

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 October 2021

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

Decision (including any steps ordered)

1. The complainant has requested information relating to Loan Charge and Loan Charge Settlement statistics.
2. The Commissioner's decision is that HM Revenue and Customs (HMRC) has correctly cited section 12(1) – cost of compliance exceeds the appropriate limit, in response to the request.
3. The Commissioner does not require HMRC to take any steps.

Background

4. The complainant explained that their original FOI request asked five questions, all directly related to the Loan Charge and Loan Charge settlement statistics. HMRC responded and supplied exactly the same set of estimated statistics that had been published ten months previously for Q1, outdated information which had ignored the request for up-to-date statistics for Q2, and refusing Q3, Q4 and Q5, citing section 12(1) of the FOIA.
5. The complainant further stated that information which was described as 'outside the FOIA' was appended to this response, providing a link to a Public Accounts Committee hearing on 7 September, with none of the figures quoted providing any context or indeed, any evidence. A further paragraph was inserted which stated *'Since the loan charge was announced at Budget 2016 and up to March 2020, we had agreed around 11,000 settlements with employers and individuals, with agreed amounts totalling around £2.6 billion. These figures include settlements agreed under a Time to Pay arrangement and are expected to change as more cases were settled ahead of the 30 September 2020 deadline'*.

6. The complainant summarised their concerns relating to HMRC's response to each question in their request for internal review, and ended by asking HMRC to confirm the sums and statistics they had just supplied (11,000 settlements with agreed amounts totalling £2.6 billion) in the context of the overall yield anticipated from this policy (as had been published on gov.uk), as this was the **only** clear statistic of any note or significance within their reply.

Request and response

7. On 7 September 2020, the complainant wrote to HMRC and requested information in the following terms:

"You have previously only provided estimates on the number of people impacted by the Loan Charge. Since then, your awareness of the numbers of those individuals and companies impacted by the Loan Charge must now have confirmed those initial estimates, or have alternatively culminated in you amending your associated figures and statistics for those impacted due to those earlier estimates being found to be inaccurate.

Please could you therefore provide accurate and up-to-date (i.e. as at today's date) statistics for the following questions:

- 1. Exactly how many a) individuals and b) companies are impacted by the Loan Charge? For the purposes of this question, please treat anyone working via their own PSC or Limited Company as an individual.*
 - 2. Exactly how many individuals have registered with HMRC for settlement?*
 - 3. Exactly how many of those individuals from Question 2 have signed and returned the acceptance of that settlement 'offer' and what precisely is the total revenue due to be raised as a result of settlements from these individuals?*
 - 4. Exactly how many individuals remain in settlement discussions with HMRC and what precisely is the total revenue anticipated should they subsequently accept the 'offer' and sign and return the settlement form?*
 - 5. Exactly how many a) individuals and b) companies that HMRC believe are impacted by the Loan Charge have not yet come forward to engage in settlement discussions?"*
8. HMRC responded on 5 October 2020 and provided some information outside FOIA stating:

"you may be interested in settlement detail published¹ as part of the record of evidence given by HMRC to the Public Accounts Committee on 7 September 2020. Since the loan charge was announced at Budget 2016 and up to March 2020, we had agreed around 11,000 settlements with employers and individuals, with agreed amounts totalling around £2.6 billion. These figures include settlements agreed under a Time to Pay arrangement and are expected to change as more cases were settled ahead of the 30 September 2020 deadline.

9. It further stated that to respond to parts 3-5 would exceed the cost limit and therefore cited section 12(1) FOIA.
10. Following an internal review HMRC wrote to the complainant on 22 December 2020 and maintained its position.

Scope of the case

11. The complainant contacted the Commissioner on 22 February 2021 to complain about the way their request for information had been handled.
12. The Commissioner considers the scope of her investigation to be to determine if HMRC has correctly cited section 12(1) FOIA.

Reasons for decision

Section 12 – cost of compliance

13. Section 12(1) of FOIA 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 cost limit.
14. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £450 for public authorities such as the university.
15. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that

¹ <https://committees.parliament.uk/work/475/tackling-the-tax-gap/publications/>

section 12(1) effectively imposes a time limit of 24 hours for the public authority.

16. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:

- determining whether the information is held;
- locating the information, or a document containing it; retrieving the information, or a document containing it; and
- extracting the information from a document containing it.

17. In its initial response, HMRC explained:

"Around 50,000 individuals were originally estimated to be affected by the loan charge. The government estimates that around 11,000 will be taken out of the loan charge altogether as a result of the changes announced in December 2019 and enacted in Finance Act 2020.

The Independent Loan Charge Review reported that approximately 4,800 individuals had settled at that time. Additionally, people who have settled their disguised remuneration (DR) tax liability 30 September 2020 will also be taken out of scope of the charge.

Around 10,000 employers were estimated to be affected by the loan charge. The Independent Loan Charge Review reported that approximately 3,200 settlements had been entered into by employers at that time. Additionally, employers who have settled their DR tax liability by 30 September 2020 will also be taken out of scope of the charge.

18. HMRC expect to publish information on the settlements agreed later in the year, once it has carried out appropriate analysis.

19. With regard to question 2 HMRC stated that:

"Under the DR settlement terms published in November 2017, more than 28,000 scheme users registered an interest in settling their tax affairs, with over 19,000 returning their settlement packs with the information needed by 5 April 2019.

Questions 3 - 5 We can confirm we hold the information you seek. However, providing it would exceed the FOIA cost limit, which for central government equates to one person spending 3½ working days locating and extracting all of the information requested. We have therefore refused your request under section 12(1) of the FOIA. Following the

December 2019 conclusion of the independent loan charge review, the deadline to either agree a settlement or file a tax return and pay the tax due for anyone subject to the loan charge was extended to 30 September 2020.

20. As the settlement date had just passed, it had yet to consolidate its records and produce any related data.
21. To provide an answer to question 3 would require HMRC to manually and electronically review the individual records of all DR users who have signed and returned their acceptance settlement offer letter to establish the number settled by 7 September 2020. It would then need to determine the expected total revenue from the signed and returned acceptance settlement offer letters for these customers. This task would exceed the FOIA cost limit.
22. To provide the information requested for question 4, HMRC explained it would need to review individual records of those who were yet to sign and return their acceptance settlement offer letter as at 7 September in order to determine those who remained in settlement discussions with us. This task would exceed the FOIA cost limit. It is important to note that it cannot establish the expected revenue from a settlement until the settlement has been agreed by both parties.
23. Similarly for question 5, it would need to carry out the steps outlined for questions 3 and 4 in order to be able to provide the requested information.
24. In its internal review, HMRC stated:

"To clarify, your request was refused in its entirety by virtue of the exemption at section 12(1) FOIA. Any additional information provided was done so on a discretionary basis outside the remit of the Act."
25. It went on to explain the Fees Regulations as above, and:

"All public authorities are required to calculate the time spent on the permitted activities at the flat rate of £25 per person, per hour. This means that the appropriate limit will be exceeded if it would require more than 24 hours work for central government

It was provided in your initial response that the aggregated burden of collating information specific to questions 3, 4 and 5 would exceed this appropriate limit.

In all cases your questions required an interrogation of individual compliance records to determine:

- *The number of individuals who had concluded the settlement process and the estimated revenue to be raised from this;*
 - *The numbers of individuals who were engaged in but yet to conclude the settlement process and the estimated revenue to be raised from this;*
 - *The number of individuals with a disguised remuneration (DR) liability who had yet to engage in the settlement process;”*
26. HMRC further noted that the request was made on 30 September 2020, 23 days prior to the deadline for individuals to settle their DR liabilities. It also stated that in response to the Independent Review of the Loan Charge, the government accepted the recommendation to report to Parliament on the implementation of the Loan Charge changes. The requested information as at 30 September 2020 is available at Table 1.A of this report².
27. HMRC confirmed that having reviewed the means by which this table was produced, it was satisfied that to provide similar information in response to the request would have far surpassed the FOIA cost limit.

The Commissioner's view

28. Given that the request was received 23 days prior to the deadline for settlement, the Commissioner recognises that the totals involved would have been in a state of flux as creditors rushed to meet the looming settlement deadline. As such HMRC would need to manually review its records to ensure that it was providing the most up to date statistics. Any previous figures would be out of date.
29. The Commissioner notes that HMRC stated that 11,000 settlements had been agreed, and that all those records would need to be reviewed to respond to the request. Even at an unlikely rate of 1 minute to review each record, this alone would exceed 183 hours. HMRC would then need to retrieve and extract any relevant information from those records identified as within scope of the request. This would increase the costs further far beyond the £600 limit.
30. Having considered all the information provided, the Commissioner is satisfied that HMRC was entitled to rely on section 12(1) FOIA to refuse the request.

² <https://www.gov.uk/government/publications/independent-loan-charge-review-hmrc-report-on-implementation/independent-loan-charge-review-hmrc-report-on-implementation>

Section 16 – Duty to provide advice and assistance

31. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the Section 45 Code of Practice³ (“the Code”) issued by the Secretary of State, it will have complied with section 16(1).
32. The Code advises that, where an authority is not obliged to comply with a request for information because, under section 12(1) and the regulations made for that section, the cost of complying would exceed the appropriate limit, it should provide the requestor with reasonable advice and assistance.
33. The Commissioner’s guidance⁴ states that the minimum a public authority should do in order to satisfy section 16(1) is indicate if it is able to provide any information at all within the appropriate limit. Communicating this to a complainant may avoid further and futile attempts to refine the request to bring it under the appropriate limit. If the requestor understands the way in which the estimate has been calculated to exceed the appropriate limit, it should help them decide what to do next
34. HMRC merely stated: You may want to revise your request by considering the information in this letter. To help you further we can offer the following advice. Having considered the nature of the information requested, the Commissioner recognises that there is no feasible way in which it can be meaningfully refined. However, the Commissioner considers HMRC should have minimally advised the complainant of this.

³ <https://ico.org.uk/for-organisations/foi-guidance/section-45-code-of-practice-request-handling/>

⁴ <https://ico.org.uk/media/for-organisations/documents/1624140/duty-to-provide-advice-and-assistance-foia-section-16.pdf>

Right of appeal

35. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

36. 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.
37. 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

Susan Duffy
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