the information requested on the basis of section 44(2).
3. No steps are required.

Request and response

4. The Commissioner understands that the public authority has been in correspondence with the complainant (outside the framework of FOIA) about a benefit claim since 2011. He understands that the public authority has written to the complainant numerous times over the past year in connection with the claim. The complainant is seeking information regarding a claim made in respect of a member of his family for whom he was paying child support.
5. It was against that background that the complainant wrote to the public authority on 13 February 2014 and requested information under FOIA in the following terms:

'You mention that Child Benefit (General) Regulations 2006 regulations 1(3) is the legislation the Child Benefit Office use in processing a claim and that CCM18030 is Staff Guidance Compliance Manual based on the law.'

Both Regulation 1(3) and CCM 18030 are based on full time education. HMRC definition of full time education is more than 12 hours per week on average in registered attendance.

The records I have and you have in your possession show that attendance was below 12 hours or more on average and therefore not full time.

Neither CCM 18030 nor Regulation 1(3) have been complied with, thus reflecting a lack of value for money to the tax payer.

Please explain why Child Benefit has been paid for an adult who has not attended on a full time basis. The Freedom of Information Act 2000 does cover this request as it is in the public interest.'

6. The public authority responded on 13 March 2014. It refused to confirm or deny whether it held any information within the scope of the request above on the basis of the exemption at section 44(2) FOIA. It did however provide the complainant with some generic information in relation to how the authority administers child benefit and the compliance activity it undertakes in relation to child benefit.
7. On 2 April 2014 the complainant requested an internal review of the public authority's decision above. He submitted that the information should be disclosed because in his opinion, the Child Support Agency has '*limited access to HMRC payments of Child Benefit and.....are unfairly perusing me for arrears.*' He added; '*To date the CSA have on instruction from my ex-wife removed 4 weeks payment for 4 weeks foreign holidays taken during college term time. The non-attendance goes far beyond this and in-fact only 5 out of 37 weeks were attended every session.*'
8. Following an internal review the public authority wrote to the complainant on 25 April 2014. It upheld the original decision to engage the exemption at section 44(2) FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 8 May 2014 to complain about the way his request for information had been handled. The complaint was however accepted for investigation on 19 June 2014 after he provided all of the required documentation.

10. The complainant claimed that the public authority had confirmed on several occasions that it held the information requested above on 13 February 2014.
11. The scope of the Commissioner's investigation therefore, was to determine whether the public authority was entitled to rely on section 44(2) to neither confirm nor deny whether it held any information within the scope of his request above of 13 February.

Reasons for decision

Section 44(2)(a)

12. Section 1(1) FOIA provides two rights to applicants. They are:
 - a) The right to be informed in writing by the public authority whether or not it holds the information requested by the applicant, and
 - b) If so, the right to have that information communicated.
13. Both these rights are subject to exemptions in FOIA.
14. The right in section 1(1)(a) is commonly referred to as a public authority's "duty to confirm or deny" whether it holds information.
15. Section 44 of FOIA (prohibitions on disclosure) states:

'(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

 - (a) is prohibited by or under any enactment,*
 - (b) is incompatible with any EU obligation, or*
 - (c) would be punishable as a contempt of court.*

(2) The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).
16. As can be seen from the above, a public authority is, by virtue of the provisions in section 44(2), excluded from confirming or denying whether it holds information requested by an applicant if to do otherwise (ie to issue a confirmation or denial) is prohibited by or under any enactment, is incompatible with any EU obligation, or would be punishable as a contempt of court.

17. The exemptions at section 44 are absolute. This means that they are not subject to a public interest test. Once it is determined that any of the exemptions is engaged, a public authority is not required to consider whether there is a public interest in confirming or denying whether it holds the information requested or in disclosing the information held (in the case of section 44(1)(a)).
18. The public authority submitted that to confirm or deny whether it holds the information requested by the applicant would itself reveal information considered exempt from disclosure on the basis of section 44(1)(a). It explained that sections 18(1) and 23(1) of the Commissioners for Revenue and Customs Act 2005 (CRCA) prohibit the authority from disclosing any information held in connection with a function of HM Revenue and Customs under FOIA. The authority also clarified that it had not at any time prior to receiving the request on 13 February, confirmed or denied under the terms of FOIA whether it held the information requested by the complainant.

Commissioner's findings

19. It is clear from the wording of the complainant's request and the subsequent arguments he submitted in support of his position on 2 April 2014 that the request relates to a benefit claim made in respect of a member of the complainant's family.
20. The Commissioner is satisfied from the exchanges he has seen between the public authority and the complainant that the authority did not confirm or deny under FOIA whether it held information within the scope of the complainant's request of 13 February. Only a confirmation or denial issued under FOIA in response to the request would undermine the public authority's position because the disclosure would have been effectively made to the public, not just to the complainant.¹
21. 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.'

¹ In any event, it does not necessarily follow that a confirmation or denial would then have to be made in this case because the Commissioner would be required to consider whether it would be appropriate to contravene the Data Protection Act 1998 by doing so (regardless of the actual position), an outcome highly unlikely in the circumstances of this case.

22. The Commissioner is satisfied that the requested information if held, would be held by the public authority in connection with its function to administer the child benefit system.
23. 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.

24. 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.'

25. Therefore, information prohibited from disclosure by virtue of section 18(1) CRCA (in this case, on the basis that if held, it would be held by the authority in connection with one of its functions) is exempt information by virtue of section 44(1)(a) FOIA only if its disclosure would identify a 'person'.
26. It is clear that confirming or denying whether information is held by the public authority in the context of the request of 13 February and the additional submission of 2 April would identify the individual that is the subject of the benefit claim and the person who made the claim. It would also reveal the identity of the complainant and that is relevant because the information (if held) would relate to him as well. The fact that the complainant (a member of the public) knows the identities of the individuals concerned is significant because confirming or denying to him whether the information requested is held would by implication place their identities in the public domain.
27. The Commissioner therefore finds that confirming or denying whether the information requested is held by the public authority would reveal information which if held by the authority, would be held in connection with its function to administer the child benefit system. He also finds

that confirming or denying whether the information requested is held would reveal the identities of the person who is the subject of the claim, the person who made the claim and the complainant himself.

28. In view of the above, the Commissioner finds that the public authority was entitled to rely on section 44(2) FOIA as the basis for neither confirming nor denying whether it held any information within the scope of the request.

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

Website: 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

Alexander Ganotis
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