



Cindy Bell
 Information Policy and Disclosure
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Annex D - DISCLOSURE OF INFORMATION BY HM REVENUE AND CUSTOMS (HMRC): HMRC'S POLICY AND LEGAL FRAMEWORK

Commissioners for Revenue and Customs Act 2005

HMRC was created by the Commissioners for Revenue and Customs Act 2005 (CRCA) and its functions are governed by that statute. HMRC's functions include the management and collection of tax and the payment of benefits as set out in the CRCA and matters ancillary to those functions such as employment of its staff.

CRCA prohibits the disclosure of information held by HMRC in connection with its functions. This prohibition applies to all information held by HMRC in connection with its functions and reflects the importance placed on 'taxpayer confidentiality' by Parliament when the department was created. The effective functioning of the new department was felt to depend critically on its customers being able to trust that information held on them would be appropriately protected and would be disclosed only in controlled, limited circumstances. There is additional protection for information that relates to an individual or legal entity whose identity is specified in the disclosure or can be deduced from it ('identifying information') in the form of a criminal sanction for unlawful disclosure.

Information gateways

The prohibition on disclosure does not apply where the exceptions ('gateways') set out in CRCA apply. The main gateways are:

- where there is UK and EU legislation that permits disclosure ('legislative gateway');
- with the consent of the subject(s) of the information; or
- where the disclosure is made for the purpose of an HMRC function ('functions gateway').

Legislative gateways

HMRC shares information through about 250 information gateways altogether with a large number of third parties, including 25 government departments, about 50 agencies, the devolved governments, Local Authorities, other countries (e.g. through double taxation agreements) and the Bank of England.

The terms of each information gateway are specific as to the type of information that can be disclosed and the purposes to which it can be put.

Currently, HMRC discloses information to private sector organisations almost exclusively on the basis that they are 'working on HMRC's behalf' and hence are unable to use the data for their own purposes. A current research project is exploring whether sharing VAT registration data with credit reference agencies to inform credit ratings would have benefits for businesses and for Government and, if so, what options there are for releasing the data (e.g. legislative gateway, consent) and what safeguards might be needed to mitigate any risks.

Functions gateway

The prohibition on disclosure does not apply to a disclosure that:

- is made for the purposes of a function of HMRC; and
- does not contravene any restriction imposed by the Commissioners.

At present, no restriction has been imposed by the Commissioners.

HMRC's functions

HMRC's functions are the powers and duties of the department's Commissioners and officers set out in CRCA (or in other legislation), primarily the assessment and collection of tax and the payment and management of tax credits. As a statutory department administered by its own Commissioners, HMRC has no common law powers and therefore less flexibility as to what it may do than a ministerial department.

Ancillary functions

Examples of HMRC's ancillary functions include: promoting publicity about the tax system; establishing advisory bodies; entering into agreements; and acquiring and disposing of property.

Disclosure for an ancillary function is permitted where there is a sufficiently close connection between the purpose for which the disclosure is made and a core HMRC function.

It is also occasionally possible to share information with a third party as part of an initiative that serves both HMRC's purposes and those of the third party. It is on this basis that we have been able to share non-identifying information with Oxford University, Institute of Education and the London School of Economics for the purposes of a project that supports HMRC's compliance function while also potentially providing a useful input to work in support of the social mobility agenda.

Data Protection and Human Rights Acts

HMRC is subject to the Data Protection Act 1998 (DPA) and the Human Rights Act 1998 (HRA). Any disclosure of data must be 'lawful' and 'proportionate' in relation to the purpose for which the data will be used.

CRCA and the Freedom of Information Act (FOIA)

A disclosure by HMRC in compliance with FOIA is a lawful disclosure under CRCA but information relating to identifiable individuals or legal entities is exempt from disclosure under FOIA.

CRCA and Transparency

HMRC is committed to being as transparent as possible while complying with its statutory duty of confidentiality. It is part of HMRC's functions to publish information that promotes public understanding of its work and increases accountability and public confidence. Public authorities also have a duty under FOIA to maintain a 'publication scheme' that includes information on their priorities, policies and procedures. HMRC publishes information on its performance and activities on its Transparency website and on www.data.gov.uk, the single online portal for central and local government data.

All information releases take into account HMRC's obligation to collect the taxes for which it is responsible and the impact that publication will have on tax collection, including the need to protect sensitive and personal information provided by individual taxpayers in order to encourage openness and promote voluntary compliance.