

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 23 March 2009

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

Summary

The Complainant requested information from HM Treasury concerning the Chancellor's visits to various Tax Credit offices. HM Treasury stated that the information requested was in the public domain (citing section 21 of the Act) and that no further information was held. Whilst the Commissioner found that HM Treasury did not hold any further information, the Commissioner concluded that it had breached sections 1(1)(a) and 10(1) of the Act in failing to respond to the information request within 20 working days.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 20 December 2006 the complainant requested the following information from HM Treasury:
 - *"Has Mr Chancellor visited a) tax credit office b) Tax Credit IT development office c) Tax Credit contact centre within the last 18 months*
 - *When Mr Chancellor last visited each of the following a) tax credit office b) Tax Credit IT development office c) Tax Credit Contact centre?*
 - *What documents exist relating to Mr Chancellors involvement in visits to a) tax credit office b) Tax Credit IT development office c) Tax Credit contact centre*
 - *What documents exist relating to meetings regarding Mr Chancellor's involvement in visits to a) tax credit office b) Tax Credit IT development office c) Tax Credit contact centre."*

3. HM Treasury responded on 8 February 2007 stating that the information had already been provided to the complainant by way of answers to Parliamentary Questions (PQs), submitted by her, in her capacity as an MP. HM Treasury advised that it was not obliged to re-issue information which it considered to be reasonably accessible to the requestor by virtue of section 21(1) of the Act.

4. On 9 February 2007 the complainant contacted HM Treasury and requested an internal review of the decision. In the correspondence the complainant stated:

"Nowhere in any Parliamentary questions answered to myself have dates or documents been given that relate directly to Mr Chancellor's visits. I urge that you actually read the answers given to myself in Parliament and then reconsider your reply to my request."

5. HM Treasury undertook an internal review and communicated its findings to the complainant on 14 March 2007. The review letter stated that HM Treasury had searched for any recorded information and had identified the responses to the Parliamentary Questions, but had identified no further information.

The Investigation

Scope of the case

6. On 19 March 2007 the complainant contacted the Commissioner to complain that HM Treasury had not answered the questions that she had put to them. She stated that *"Nowhere in the answers can I find the information sought in my FOI request"*.

7. The Commissioner notes that HM Treasury initially applied section 21(1) to the requested information (information accessible by other means), as the complainant had already received answers to similar questions put to Parliament. However as the complainant did not dispute that she had the relevant PQ answers but was seeking additional information, the Commissioner does not consider section 21 to be relevant to the complaint, and has investigated whether any further relevant information was held by HM Treasury.

Chronology

8. The Commissioner wrote to HM Treasury on 14 August 2008 asking what searches had been completed by HM Treasury to determine what information was held.

9. HM Treasury provided its response on 9 September 2008 and explained that the Chancellor's diary was searched by his Private Office for the relevant period. It advised that the Chancellor's diary would be the key document as itineraries and briefings, for example, are informed by appointments in the diary. HM Treasury re-iterated that it did not hold any further information other than the answers to the Parliamentary Questions raised by the complainant.

10. The Commissioner wrote to HM Treasury on 27 October 2008 suggesting that it may wish to undertake a wider search to include any recorded information concerning the generation of answers to Parliamentary Questions. The Commissioner also invited comments as to why HM Treasury limited its search to the Chancellor's diary.
11. HM Treasury responded on 20 November 2008 stating that
"In this case no background information was prepared in relation to the answer, and the source of information provided in the answer came from the Chancellor's diary"
12. Further correspondence was sent to HM Treasury on 8 January 2009 requesting information on the searches carried out regarding recorded information on the administration of Parliamentary Questions. On 12 January 2009 HM Treasury provided a response to the Commissioner detailing the nature of the search conducted that confirmed that a search had been undertaken and no new information had been found.

Analysis

Section 1 - general right of access

13. The Commissioner has considered whether the public authority has complied with section 1 of the Act. Section 1(1) provides:
"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."
14. The initial request was made on 20 December 2006 but no response was received by the complainant until 8 February 2007. HM Treasury therefore failed to confirm or deny whether information was held within 20 working days. The Commissioner therefore finds that HM Treasury breached section 1(1) (a) of the Act.
15. HM Treasury has stated that it does not hold any relevant information other than that already available to the complainant. The Commissioner has investigated whether this is the case.
16. The complainant expressed the view that she was unable to find the answers to her request in the information that had been provided to her by way of the answers to her PQs. HM Treasury's response was that it had searched for information relevant to the request but had not been able to identify anything other than the PQs.

17. HM Treasury have informed the Commissioner that it was unable to identify any other specific information of the kind requested by the complainant. HM Treasury have also confirmed that *“the Chancellor’s office have confirmed to the best of their knowledge and belief no information of this kind has been deleted from the diary”*.
18. In considering this case the Commissioner has been guided by the decision of the Information Tribunal in *Linda Bromley v Information Commissioner and The Environment Agency (EA/2006/072)*. In its decision the Tribunal agreed that the test to be applied in cases where a public authority claimed that it did not hold any relevant information was *“the normal civil standard, namely, the balance of probabilities...”* (paragraph 10) because *“...there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority’s records...”* (paragraph 13).
19. The Tribunal also set the factors which should be considered:
 - *“the quality of the public authority’s initial analysis of the request,*
 - *the scope of the search that it decided to make on the basis of that analysis,*
 - *and*
 - *the rigour and efficiency with which the search was then conducted.”*
20. HM Treasury stated that the only recorded information it held was the answers to the PQ’s, which had been provided to the complainant. It stated:

“We have conducted a thorough and vigorous search and, subject to the caveat that we can never be 100% sure that we have found all the relevant information, we can confirm that we have not identified any relevant information other than that which has already been disclosed”
21. From the information provided by HM Treasury it would appear to the Commissioner that HM Treasury has undertaken a comprehensive search with regards to the complainant’s request. In these circumstances the Commissioner has found that there is insufficient evidence to justify refusing to accept HM Treasury’s response that it does not hold the information requested in this case.
22. For the sake of clarity the Commissioner made further enquiries of HM Treasury on 9 March 2009. In its response of 10 March 2009, the Treasury confirmed that its search of the Chancellor’s diary revealed that no information was recorded in the diary regarding appointments for the Chancellor to visit tax credit offices, tax credit development offices or tax credit contact centres. If no visits have been recorded in the diary then the Commissioner has assumed that no visits are likely to have taken place, and consequently no further documents will be likely to exist regarding such visits either.
23. The Commissioner therefore concludes that, on the balance of probabilities, HM Treasury does not hold any further information falling within the complainant’s request. Accordingly, he does not consider that there is any evidence of a section 1(1)(b) breach of the Act in this regard.

Section 10 – time for response

24. Section 10(1) of the Act provides that:

'Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.'

25. In this case the complainant made her request on 20 December 2006, but HM Treasury did not provide a response until 8 February 2007. Therefore, the Commissioner is satisfied that HM Treasury breached section 10(1) of the Act in that it did not confirm or deny whether the information was held within the statutory timescale of 20 working days.

The Decision

27. The Commissioner is satisfied that HM Treasury does not hold any further recorded information relevant to the complainant's request and has complied with section 1(1)(b) of the Act.

28. However the Commissioner finds that, in failing to confirm or deny within the statutory time limit whether it held the requested information, HM Treasury breached section 10(1) and section 1(1)(a) of the Act.

Steps Required

29. The Commissioner requires no steps to be taken.

Right of Appeal

30 Either party has the right to appeal against this Decision Notice to the Information 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

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

Dated the 23 day of March 2009

Signed

**Anne Jones
Assistant Commissioner**

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

Legal Annex: Relevant statutory obligations

1. **Section 1(1)** provides that:

(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.

2. **Section 10(1)** provides that:

(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

3. **Section 21(1)** provides that:

“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”

Annex 1: Parliamentary Questions

Written Parliamentary Question: 1

To ask the Chancellor of the Exchequer when he last visited a tax credit (a) contact centre, (b) office and (c) IT development office.

Answer (from Dawn Primarolo):

I (*Dawn Primarolo*) opened the new contact centre for handling tax credits enquiries at Queens Dock, Liverpool and then visited the Tax Credit Office at Imperial Court on 19 October 2006.

Written Parliamentary Question: 2

To ask the Chancellor of the Exchequer when (a) the Paymaster General was last (i) accompanied by him to and (ii) informed of a visit by him to a tax credit (A) contact centre, (B) office and (C) IT development office.

Answer:

Treasury Ministers undertake visits all over the country and are in constant contact with each other on a wide range of issues relating to the Treasury/

Written Parliamentary Question: 3

To ask the Chancellor of the Exchequer pursuant to the answer of 12 December 2006, Official Report, column 981W, on the Paymaster General, whether he has visited a tax credit (a) contact centre, (b) office and (c) IT development office in the last 18 months, and if he will make a statement.

Answer:

Treasury Ministers regularly undertake visits to Government establishments, including offices of HM Revenue and Customs.

Written Parliamentary Question: 4

To ask the Chancellor of the Exchequer pursuant to the answer of 19 December 2006, Official Report, column 1747W, on visits if he will list such visit in the last 18 months, broken down by (a) Minister and (b) tax credit facility; and when each minister last visited (i) tax credit, (ii) contact centre and (iii) IT development offices in each of the last 18 months.

Answer:

Treasury Ministers pay visits to the departments and agencies for which we are responsible and discuss a wide range of issues with the officials concerned. This is an integral part of our day to day routine. It is not our usual practice to provide details of all Ministers' meetings with staff.