HM Revenue & Customs

Jim Harra
Chief Executive and First Permanent Secretary

Room 2/75
100 Parliament Street
London
SW1A 2BQ

Tel 03000 577293

Email perm.secs@hmrc.gov.uk

22 July 2021

Dear Lord Fox,

I refer to your letter of 19 July concerning a reference to an "elephant in the room" in an internal HMRC email dated 30 September 2020.

Thank you for correcting your assertion during the Economic Affairs Committee session on 15 July 2021 that the message concerned was written by me. As you say in your letter, the message was in fact written by a member of staff in HMRC's Solicitor's Office and Legal Services area. It would be helpful if the transcript of the session could be suitably footnoted to reflect the correct factual position as it does help to explain why I did not recognise the phrase when you raised it in Committee as one used by me.

The email concerned was a response to a question about information requests made under the Freedom of Information Act regarding the tax affairs of contractors working for HMRC; in particular, it addressed whether the scope of the requests was contractors providing contingent labour to HMRC or included contractors working for companies that supplied services to HMRC (whom we describe as "service contractors"). That question was:

> Surely if we contract with a supplier to provide a professional service, then the people they deploy to provide that service cannot be described as ours?

The response to that question was as shown in your letter:

> Whilst we could respond to these requests with references to just contingent labour it does still leave an elephant in the room which needs to be addressed and which would lead to further questions. To do so would also be inconsistent with how we have responded to previous questions.

Seen in its full context, it is clear that "leave an elephant in the room…which would lead to further questions" refers to the likelihood that if we did not treat the FOI requests as including service contractors, then this would result in further requests for this information. Therefore, we concluded that it was best to include information about service contractors in our responses to these FOI requests, which is what we did.

Contrary to your interpretation that the exchange exhibits a reluctance to provide information, the email message shows the officer explaining why it would be preferable to provide more information than would strictly be sufficient to satisfy the request.

I am aware that HMRC has been accused of failing to comply with information requests on this matter. These accusations are groundless and are part of the campaign of misinformation that I referred to in my evidence to the Committee. In all cases, HMRC has responded to FOI requests in accordance with – indeed over and above – the requirements of the Act.

I attach copies of the relevant correspondence as an annex to this letter so that you can see the extent of the information we provided.

Yours sincerely

JIM HARRA
CHIEF EXECUTIVE AND FIRST PERMANENT SECRETARY

HM Revenue & Customs

Freedom of Information Team
S1715
6 Floor
Central Mail Unit
Newcastle Upon Tyne
NE98 1ZZ

Email foi.request@hmrc.gov.uk

Web www.gov.uk

[redacted]

By email: mailto:request-710463-6fd62019@whatdotheyknow.com

Date: 8 December 2020
Our ref: FOI2020/03164

Dear [redacted]

Freedom of Information Act 2000 (FOIA)

Thank you for your request, which was received on 1 December, for the following information:

“HMRC's Freedom of Information Team provided a response to a recent FOI request (FOI2020/01810) on 02 November. Within this response, a series of internal email exchanges were disclosed as an annex to the summary letter, which was headed Freedom of Information Act 2000 (FOIA) and explained HMRC's interpretation of the aforementioned request.”

“Within the body of this specific email, a paragraph was included which stated:

‘Whilst we could respond to these requests with reference to just contingent labour it does still leave an elephant in the room which needs to be addressed and which would lead to further questions. To do so would also be inconsistent with how we have responded to previous questions.’”

“Apropos the above, please provide a clear, unambiguous and factual explanation of precisely what 'the elephant in the room' refers to in the specific context of this paragraph and email. Please also explain, and provide in full, those 'further questions' which would be raised as a result of the 'elephant in the room' being addressed. Additionally, please explain, in detail and in full, why addressing the 'elephant in the room' would be inconsistent with how you have responded to previous questions on this subject.”

Section 1 of the FOIA gives applicants the right of access to recorded information held by a public authority.

Requests requiring explanation or clarification are not requests for recorded information and therefore do not fall within scope of the FOIA.

The referenced email was sent in response to tracked comments on a previous message querying whether the scope of a request under the FOIA was limited to contingent labour. Previous FOIA responses referenced both contingent labour and those working as part of a professional service contract. A full copy of this email and the corresponding attachment have been provided as an annex to this letter.

Where requested information contains the personal information of officials to a degree which is contrary to their expectation of privacy, this has been withheld under section 40(2) FOIA.

Section 40(2) of the FOI Act, by virtue of section 40(3A) provides an absolute exemption for third party personal data, where disclosure would contravene any of the data protection principles set out in Article 5 of the General Data Protection Regulation. The first data protection principle requires the disclosure of third-party personal data to be lawful, fair and transparent. We believe that releasing the information would breach the first data protection principle, since it would be unlawful and unfair to release the information.

The exemption in section 40(2) is absolute, meaning that there is no need to weigh up the public interest in releasing the information against the public interest in maintaining the exemption. On this basis, all identifying information relating to junior officials has been withheld.

If you are not satisfied with this reply you may request a review within two months by emailing foi.review@hmrc.gov.uk, or by writing to the address at the top right-hand side of this letter.

If you are not content with the outcome of an internal review you can complain to the Information Commissioner's Office.

Yours sincerely,

HM Revenue and Customs

From: Harra, Jim (HMRC) <jim.harra@hmrc.gov.uk>
Sent: 30 September 2020 16:15
To: [redacted] (SOLS) <[redacted]@hmrc.gov.uk>; Stanier, Ruth (CS&TD Director General) <ruth.stanier@hmrc.gov.uk>; Ciniewicz, Penny (CCG Director General) <penny.ciniewicz@hmrc.gov.uk>; Holliday, Justin (CFO Group) <justin.holliday@hmrc.gov.uk>; Rehal, Daljit (HMRC CDIO Director General) <daljit.rehal@hmrc.gov.uk>; Evans, Alan (SOLS) <alan.evans1@hmrc.gov.uk>
Cc: Agnew, Sonia (CDIO Chief Operating Office) <sonia.agnew@hmrc.gov.uk>; Aiston, Mary (Counter-Avoidance) <mary.aiston@hmrc.gov.uk>; Newbury, Nicole (WMBC) <nicole.m.newbury@hmrc.gov.uk>; Woodstock, Rob (Commercial) <rob.woodstock@hmrc.gov.uk>; Bristow, Carol (CS&TD Individuals Policy, Director) <carol.bristow@hmrc.gov.uk>; McGeehan, Jackie (CS&TD Individuals Policy, Income Tax) <jackie.mcgeehan@hmrc.gov.uk>; Wilson, Mark (SOLS) <mark.wilson3@hmrc.gov.uk>; Hope, Zoe (SOLS) <zoe.hope@hmrc.gov.uk>; [redacted] (HMRC) <[redacted]@hmrc.gov.uk>; [redacted] (SOLS) [redacted]@hmrc.gov.uk>
Subject: RE: Sensitive FOI's regarding HMRC contractors

Thanks, [redacted]

I have tracked some suggested revisions (which you and others need to check for accuracy).

I am conscious that while we have included a lot of explanation, the recipient is likely to publicise an edited extract, aimed at showing the department in a bad light. Do we have plans to prevent this and tell the full story ourselves?

KR,

Jim

Jim Harra

Chief Executive, and First Permanent Secretary, HMRC. Tel:[redacted] | mob: [redacted] | email: jim.harra@hmrc.gov.uk

(Chief of Staff: Ian Allen | tel: [redacted]; email: ian.allen@hmrc.gov.uk)

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Email foi.request@hmrc.gov.uk

Web www.gov.uk

[redacted]

By email: request-690057-a6b9b8c0@whatdotheyknow.com

Date: 9 September 2020
Our ref: FOI2020/01615

Dear [redacted]

Freedom of Information Act 2000 (FOIA)

Thank you for your request, which was received on 7 September, for the following information:

"Can you supply me with any information that you hold for the usage of disguised remuneration within the HMRC (including HMRC's subsidiary Revenue and Customs Digital Technology Services Ltd) since 2010, when, according to the Morse inquiry, all matters were clear.

I would l ke the information to contain, but not limited to, audit reports for HMRC and subsidiaries where comments and observations of such schemes exist."

Where this letter refers to contractors of HMRC, this includes Revenue and Customs Digital Technology Services Ltd.

In November 2018, responding to a letter from the House of Lords Economic Affairs Committee, Ruth Stanier, Director General of Customer Strategy and Tax Design set out that:

'HMRC has never participated in disguised remuneration tax avoidance schemes, for example by remunerating contractors through loans or payments to trusts. It is possible for contractors to use disguised remuneration without the participation or knowledge of their engager. Any HMRC contractor identified in the course of our compliance work as using a disguised remuneration scheme would be investigated in the same way as any other contractor.'

~~HMRC as an employer is an engager of professional services and contingent labour. As a contracting authority, t~~The majority of HMRC's contracts are for contingent labour via an agency, and we use the Crown Commercial Service's framework contracts for this. These contractors form a flexible complement to our workforce, sourced through an employment agency, who are directly managed by HMRC but paid through an agency.

Commented [HJ(1]: What precisely does this mean? t implies that we have a line management relationship with these people but pay them through an agency. Please clarify.

With contingent labour there is always at least one agency between HMRC and the individual contractor, although in practice this contract can be further sub-contracted, meaning there are multiple agencies between the department and the contractor themselves.

The remainder of contractors are brought in via fully contracted out professional service provision. In these circumstances, the arrangement is between HMRC and the supplier. The contractors then have their own arrangements with and are directly managed by the supplier.

Commented [HJ(2]: Again, I am not sure what this means. Surely if we contract with a supplier to provide a professional service, then the people they deploy to provide that service cannot be described as contractors of ours?

All contracts with agencies supplying contractors to HMRC include standard tax compliance clauses. This is for both fully contracted out provision and contingent labour. There is also clear guidance around tax compliance and what checks will be completed on anybody supplying labour to HMRC on GOV.UK.

Any engagement of a supplier to HMRC will result in mandatory tax compliance checks being carried out. As HMRC's agreement will be with a supplier or agency this will be on the company itself and its directors rather than individual contractors.

However, prior to a contingent worker commencing an assignment with HMRC, they must acknowledge acceptance of clauses regarding "Compliance with Tax Legislation". This requires the worker to declare acceptance of a number of terms, including that "[the worker] complies with its obligations under ~~DOTAS~~ [the Disclosure of Tax Avoidance Schemes rules] and is not involved in any way in any arrangement that is contrary to ~~GAAR~~ [the General Anti-Abuse Rule] or any arrangement which has been spotlighted by HMRC as an unlawful tax avoidance scheme."

As HMRC are not involved in the payment arrangements between their suppliers and individual contractors the department have not and could not have participated in such avoidance schemes. On that basis HMRC does not hold information regarding the 'usage of disguised remuneration within the HMRC' because, as Ruth Stanier said in her letter to the HoL EAC, we have never used such tax avoidance schemes.

However, as Ruth acknowledged in her letter, HMRC ~~acknowledges that as they~~ are not privy to the~~se details~~ arrangements between suppliers and their contractors, it is possible that a contractor ~~may~~ might have used~~utilise~~ a~~n~~ disguised remuneration (DR) tax avoidance scheme without ~~the~~ HMRC's knowledge ~~of their engager~~. If HMRC discovered that a contractor had done so, in breach of our "Compliance with Tax Legislation" clauses, our policy would be to remove them from the department and deal with their tax affairs in the same way as any taxpayer who had used such a scheme.

It may help if I explain that, to inform the letter from HMRC to the House of Lords Economic Affairs Committee, analysis of the contractor records held was completed. In accordance with departmental retention policy, and in preparation for~~to~~ ensuring~~e~~ compliance with the 2017 reforms to the off-payroll working rules, HMRC ~~only~~ held a complete central record of departmental contractor engagements from 2016. The analysis involved clashing the details of individual contractors against the list of known users of DR schemes. The result of this analysis would show whether a contractor had ~~been engaged whilst using~~used a DR scheme ~~without the knowledge of their engager~~.

This work identified five contractors who had a history of using ~~disguised remuneration tax~~DR avoidance schemes and had previously been engaged by HMRC. In all cases, the periods of scheme usage did not run concurrently with the period for which they were engaged by HMRC. On this basis it was determined that HMRC did not hold any records of a contractor being engaged whilst using a DR scheme.

HMRC's database of known avoidance scheme users is constantly updated and enriched. Also, the database of contractors is dynamic as new contractors are constantly being engaged and other contractors reach the end of their engagements. Between November 2019 and July 2020, the analysis was run a further two times alongside further compliance activity.

This analysis indicated a number of existing contractors where it was possible they were using a DR scheme. Compliance teams concluded that 13 contractors were highly likely to be current or previous users of a DR scheme.

HMRC/RCDTS acted promptly once it had been informed of the results of the cross-referencing exercise, terminating the relevant engagements within two weeks of being informed.

If you are not satisfied with this reply you may request a review within two months by emailing foi.review@hmrc.gov.uk, or by writing to the address at the top right-hand side of this letter.

If you are not content with the outcome of an internal review you can complain to the Information Commissioner's Office.

Yours sincerely,

HM Revenue and Customs

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Freedom of Information Team
S1715
6 Floor
Central Mail Unit
Newcastle Upon Tyne
NE98 1ZZ

[redacted]

By email: request-710463-6fd62019@whatdotheyknow.com

Email foi.request@hmrc.gov.uk

Web www.gov.uk

Date: 9 February 2021
Our ref: IR2021/01190

Dear [redacted],

Freedom of Information Act 2000 (FOIA)

Thank you for your email of 6 February, which seeks a review of our original response to your information request.

Section 1 of the FOIA states:

(1) Any person making a request for information 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.

The explanatory note to this section states:

11.This Part:

- provides for the general right of access to <u>recorded information</u> held by public authorities and specifies the conditions which need to be fulfilled before an authority is obliged to comply with a request;

The Guide to Freedom of Information further provides that:

‘The Act does not cover information that is in someone’s head. If a member of the public asks for information, you only have to provide information you already have in recorded form. You do not have to create new information or find the answer to a question from staff who may happen to know it’.

Your request sought an explanation/clarification which was not in recorded form and by virtue of the above was a not a valid request under the FOIA. On a discretionary basis, HMRC provided an explanation and disclosed further information providing the context to the matter. The personal information of junior officials was redacted from this discretionary release pursuant to section 40(2) FOIA.

Having carefully considered how we handled your original request and representations made, I am content that the initial response to your request was correct.

If you are not content with the outcome of this internal review you can complain to the Information Commissioner’s Office.

Yours sincerely,

HM Revenue and Customs

From: [redacted] (SOLS)
To: Harra, Jim (HMRC); Stanier, Ruth (CS&TD Director General); Ciniewicz, Penny (CCG Director General); Holliday, Justin (CFO Group); Rehal, Daljit (HMRC CDIO Director General); Evans, Alan (SOLS)
Cc: Agnew, Sonia (CDIO Chief Operating Office); Aiston, Mary (Counter-Avoidance); Newbury, Nicole (WMBC); Woodstock, Rob (Commercial); Bristow, Carol (CS&TD Individuals Policy, Director); McGeehan, Jackie (CS&TD Individuals Policy, Income Tax); Wilson, Mark (SOLS); Hope, Zoe (SOLS); [redacted] (HMRC); [redacted] (SOLS)
Subject: RE: Sensitive FOI"s regarding HMRC contractors
Date: 30 September 2020 16:49:36
Attachments: FOI2020 01615 [redacted] amendments.docx

Good evening Jim,

With regards to contingent labour and service provision, the issue of who is engaging contractors seems to have been overshadowed by campaigners instead concentrating on the end client of contracts.

I am aware of at least one person who has been touted as an HMRC contractor who used a DR scheme but was actually contracted to Fujitsu providing services to HMRC.

This technicality is generally ignored by those seeking to exploit this issue but is something which I have always tried to define in correspondence as it is on this basis that we provide that we have never used these schemes.

The RCDTS Annual Reports have been a great topic of interest in relation to this. These reports provide a breakdown of permanently employed staff and contractors. It has come to my attention that the contractor figure in these reports is a combination of both contingent labour and those brought in through a service provision contract who are based on site.

This lack of definition somewhat muddies the waters between those for whom HMRC is responsible for ensuring tax compliance under the public sector reforms and those for which they are not. It is also of note that all non-permanent staff within RCDTS are provided with an HMRC email address regardless of how they are engaged.

Whilst we could respond to these requests with reference to just contingent labour it does still leave an elephant in the room which needs to be addressed and which would lead to further questions. To do so would also be inconsistent with how we have responded to previous questions.

I have made some suggested amendments to the letter which will hopefully make this clearer.

All of these requests have been made through the WDTK website, so whilst there are no plans to proactively release this information, the letter in its entirety will be readily available online

Happy to discuss

[redacted]

[redacted] | **Head of Information Rights Unit**
Solicitor's Office and Legal Services | HM Revenue & Customs
7.10 | 7TH Floor | 10 South Colonnade | Canary Wharf | London | E14 4PU
Tel: [redacted]

OFFICIAL

From: Harra, Jim (HMRC) <jim.harra@hmrc.gov.uk>
Sent: 30 September 2020 16:15
To: [redacted] (SOLS) [redacted]@hmrc.gov.uk>; Stanier, Ruth (CS&TD Director General) <ruth.stanier@hmrc.gov.uk>; Ciniewicz, Penny (CCG Director General) <penny.ciniewicz@hmrc.gov.uk>; Holliday, Justin (CFO Group) <justin.holliday@hmrc.gov.uk>; Rehal, Daljit (HMRC CDIO Director General) <daljit.rehal@hmrc.gov.uk>; Evans, Alan (SOLS) <alan.evans1@hmrc.gov.uk>
Cc: Agnew, Sonia (CDIO Chief Operating Office) <sonia.agnew@hmrc.gov.uk>; Aiston, Mary (Counter-Avoidance) <mary.aiston@hmrc.gov.uk>; Newbury, Nicole (WMBC) <nicole.m.newbury@hmrc.gov.uk>; Woodstock, Rob (Commercial) <rob.woodstock@hmrc.gov.uk>; Bristow, Carol (CS&TD Individuals Policy, Director) <carol.bristow@hmrc.gov.uk>; McGeehan, Jackie (CS&TD Individuals Policy, Income Tax) <jackie.mcgeehan@hmrc.gov.uk>; Wilson, Mark (SOLS) <mark.wilson3@hmrc.gov.uk>; Hope, Zoe (SOLS) <zoe.hope@hmrc.gov.uk>; [redacted] (HMRC) [redacted]@hmrc.gov.uk>; [redacted] (SOLS) [redacted]@hmrc.gov.uk>
Subject: RE: Sensitive FOI's regarding HMRC contractors

Thanks [redacted]

I have tracked some suggested revisions (which you and others need to check for accuracy).

I am conscious that while we have included a lot of explanation, the recipient is likely to publicise an edited extract, aimed at showing the department in a bad light. Do we have plans to prevent this and tell the full story ourselves?

KR,

Jim

Jim Harra
Chief Executive, and First Permanent Secretary, HMRC. Tel [redacted] **| email: jim.harra@hmrc.gov.uk**
(Chief of Staff: Ian Allen | tel: [redacted]**; email: ian.allen@hmrc.gov.uk)**

OFFICIAL

From: Sutherland, Ross (SOLS) <ross.sutherland@hmrc.gov.uk>
Sent: 30 September 2020 12:16
To: Harra, Jim (HMRC) <jim.harra@hmrc.gov.uk>; Stanier, Ruth (CS&TD Director General) <ruth.stanier@hmrc.gov.uk>; Ciniewicz, Penny (CCG Director General) <penny.ciniewicz@hmrc.gov.uk>; Holliday, Justin (CFO Group) <justin.holliday@hmrc.gov.uk>; Rehal, Daljit (HMRC CDIO Director General) <daljit.rehal@hmrc.gov.uk>; Evans, Alan (SOLS) <alan.evans1@hmrc.gov.uk>
Cc: Agnew, Sonia (CDIO Chief Operating Office) <sonia.agnew@hmrc.gov.uk>; Aiston, Mary (Counter-Avoidance) <mary.aiston@hmrc.gov.uk>; Newbury, Nicole (WMBC) <nicole.m.newbury@hmrc.gov.uk>; Woodstock, Rob (Commercial) <rob.woodstock@hmrc.gov.uk>; Bristow, Carol (CS&TD Individuals Policy, Director) <carol.bristow@hmrc.gov.uk>; McGeehan, Jackie (CS&TD Individuals Policy, Income Tax) <jackie.mcgeehan@hmrc.gov.uk>; Wilson, Mark (SOLS) <mark.wilson3@hmrc.gov.uk>; Hope, Zoe (SOLS) <zoe.hope@hmrc.gov.uk>; Wickramasinha, Sanjay (HMRC) [redacted]@hmrc.gov.uk>; [redacted] (SOLS) [redacted]@hmrc.gov.uk>
Subject: Sensitive FOI's regarding HMRC contractors

Good afternoon,

Since November 2019, HMRC have identified 13 contingent workers engaged by HMRC or RCDTS who were found likely to be either current or previous users of disguised remuneration schemes.
There has been a lot of discussion on Twitter between LC campaigners about HMRC's purported use of contractors using DR schemes, particularly within RCDTS. A Twitter user encouraged others to submit FOI requests in order to inform the APPG.
A series of FOI requests from LC campaigners have now been received that will lead to this information being revealed publicly for the first time. These requests are directly linked to an ICO complaint from last year concerning a letter from Ruth Stanier to Lord Forsyth on the same matter.
The attached drafts and associated briefing have been carefully considered by the FOI team and departmental stakeholders, sensitively balancing our obligations under the FOIA and control of the media narrative. These responses proactively address the letter to the HoL to highlight that we have always been consistent on this issue whilst defending any poss ble comment that our earlier communications may not have been accurate.
I am now seeking **your approval of both this approach and disclosure.** This has already been reviewed by deputy directors and directors from all appropriate directorates.
The main response (1615) is a combination of lines which I wrote last year and were cleared and issued in response to requests/complaints. Below is the only new content in the response:
HMRC's database of known avoidance scheme users is constantly updated and enriched. Also, the database of contractors is dynamic as new contractors are constantly being engaged and other contractors reach the end of their engagements. Between November 2019 and July 2020, the analysis was run a further two times alongside further compliance activity. This analysis indicated a number of existing contractors where it was possible they were using a DR scheme. Compliance teams concluded that 13 contractors were highly likely to be current or previous users of a DR scheme.
HMRC/RCDTS acted promptly once it had been informed of the results of the cross-referencing exercise, terminating the relevant engagements within two weeks of being informed.
I have used this response as the basis to answer all requests on this subject rather than sending multiple near identical requests for you to review. Due to the statutory deadline of these requests, I would appreciate any response **by COP 2 October.**
Happy to answer any questions you may have
Kind regards
[redacted]

[redacted] | **Head of Information Rights Unit**
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Tel: [redacted]