

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

### **Decision notice**

**Date:** 4 October 2022

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

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

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1. The complainant has requested information contained within his own tax file. The above public authority ("the public authority") relied on section 44(1) of FOIA (statutory prohibition on disclosure) to withhold the information.
2. The Commissioner's decision is that the public authority has correctly relied upon section 44 of FOIA.
3. The Commissioner does not require further steps.

### **Request and response**

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4. On 4 March 2022, the public authority responded to a Subject Access Request (SAR) that had been submitted on behalf of the complainant.
5. On 7 March 2022, an accountant, acting on behalf of the complainant replied to the public authority in the following terms:

"Thank you for your letter of 4th March.

"As you might expect we find the contents very disappointing, particularly as we have made the Subject Access Request in a case where HMRC will not allow our client the benefit of a tax relieving provision, but have not been prepared to respond meaningfully to our reasoned objections to this approach.

"We note, however, that you make the following observation:

'Additionally, some documents which fell within the boundaries of the request (such as general discussions regarding interpretation and operation of legislation) did not contain personal data of [the complainant] and so were outside the provisions for Subject Access Requests.'

"Clearly, therefore, there are documents on our client's file which you confirm do not fall within the exemptions you outline, but which HMRC nevertheless have declined to provide because it is alleged that they do not fall within the scope of a Subject Access Request. Please accept this letter as a request under the Freedom of Information Act 2000 to be provided with those documents."

6. The public authority originally relied upon section 31 of FOIA to withhold this information, but at internal review stage, it instead relied upon section 44 of FOIA as disclosure would breach section 18 and 23 of the Commissioners for Revenue and Customs Act 2005 (CRCA).

## **Reasons for decision**

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7. The following analysis sets out why the Commissioner has concluded that the public authority was entitled to rely on section 44 of FOIA in this particular case.
8. Section 44 of FOIA allows a public authority to withhold information whose disclosure, otherwise than under FOIA, would breach another piece of legislation.
9. The Commissioner has previously agreed that disclosure of information relating to the tax affairs of a particular person (where the term "person" refers not just to living individuals but also companies or charitable trusts) will breach CRCA in circumstances where the person is identifiable, either directly from the information or indirectly from other sources.<sup>1</sup>
10. In this case, the Commissioner notes that the request was framed with reference to a particular piece of correspondence that included the complainant's name. The Commissioner therefore considers that the complainant is intrinsically linked to any information that HMRC discloses by virtue of having been specifically named in the request. Any

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<sup>1</sup> See for example: <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617419/fs50895430.pdf>

information the public authority holds within the scope of the request must, by definition, relate to the complainant.

11. The Commissioner has not seen the withheld information but understands from its description that it contains generic interpretations and operations of tax law.
12. Whilst the Commissioner accepts that these documents may be generic, the fact that these particular documents sit within the complainant's tax file would indicate that they are pertinent to the complainant's tax affairs. Disclosure to the world at large (which is what FOIA requires) would therefore reveal something about the complainant's tax affairs to the wider world.
13. The Commissioner is therefore satisfied that, on the facts of the case, disclosure of the withheld information would be contrary to CRCA and therefore the public authority would be entitled to rely on section 44 to withhold the information.
14. As section 44 is an absolute exemption, the Commissioner is not required to take into account any public interest factors or the identity of the individual on whose behalf the information has been requested.

## Right of appeal

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15. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

16. 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.
17. 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 .....**

**Roger Cawthorne**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**