

**Information Governance**

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15 February 2019  
Reference no.18190380

Dear

**Request for Information: Freedom of Information Act**

Thank you for your email of 15<sup>th</sup> January making a request for information under the Freedom of Information Act. You requested the following information and the Trust is able to provide the information below in response:

**Request:**

The Off-payroll legislation was introduced in Chapter 10 of the Income Tax (Earnings and Pensions) Act 2003, with the new legislation going live from April 6th 2017. This new legislation overrode, in the public sector, the existing Intermediaries Legislation (Chapter 8, ITEPA).

The new legislation is here:

<https://www.legislation.gov.uk/ukpga/2017/10/schedule/1/part/2>

One of the key differences between the chapter 8 and chapter 10 is that the public authority is required to decide whether the off-payroll working rules (Chapter 10) apply based on whether the conditions have been met in section 61M(1)(d).

61M Engagements to which Chapter applies

(1) Sections 61N to 61R apply where—

(a) an individual (“the worker”) personally performs, or is under an obligation personally to perform, services for another person (“the client”),

(b) the client is a public authority,

(c) the services are provided not under a contract directly between the client and the worker but under arrangements involving a third party (“the intermediary”), and

(d) the circumstances are such that—

(i) if the services were provided under a contract directly between the client and the worker, the worker would be regarded for income tax purposes as an employee of the client or the

holder of an office under the client, or

(ii) the worker is an office-holder who holds that office under the client and the services relate to the office.

This requires the public authority to test whether the worker would be considered an employee based on employment status case law.

These assessments would have been completed by you with each assessment receiving its own determination.

Please can you provide:

A monthly breakdown, from April 2017 onwards of the number of assessments conducted by you, together with the number of assessments that are considered to be "inside IR35" (i.e. 61M(1)(d) applies) and the number that are "outside IR35" (i.e. 61M(1)(d) does not apply)

Response:

Every worker is considered to fall within IR35 and no exceptions have been made. A blanket communication was sent to all agencies informing them of this and the Trust do not engage individuals off payroll i.e. they are all engaged through the Trust bank.

If you are concerned with the service you have received in relation to your request and wish to make a complaint or request a review of our decision, you should write to me and I will ensure the decision is reviewed. The Trust will consider undertaking a review if requested to do so within 40 working days of the date the response is received by the applicant, and will apply discretion if a longer period of time has passed.

Should you wish to make a complaint as a result of the outcome of such a review, you may apply directly to the Information Commissioner's Office (ICO) for a decision.

Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by the Trust for FoI Act matters.

The ICO can be contacted at:

The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

Please contact me if there are any further queries.

Kind regards,

Yours sincerely,

Mark Underwood

Head of Information Governance