

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 20 January 2021

Public Authority: HM Treasury
Address: 1 Horse Guards Road
London
SW1A 2HQ

Decision (including any steps ordered)

1. The complainant has requested information on the underlying calculations to determine the cost, reported as £1 trillion, to achieve Net Zero carbon emissions by 2050.
2. The Commissioner's decision is that HM Treasury ("HMT") has appropriately engaged the exception at regulation 12(4)(e) as the request involves the disclosure of internal communications. However, the Commissioner finds that the public interest favours disclosure of the information in the scope of the request. The Commissioner also finds a breach of regulation 11(4) as HMT did not provide an internal review within 40 working days.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the specific email containing the requested information.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. On 27 October 2020 HMT provided the Commissioner with useful background which she replicates here:
6. HMT works with other government departments on policies to reduce greenhouse gas emissions and deliver on carbon budget commitments, while keeping costs down for consumers, supporting the creation of good jobs and growing the economy.
7. In October 2018, the governments of the UK, Wales and Scotland asked the Committee on Climate Change (CCC) for an update to advice on UK climate action. The CCC recommended that the UK should set a target of Net Zero greenhouse gas emissions by 2050. There were separate targets for Scotland and Wales (Net Zero by 2045 and 95% reduction by 2050 respectively). The CCC also recommended that HMT should undertake a review of how the transition will be funded and where the costs will fall.
8. The (then) Prime Minister accepted the Net Zero recommendation in June 2019, which was then legislated for. Then, in November 2019, HMT published terms of reference for its review into how the transition to a Net Zero economy will be funded, and where the costs will fall. The review will examine how to ensure contributions are fair between households, businesses and the taxpayer, and will allow the UK to maximise economic growth opportunities from the transition.
9. HMT expected to publish the interim report in Autumn 2020¹, and the final report the following year.

Request and response

10. On 3 June 2019, the complainant wrote to HMT and requested information in the following terms:

"I understand that the Treasury recently gave the cost of reaching net zero carbon emissions by 2050 as £1 trillion. I would like a copy of the underlying calculations so I can understand how this figure was derived."

¹ <https://www.gov.uk/government/publications/net-zero-review-interim-report> published 17 December 2020

11. HMT responded on 8 July 2019. It confirmed holding the requested information and explained that it was withheld in reliance of the exception at regulation 12(4)(e) - internal communications – of the EIR.
12. On 10 July 2019 the complainant requested an internal review; this request was acknowledged by HMT on 11 July 2019. The internal review was provided, following the Commissioner's intervention, on 5 November 2019. The review upheld the initial response and maintained that the public interest favoured withholding the information.

Scope of the case

13. The complainant initially contacted the Commissioner on 20 September 2019 to complain about the way his request for information had been handled in regard to his request for internal review.
14. Following provision of the internal review the complainant advised the Commissioner on 14 November 2019 that he wished to pursue his complaint. The complainant explained:

"The information requested is a set of calculations. HMT says that the information they hold 'comprises communications generated by and/or shared within central government departments'. Their argument appears to be that if the calculations have at some point been attached to an email then they become communications. This would appear unlikely, and particularly so if the calculations were generated by the Treasury themselves."

"The Net Zero statutory instrument underpins a proposal to transform the UK economy by the year 2050.

This will involve considerable public expenditure, and possibly the largest spending programme ever. The public interest in knowing the costs involved, and how they have been estimated, is therefore overwhelming."

15. The Commissioner considers the scope of her investigation to be the application of the exception at regulation 12(4)(e) to the specifically requested information.

Reasons for decision

Is the information environmental?

16. Regulation 2(1)(c) of the EIR defines environmental information as any information on:

"measures ... such as policies, legislation, plans, programmes ... and activities affecting or likely to affect" the state of the elements of the environment."

17. HMT considered the request under the EIR and the Commissioner confirms that this is the correct legislation as the requested information falls within the definition given at regulation 2(1)(c).

Regulation 12(4)(e) - internal communications

18. Regulation 12(4)(e) of EIR states:

"a public authority may refuse to disclose information to the extent that-
(e) the request involves the disclosure of internal communications."

19. The Commissioner accepts that the term 'communications' should be given a wide interpretation. In line with her published guidance on the exception, 'communications' will encompass any information someone intends to communicate to others. It will therefore include not only letters, memos, and emails, but also notes of meetings or any other documents if these are circulated or filed so that they are available to others. The Commissioner considers an internal communication is a communication which stays within one public authority. Once a communication has been sent outside the public authority, it will generally no longer be internal. However, for communications between central government departments, it is accepted that these are expressly included as internal communications by virtue of regulation 12(8) EIR.
20. The Commissioner would first clarify the information in the scope of this request. HMT provided her with some information which she considers to fall outside the scope of the specific request. The complainant has been clear on his requirements and has confirmed to the Commissioner that his request concerns only the calculations undertaken by HMT to create the £1 trillion figure referenced in his request and reported in the media.
21. HMT agreed that the underlying calculations for the £1 trillion estimate are contained in an email. HMT concluded that the information therefore falls within the description of an internal communication and the remit of regulation 12(4)(e).
22. The Commissioner is therefore limiting her consideration to one email in an email chain which contains the only recorded information which falls within scope, held by HMT at the time of the request, concerning the calculations to support the £1 trillion figure.
23. In line with the approach set out in paragraph 19 the Commissioner is satisfied that the relevant email is an internal communication.

24. Where Regulation 12(4)(e) is engaged, it is then subject to the public interest test required by Regulation 12(1). When carrying out this test the Commissioner must take into account a presumption in favour of the disclosure of the information which is required by Regulation 12(2).

The public interest

25. HMT explained that it recognises the inherent public interest in the transparency and accountability of public authorities and the broad public interest in furthering public understanding of the issues with which public authorities deal. It explained its view that there is a clear public interest in being transparent and open in the work of government departments concerning environmental matters, and in particular around the 2050 emissions target and how Government arrived at its estimate of the cost of reaching Net Zero emissions. This is particularly relevant considering the significant implications likely to affect public policy in the future.
26. HMT noted that there is already a large amount of information in the public domain concerning the 2050 emissions policy which goes some way to meeting this public interest. HMT cited the CCC as providing independent, expert advice to Government on climate change mitigation and adaptation with an annual report to Parliament assessing progress in reducing UK emissions. These can be found on its website.² The Department for Business, Energy and Industrial Strategy produces a response³ to these reports annually and are published on the gov.uk website.
27. In essence, the public interest considerations in maintaining regulation 12(4)(e) relate to the protection of thinking space and the ability to have full and frank discussions without fear that the information will be disclosed. Generally, once a decision has been taken the private thinking space or 'safe space' required to properly consider a matter is diminished and the sensitivity of the information is reduced.

² <https://www.theccc.org.uk/publication/net-zero-the-uks-contribution-to-stopping-global-warming/>

³ <https://www.gov.uk/government/publications/committee-on-climate-changes-2020-progress-report-government-response/>

28. HMT explained to the Commissioner its view of the public interest in maintaining the exception. It advised that the government's ability to discuss and develop policies and to reach well-formed conclusions must be protected. It added that the release of the information would undermine the safe space for policy officials and ministers to develop ideas, debate live issues and reach decisions regarding reaching zero emissions away from external interference and distraction.
29. HMT advised that this safe space was still required when the request was made in June 2019:

"There were internal discussions in the Treasury on what the Net Zero Review would deliver, its scope, and its internal structures. Disclosure would have undermined the Government's policy development process as these ideas were being developed and so were incomplete at the time. The information discussed policy options in a way that would create expectations or otherwise tie the government's hands in future."
30. Furthermore, HMT considers that releasing the requested information would negatively affect the ability of officials to preserve a safe space and would hinder discussion of climate change cost estimates. Accordingly:

"Officials would be less able to serve the public interest by having serious and detailed internal discussions on the costs of net zero and where further work is required to deliver sufficiently robust analysis for publication, but would instead have to focus on caveating and protecting their draft calculations in case they were released and taken out of context."
31. HMT maintained that disclosure of the withheld information would also have a chilling effect on ongoing work relating to calculating the cost of reaching Net Zero emissions by 2050. It explained that the officials creating the original estimate would not have expected it to be published and had they had this expectation they would have caveated the figure. If the calculations behind the £1 trillion figure are disclosed the result would be to inhibit the officials working on the Net Zero cost estimates.
32. HMT argues that it is committed to publishing a review into the costs of meeting Net Zero emissions. It considers that releasing an early, and very rough set of underlying calculations would undermine the work of the review in working out a more detailed analysis of the costs of meeting Net Zero, and would have "anchored expectations in a way that would not have allowed a space for more rigorous and considered analysis."
33. The £1 trillion figure appeared in a letter from the Chancellor to the Prime Minister leaked to the media. The government did not publicly

confirm the figure and this was also covered by the media⁴ HMT explained that the "leaked £1 trillion figure" was a provisional estimate based on rough calculations and advised that estimates of the cost of reaching Net Zero emissions have subsequently become more advanced and detailed.

34. HMT argues that disclosure of the requested information would result in creating confusion rather than informing the public and allowing for scrutiny, and would therefore not inform the public on the on-going policy work on Net Zero.

35. HMT further explained:

"The planned release of the next set of public estimates on 9 December 2020, and the full methodology behind those estimates, will provide the public with the accurate, up-to-date figures that will enable them to scrutinise the Government's costing of the net zero policy fully."

The Commissioner's view

36. The Commissioner must determine whether in all the circumstances of the case, including the presumption in favour of disclosure under Regulation 12(2), the public interest in maintaining the exception outweighs the public interest in disclosing the information.

37. The Commissioner considers that there is always significant public interest in government departments operating in an open and accountable manner. She accepts that greater transparency leads to better public understanding of particular issues and enables the public to assist in the decision making process where possible. She notes that there is a significant public interest in climate change and the development of policy surrounding the topic. The actions taken by Government in this regard involve a significant amount of public expenditure and this carries significant weight in favour of the public interest in disclosure.

38. However, she also accepts that there is a strong public interest in enabling ministers and senior officials to discuss and debate policy

⁴<https://www.theguardian.com/environment/2019/jun/06/cutting-uk-emissions-net-zero-cost-1tn-philip-hammond>

<https://www.telegraph.co.uk/business/2019/06/12/hammonds-1-trillion-bill-hitting-net-zero-innumerate-nonsense>

issues, options and funding in a free and frank manner, away from public scrutiny, especially when the issues under discussion and debate are still live. There is a strong public interest in allowing ministers and senior officials the safe space to engage with each other without undue or premature scrutiny to preserve the quality of such discussions and views and advice being exchanged.

39. The Commissioner notes the view of HMT quoted in paragraph 29. However, although she understands that the broad policy development process was, and continued to be, underway at the time of the request; the specific, requested information does not in the Commissioner's view discuss policy options or create expectations or otherwise tie the government's hands in future. She accepts that the narrative information provided to her by HMT could be considered to possibly create expectations; however this material does not constitute the requested information.
40. The Commissioner understands that HMT considers the withheld information is not sufficiently robust for publication and was not intended for publication. Notwithstanding this, the withheld information held is the only relevant recorded information held which falls within the scope of the request.
41. She is not persuaded that the information holds no value or that it would be against the public interest for 'out-of-date' estimates to be withheld because more robust and well considered estimates are subsequently to be published. Rather, such information demonstrates the development and progression of cost calculations and estimates.
42. The timing of a request is often crucial to the balance of the public interest and whether the issues and matters contained in the withheld information are live at that time. The Commissioner accepts that the withheld information relates to issues live at the time of the request. She considers that the topic of climate change and matters pertaining to developing government policy will be live for many years. In this case the leaked letter contained a figure which represented a conclusion, albeit subsequently changed. It is the Commissioner's view that the unique circumstances and huge impact of climate change issues brings with it a commensurate public interest in disclosure of information.
43. The Commissioner notes that at the time of writing, the publication of the detailed information referenced in paragraph 35 is available online⁵ including a section of charts and data included in the report; the

⁵<https://www.theccc.org.uk/publication/sixth-carbon-budget/>

associated Dataset "containing all the numbers and detail behind the advice" is not yet published.

44. She notes that HMT officials did not expect the early estimate to be published and disclosure now would, in HMT's view, inhibit the officials working on future Net Zero cost estimates. The Commissioner expects all officials to be aware of the access to information legislation and the potential for the public to request information to be placed in the public domain. Similarly she expects officials to be robust in meeting their responsibilities and not easily deterred from expressing their views by the possibility of future disclosure. In regard to the caveating of calculations, in the particular circumstances relevant to this case, she does not consider such an action to be necessarily detrimental.
45. The Commissioner agrees with HMT that the Government's full assessment of the costs and a detailed consideration of where the costs of the transition would fall, as outlined above in paragraph 35, will be most beneficial in informing the public. However, in the circumstances of this case, the December 2020 publication of the Sixth Carbon Budget documentation should not be used to support withholding the information requested on 3 June 2019.
46. Moreover, the Commissioner is not persuaded that releasing the, albeit preliminary, underlying calculations would undermine the work of the review HMT is committed to publishing into the costs of meeting Net Zero emissions in 2021. She has had the benefit of seeing the withheld information and is satisfied that the public will understand the preliminary nature of the material without confusion. The Commissioner considers that the public would have no doubt that the calculations are limited and would require further work to provide a coherent explanation.
47. In the specific circumstances of this case the Commissioner's decision is that the exception at regulation 12(4)(e) is engaged but the public interest favours disclosure.

Regulation 11 - representations and reconsideration

48. Regulation 11 (3) states-

"The public authority shall on receipt of the representations and free of charge-

- (a) Consider them and any supporting evidence produced by the applicant; and
- (b) Decide if it has complied with the requirement.

(4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.

49. The complainant requested an internal review on 10 July 2019. HMT provided the review on 5 November 2019 some 83 days later. HMT therefore breached regulation 11(4).

Right of appeal

50. 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 1234504
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

51. 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.

52. 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

Susan Hughes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF