

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 October 2015

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

Decision (including any steps ordered)

1. The complainant has requested information from HMRC about the automatic backdating of tax credits and about HMRC's discrimination in that respect. HMRC refused the request stating that it did not hold the requested information.
2. The Commissioner's decision is that the request is not a valid request for information because it does not meet the requirements of section 8 of the FOIA. The Commissioner does not require the public authority to take any steps.

Request and response

3. On 21 February 2015 the complainant wrote to HMRC and requested information in the following terms:

"In the HMRC Charter point 5, they promise to 'treat you even - handedly'. That means fairly, impartially and with equitable treatment of all citizens.

(1) With that promise in mind, can HMRC let me know why automatic backdating of tax credits only applies if you have children? In other words, if you don't have children then you don't qualify for automatic backdating. Why?

(2) Does HMRC have any documents to explain and justify this discrimination?

(3) Can you let me know where this discrimination is stated and justified in the Tax Credits Act 2002 (and later consolidations)?

(4) Because you are discriminating against a certain group of people, can you please explain or provide documents to show how this accords with your charter point 5: treating people even-handedly?

(6) Is this policy of discrimination just a money saving measure, or is it ideological, or perhaps there is another reason?

4. HMRC responded on 23 March 2015. It refused the request stating that it does not hold the requested information. Outside of the scope of the request, HMRC provided the complainant with a link explaining how a customer can request the backdating of their tax credit claim.
5. On 23 March 2015 the complainant requested a review of HMRC's decision.
6. HMRC responded to the request for an internal review on 8 May 2015. It upheld its position that it does not hold information falling within the scope of the request. HMRC went on to explain that where different processes and requirements exist, they exist because it is necessary to ensure that customers only receive tax credits to which they are entitled.
7. HMRC categorically denied that this was discriminatory.
8. Again, outside of its obligations under the FOIA, HMRC provided an explanation of the backdating of Child Tax Credit (CTC) and Working Tax Credit (WTC)

Scope of the case

9. The complainant contacted the Commissioner on 13 June 2015 to complain about the way his request for information had been handled.
10. The Commissioner considers the scope of the case is to consider whether the request constituted a valid request in accordance with FOIA section 8 and whether HMRC should have handled it as such.
11. The Commissioner wrote twice to the complainant explaining that he did not consider the request to be a valid request under the FOIA, and provided reasons for his view. The complainant asked for a decision notice to be issued.

Reasons for decision

12. Section 1(1) of FOIA states that:

1(1) Any person making a request to a public authority is entitled –

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
(b) if that is the case, to have that information communicated to him.*

13. Section 8(1) of FOIA states:

8(1) In this Act any reference to a "request for information" is a reference to such a request which –

*(a) is in writing,
(b) states the name of the applicant and an address for correspondence, and
(c) describes the information requested.*

14. Therefore, a request for information has to include a description of the information requested for it to be a valid request under the Act.

15. The complainant's request comprises five questions. The questions are numbered one to six but there is no question five. The Commissioner will adopt the same numbering for ease of reference. For the purposes of this DN, the Commissioner will address question 1 separately and questions 2, 3, 4 and 6 together.

16. Question 1 asks why automatic backdating of tax credits only applies if you have children. The FOIA provides access to recorded information but does not place any duty on a public authority to provide explanatory responses or create information, such as why a certain policy or process exists. The Commissioner is satisfied that this is not a request for recorded information but rather a request for an explanation of a policy position. He notes that in order to be helpful, HMRC did offer an explanation, outside of the FOIA, about the backdating of tax credits when it responded to the internal review request.

17. Questions 2, 3, 4 and 6 seek an explanation of or justification for HMRC's 'discrimination' regarding the issue of automatic backdating of tax credits.

18. Questions 2, 3, 4 and 6 are phrased in a way which assumes that HMRC's procedure is discriminatory.
19. HMRC has denied absolutely that its process for automatic backdating of tax credits is discriminatory.
20. The Commissioner's view is that if HMRC were to respond to the request it would amount to acceptance of the complainant's assertion about discrimination. Given the requests are based on a premise which is a subjective observation which HMRC does not accept, the request for information is invalidated.
21. The Commissioner notes that even if he were to assess that the request, as it relates to the alleged discrimination, constitutes a valid request for information, it would necessarily be invalidated by the fact that the complainant is seeking an explanation of or justification for that alleged discrimination.
22. The Act requires that requests for information made under section 1 of the FOIA have to fulfil the requirements of section 8, which includes a description of the information requested. In this case the description amounts to an allegation of discrimination against HMRC and information to substantiate the alleged discrimination.
23. The Commissioner is not aware of any authoritative finding that HMRC's tax credit process is discriminatory. Whilst it is not for the Commissioner to comment on the allegation of discrimination made by the complainant, he has a duty to ensure that the integrity of the FOIA is not compromised by accepting complaints which do not meet the requisite criteria and which, as is the case here, would potentially endorse the complainant's position regarding his allegation.
24. Although the FOIA does not prescribe how the information sought must be described, the Commissioner considers that the purpose of section 8(1)(c) is to enable the public authority to narrow down what the requester wants.
25. It is the Commissioner's position that a request will meet the requirements of section 8(1)(C) as long as it contains a sufficient description of the information required. Details as to date, author purpose or type of document, physical location, subject matter or relevant business area may all help to identify the nature of the information requested. Each request must be considered on its individual merits to determine whether the information sought has been adequately provided for the purposes of section 8.

26. The Commissioner does not consider that the request adequately sets out a description of the recorded information being requested; rather it appears to seek to use the FOIA as a means of advancing the complainant's allegation of discrimination against HMRC. The request relies on the assumption that HMRC, and now the Commissioner, will accept the premise that an act of discrimination has taken place. The request is based on the complainant's opinion, which is categorically denied by HMRC, that discrimination has taken place. It does not therefore seek information that could be identified, located and extracted by any member of staff at HMRC handling the request; rather it seeks justification for and explanation of his allegation.
27. It is the Commissioner's position that HMRC was entitled to inform the complainant that the request was not a valid request for information under the FOIA; he accepts however that HMRC has tried to resolve the complaint by stating that the information is not held but has offered some explanation by outside the FOIA.
29. The Commissioner is satisfied that the request is not a valid request under the FOIA and that HMRC does not need to take any further steps.

Right of appeal

30. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

31. 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.
32. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF