



Freedom of Information Act 2000 (Section 50)

Decision Notice **Dated 7 June 2006**

Public Authority: HM Treasury

Address: 1 Horse Guards Road
London
SW1A 2HQ

Summary Decision and Action Required

The Commissioner's decision in this matter is that the Public Authority has not dealt with the Complainant's request in accordance with Part I of the Act in that it has failed to comply with its obligations under section 1(1).

The Commissioner requires the Treasury to provide disclosure of the information previously withheld.

- 1. Freedom of Information Act 2000 (the 'Act') – Application for a Decision and the Duty of the Commissioner.**
 - 1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the Complainant's request for information made to HM Treasury has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').
 - 1.2 Where a Complainant has made an application for a decision, unless:
 - a Complainant has failed to exhaust a local complaints procedure, or
 - the application is frivolous or vexatious, or
 - the application has been subject to undue delay, or
 - the application has been withdrawn or abandoned,the Commissioner is under a duty to make a decision.
 - 1.3 The Commissioner shall either notify the Complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the Complainant and the public authority.

2. The Complaint

2.1 The Complainant has advised that on 16 February 2005, the following information request was submitted to the Public Authority in accordance with section 1 of the Act.

2.2 *“Prior to July 1997, UK pension funds were able to claim from the Inland Revenue the amount of any tax credits on UK dividends received. The ability to reclaim was withdrawn by Finance (No. 2) Act 1997.*

The blocking of tax credit repayment did of course mean a reduction in the income of pension funds. Information is therefore requested on:

- (i) The estimates that were prepared for Ministers on the loss of revenue to pension funds in 1997 and subsequent years.*
- (ii) What consideration was given to the impact on this loss of revenue to pension funds?*
- (iii) What consideration was given to the need for phasing this withdrawal of credit or allowing some form of compensation to the affected pension funds?*
- (iv) What consideration was given to the impact, long term, on the pension funds run by employers and the value of funds maintained by the self- employed and others with personal pensions?”*

2.3 The Treasury replied on 16 March 2005 refusing to disclose the information requested on the grounds that it related to advice by officials to Ministers falling within the exemption provided by Section 35(1) (a) of the Act and that the public interest in maintaining the exemption outweighed the public interest in disclosing the information. It was argued in the refusal notice that the disclosure of such information would prejudice ongoing full and frank advice to Ministers.

2.4 The Complainant requested an internal review of the decision by the Public Authority on 22 March 2005. The Treasury responded on 1 August 2005 disclosing *“a note produced by HM Treasury which was presented to the Treasury Select Committee following Budget 2001”* and *“a note from the analytical part of the Inland Revenue produced for the Parliamentary Accounts Committee on 5 February 2003,”* but otherwise upholding the decision to withhold the requested information placing reliance upon the exemption within section 35(1) (a).

2.5 The Treasury also stated in its letter of 1 August 2005 that the items of information were held, had been considered individually for disclosure, that the information withheld, had not included any statistical information within the meaning of the Act, and that due weight had been

given to the considerations set out under section 35(4) with regards the disclosure of background factual information.

3. Relevant Statutory Obligations under the Act

3.1 Section 1(1) provides that –

“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.”

3.2 Section 2 provides that – section 1(1) does not apply where any provision of Part 2 of the Act (exempt information) applies.

3.3 Section 35(1) (a) provides that-

Information held by any government department or by the National Assembly for Wales is exempt information if it relates to –

- (a) the formulation or development of government policy.

3.4 Section 35 is a qualified exemption and is subject to the public interest test under section 2(2)(b), which provides that the entitlement to information under Section 1(1) does not apply if, or to the extent that –

In all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

4. Review of the case

4.1 On 12 September 2005, the Complainant asked the Commissioner to review the Treasury’s decision to withhold the requested information.

4.2 On 19 September 2005 the complaint was acknowledged by the Commissioner and copies of the Complainant’s correspondence with the Treasury requested.

4.3 On 14 February 2006 the Commissioner wrote to the Public Authority asking why the exemption under section 35(1) (a) was considered to apply and the reasons for finding that in all the circumstances of the case, the public interest in maintaining the exemption outweighed the

public interest in disclosing the information.

- 4.4 On 3 April 2006 the Treasury replied indicating that the information withheld was contained in four 'papers' generated by the Inland Revenue (now HM Revenue & Customs) as part of the 1997 pre-budget policy making process.
- 4.5 Three of the documents, were said to contain submissions to Treasury Ministers, and a fourth comprised a detailed ex - ante analysis of the anticipated economic effects of the abolition of Advanced Corporation Tax ("ACT"), a measure subsequently enacted under the Finance (No.2) Act 1997. Consideration of the anticipated impact on pension funds of the removal of payable tax credits on dividends, associated with the planned abolition of ACT was said by the Treasury to be 'at the heart of' the information requested.
- 4.6 The Treasury stated that the information fell within the exemption provided by Section 35 (1) (a) of the Act, as it related to the formulation or development of government policy, in that it provided:
- "... detail on some of the factors considered in reaching the decision to include this measure in the budget including assumptions (actuarial or otherwise) made in order to reach the budget costings."*
- 4.7 In applying the public interest test, the conclusion reached by the Treasury, was that the balance of the public interest lay in withholding the information requested on the following grounds:
- *Disclosure of this information would be likely to damage officials' and Ministers' confidence in the confidentiality of the budget process and have an adverse effect on the nature of the advice given.*
 - *Releasing this information would also be likely to have a negative impact on the departmental policy process, making it difficult for officials and ministers to make informed policy decisions in the very sensitive and current area of pensions.*
 - *The release of this information would not materially add to the pensions debate as it relates to the estimated impact of one isolated measure. It does not take account of the other measures of the package nor does it provide any information about the actual (i.e. post implementation) impact of this measure, or the other measures, on pension funds. However, release would have a serious negative impact on the policy making process.*

5. The Commissioner's Decision

5.1 The Commissioner's decision in this matter is that the Treasury has not dealt with the Complainant's request in accordance with the following requirements of Part I of the Act:

5.2 **Section 1(1)** – in that it failed to communicate to the Complainant such of the information specified in his request as did not fall within any of the absolute exemptions from the right of access nor within any of the qualified exemptions under which the consideration of the public interest in accordance with section 2 would authorise the Public Authority to refuse access.

5.3 The application of section 35 (1) (a).

5.3.1 The Commissioner accepts that the request for disclosure of the 'estimates' and 'considerations' that informed the decision to abolish payable tax credits on pensions would involve disclosure of tax policy options and of the assumptions (as opposed to background facts) upon which they were predicated and as such would constitute information that relates to the formulation or development of government policy. Therefore the exemption is engaged.

5.4 The public interest test

Section 35(1) (a) is a qualified exemption and therefore it is necessary to consider whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

5.4.1 The Commissioner has taken into account the following public interest considerations raised by the Treasury in reaching his decision:

5.5 The Impact of the release of the information upon the Budget decision making process.

5.5.1 The Commissioner recognizes the public interest, in maintaining private space to allow wide ranging discussion of sensitive issues, that is conducive to full and rigorous consideration of all options. The Commissioner also accepts that the Budget making process can involve difficult and controversial policy considerations where the public interest in maintaining the confidentiality of candid debate and risk assessment, can outweigh the public interest in disclosing the information.

5.5.2 The Commissioner takes into account the particular importance of the Budget-making process for the UK economy but considers the logical extension of the Treasury's argument that the Budget-making process is to be 'preserved,' might lead some to believe that the exemption

should be treated as absolute, in so far as it applies to the formulation of Budgetary policy.

5.5.3 The Commissioner accepts that there is a public interest in officials and Ministers having confidence in the confidentiality of the Budget - making process. This is in keeping with the scheme of the Act to the extent that the information falls within one of the exemptions within Part II.

5.5.4 Where the exemption is subject to the public interest test, the natural expectation of those involved in the decision-making process would be that the sensitivity of the information will diminish over time. The information requested, in this instance relates to pre-1997 budgetary forecasts, that the Treasury accepts to have been superseded by events.

5.5.5 Given the time that had elapsed between the 1997 Budget and the date of the request, the Commissioner is not satisfied that officials who advise Ministers would be likely to do so in future with any less candour, nor that they would tailor their advice, with an eye to what the public may think at some later date, rather than to what is in the economic interests of the UK. The officials have a duty to serve their Ministerial Department and would not be swayed to any significant degree by fears that their advice could be scrutinized in subsequent years.

5.5.6 Furthermore the Commissioner takes the view that that greater the impact of a particular policy upon public revenues and upon the wider debate in relation to pensions, the greater the public interest in disclosure of information to promote accountability and the transparency of the decision making process.

5.6. The impact of the release of the information on the future conduct of pensions policy formulation.

5.6.1 The Commissioner accepts that the government's pensions policy was "sensitive and current" at the time of the request, and that it remains so. The Commissioner also takes into account the Treasury's indication that the removal of payable tax credits on dividends associated with the abolition of "ACT," is likely to remain a key consideration in the formulation and development of future pensions policy.

5.6.2 The Commissioner accepts that the disclosure of current policy options could potentially have a detrimental effect upon the quality of advice and policy decision making. The request in this instance however, does not relate to the disclosure of any new policy options, but rather to the forecasts that informed an existing policy.

5.6.3 The Treasury has stated that the impact of external economic factors,

upon changes to the value of pension schemes since 1997, is such that disclosure of the original forecasts would not add anything to the current pensions debate. The Commissioner does not consider in those circumstances that future policy options might be 'closed off' if the forecasts relied upon prior to the adoption of this particular measure in 1997, are disclosed.

- 5.6.4 The particular sensitivity of the information requested, lies in the fact that, the assumptions underlying the adoption of the policy, may be viewed critically, in retrospect and without due consideration of the context in which it was formulated or of wider policy objectives. The Commissioner considers that the public interest in disclosure of this information goes to accountability in the decision making process.
- 5.6.5 Economic forecasts are by their nature speculative, and the Commissioner considers that the Treasury would to some extent be able to address such criticism, by publishing information both, as to the limitations of the economic and actuarial advice relied upon and as to the wider policy objectives of the measure.
- 5.6.6 The Commissioner is not satisfied that disclosure of the historical estimates and considerations forming the subject matter of the request, is likely to cause officials to alter their future advice to the extent that policy options could be eliminated before they have been fully considered, either in relation to the development of the policy relating to the abolition of tax credits, or to the development of pensions policy generally.
- 5.6.7 The Commissioner accepts that there is a strong public interest in accurate and comprehensive record keeping. However it does not follow that disclosure of the detailed submissions and economic analysis would result in such information being confined to oral briefing or in the failure to accurately minute policy discussions in the future.
- 5.6.8 The promotion of accurate and comprehensive record keeping is in any event, primarily a management function reflecting the standards of "*integrity, honesty, impartiality and objectivity,*" required under the Civil Service Code of Conduct.

5.7. The Impact of the release of the information on the current pensions debate

- 5.7.1 The Treasury contends that disclosure of the forecasts previously relied upon when assessing the expected impact of the removal of payable tax credits in isolation, would add little to the current pensions debate, and that it would be likely to be taken out of context, compounding misunderstanding and that any adverse public reaction

that could ensue, would have a serious negative impact on decision-making.

- 5.7.2 Whilst the Commissioner considers the public interest in disclosure to extend beyond the potential contribution that the information could make to the to the current pensions debate, he takes into account the concerns expressed by the Treasury, that if misconstrued, the information could prove more a hindrance, than an aid to public understanding.
- 5.7.3 The Commissioner accepts that there is a potential for the information to be taken out of context and misunderstood. However the Commissioner also considers that the withholding of information could of itself contribute to suspicion and misunderstanding of the issues, and his preferred approach in accordance with the presumption under the Act, would be to encourage the publication of background information as to the decision-making process and as to the wider objectives of the policy.
- 5.7.4 If an adverse public reaction was to follow, the Commissioner is not satisfied that this would result in Officials giving less than comprehensive and objective advice, or that it would otherwise adversely affect the quality of Ministerial decision-making in the current pensions debate.
- 5.7.5 Having weighed the competing public interest considerations, the Commissioner concludes in all the circumstances, that the public interest in good governance which requires transparency in the decision making process, is stronger than the public interest in maintaining the exemption.

6. Action Required

- 6.1 In view of the matters referred to above, the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he requires that:

The Treasury shall, within 30 Days of this Decision Notice, provide the complainant with the information requested on 16th February 2005.

7. Right of Appeal

12.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

12.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 7th day of June 2006

**Graham Smith
Deputy Commissioner**

**Information Commissioner's Office
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Cheshire
SK9 5AF**