

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 March 2012

Public Authority: The Bank of England
Address: Threadneedle Street
London
EC2R 8AH

Decision (including any steps ordered)

1. The complainant has requested confirmation of any conditions or controls attached to the Bank of England (BoE)'s purchasing of assets, with particular reference made to the Royal Bank of Scotland (RBS) and other financial institutions.
2. The Commissioner's decision is that the requested information, to the extent that it is held, relates to the 'monetary policy' of the BoE and does not fall under FOIA. He does not therefore require the BoE to take any further steps as a result of this notice.

Request and response

3. On 29 November 2011, the complainant wrote to the BoE and requested information in the following terms:
 1. *In offering the Royal Bank of Scotland and other financial institutions to purchase assets, does the Bank of England through its subsidiary BEAPF¹ impose any conditions, and if so, what are these conditions?*
 2. *Does the Bank of England consider that it is unable to control lendings by the Royal Bank of Scotland and other financial institutions [sic] when the latter are asked for mortgages in*

¹ Asset Purchase Facility transactions are undertaken by a subsidiary company of the Bank of England – the Bank of England Asset Purchase Facility Fund Limited (BEAPFF).

connections [sic] with the acquisition of private residential property, and if so, what imposes the inability on the Bank of England?

4. The BoE responded on 23 December 2011. It explained that FOIA did not extend to certain parts of the BoE's functions, one of which is monetary policy. Nevertheless, the BoE continued by providing information that it considered answered each of the requests.
5. The complainant wrote to the BoE again on 3 January 2012 disputing the BoE's claim that the requested information was not covered by FOIA and, in any case, challenging the completeness of its response to his requests. He therefore asked the BoE to review its handling of the requests.
6. In its letter of 20 January 2012 the BoE informed the complainant that there was no basis upon which to conduct an internal review given its view that FOIA did not apply to the requested information. However, the BoE did furnish the complainant with further clarification that it considered should help satisfy the requests.

Scope of the case

7. The complainant contacted the Commissioner to complain about a number of issues arising from the BoE's handling of his requests.
8. The Commissioner considers that the first matter that must be decided is whether the requested information is subject to FOIA. If not, the issue of whether the BoE fully complied with the requests becomes immaterial.
9. In approaching cases in which the principal issue is whether FOIA applies to requested information (see, for example, *Sugar v the Information Commissioner and the BBC* [EA/2005/0023]), the Information Tribunal has allowed that a decision notice can be issued under section 50(1) regardless of whether the Commissioner does, or does not, find that FOIA applies. The Commissioner has therefore acted in accordance with this finding.

Reasons for decision

10. Schedule One, Part VI of FOIA provides that the BoE is a public authority for the purposes of FOIA but only has to deal with requests for information in some circumstances. The entry relating to the BoE states that the BoE is a public authority:

“...in respect of information held for purposes other than those of its functions with respect to –

- (a) monetary policy,*
- (b) financial operations intended to support financial institutions for the purposes of maintaining stability, and*
- (c) the provision of private banking services and related services.*

11. This means, in short, that the BoE has no obligation to comply with Parts I to V of FOIA where information is held for any of the purposes described at (a) – (c) above. The Commissioner refers to this as ‘the derogation’.
12. The Commissioner’s task is therefore to consider whether requested information, if and where it was in the possession of the BoE, was genuinely held for the derogated purposes or not.
13. It is clear that the BoE had some difficulty in resolving what actual information the complainant was seeking by making the requests. Yet, in coming to the Commissioner, the complainant has explained that his requests were directed at the aspects of safeguards connected with the purchasing of assets. Adopting what would appear to be a fairly narrow interpretation of what is meant by ‘monetary policy’, the complainant has argued that the requested information can be clearly distinguished from the functions set out in the derogation.
14. He claims that a distinction should be drawn between, for example, information relating to decisions on whether assets should be purchased and information concerning conditions or controls imposed by the BoE. The former, in the complainant’s opinion, can be viewed as an issue of monetary policy while the latter information, which features as part of the requests, can not because it does not refer to operational policy but instead to the imposition of mandatory safeguards.
15. The Commissioner, though, respectfully disagrees with this analysis. He accepts that the term ‘monetary policy’ should not be given an unnaturally wide meaning. Similarly, however, the Commissioner remembers that the term is a broad one, which will necessarily cover a number of the BoE’s key functions simply because of the role the BoE plays in promoting monetary and financial stability.
16. The Commissioner notes that he has not investigated what information is held by the BoE that is relevant to either of the requests. Nor is he aware, or had sight, of any information that has been expressly withheld from the complainant in response to his requests. Instead, the Commissioner is satisfied that he is able to reach a decision based on the direction of the requests themselves.

17. A dictionary definition of 'monetary policy'² states that it is an "Economic strategy chosen by a government in deciding expansion or contraction in the country's money-supply."
18. Under the heading 'Monetary Policy' on its website³, the BoE expands on what is meant by this policy, clarifying that –

"One of the Bank of England's two core purposes is monetary stability. Monetary stability means stable prices – low inflation – and confidence in the currency..."

A principal objective of any central bank is to safeguard the value of the currency in terms of what it will purchase. Rising prices – inflation – reduces the value of money. Monetary policy is directed to achieving this objective and providing a framework for non-inflationary economic growth. As in most other developed countries, monetary policy usually operates in the UK through influencing the price at which money is lent – the interest rate. However, in March 2009 the Bank's Monetary Policy Committee announced that in addition to settling Bank Rate, it would start to inject money directly into the economy by purchasing assets – often known as quantitative easing. This means that the instrument of monetary policy shifts towards the quantity of money provided rather than the price at which the Bank lends or borrows money."
19. The Commissioner considers that the BoE's decision to purchase assets would naturally be guided by a policy setting out the safeguards that needed to be attached to the purchases. Such a policy should help ensure protection for the scheme, which means it can function effectively.
20. The Commissioner believes it would be an artificial device to try to separate the BoE's broader strategic aims quoted above from the checks and controls that are attendant to this strategy. In the Commissioner's opinion, it is difficult to imagine how one could legitimately isolate the safeguards imposed on the purchase of assets from the act of purchasing the assets themselves, given that both aspects would seem integral to the application of the broader monetary policy. Furthermore, the Commissioner is satisfied that as it would form part of an ongoing strategy, any information held would continue to be held for the purposes of its monetary policy

² <http://www.businessdictionary.com/definition/monetary-policy.html>

³ <http://www.bankofengland.co.uk/monetarypolicy/index.htm#>

21. For this reason, the Commissioner has decided that the requests ask for information that, if held, would be held for the functions of the BoE's monetary policy and is derogated. The BoE was not therefore obliged to comply with Parts I to V of FOIA.

Other matters

22. The complainant has asked the Commissioner to consider the 'tenor' of the BoE's responses to the requests, which included the BoE's alleged failure to carry out an appropriate internal review. As the Commissioner has found that the BoE was not obliged to comply with parts I to V of FOIA, however, he has decided that it would be outside of his remit to investigate these issues further.

Right of appeal

23. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

24. 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.
25. 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

Rachael Cragg
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