

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 March 2023

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

Decision (including any steps ordered)

1. The complainant requested information from HM Treasury about correspondence and documents from particular meetings concerning the Loan Charge.
2. The Commissioner's decision is that, on the balance of probabilities, HM Treasury does not hold any further information within the scope of the request. The Commissioner also finds that HM Treasury is entitled to rely on section 40(2) of FOIA to withhold some of the requested information.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 29 August 2021, the complainant wrote to HM Treasury and requested information in the following terms:

"Please supply the following information, relating to all meetings between Jesse Norman and external stakeholders about the Loan Charge between 01 June 2019 and 31 August 2019:

- all briefings/documents (received from HMT and/or HMRC)
- all minutes of such meetings
- all follow-up correspondence to/from HMT and/or HMRC officials

- all memoranda (for file and/or as sent to other individuals including any retained drafts) from Mr Norman or members of his office.”

5. HM Treasury responded on 27 September 2021 to advise that it was unable to comply with the request within the cost limit (section 12 FOIA). The complainant then submitted the following refined request on 4 October 2021:

“Thank you for confirming that HM Treasury does hold information within the scope of my request, and that ten meetings in total were held within the date range I specified in that request.

I understand that it is your view that section 12 of the FOIA is engaged due to the limit on costs. You suggested that by narrowing the number of meetings that I am interested in, you may be able to comply with a future request, so I have reduced this subsequent request to three of those ten meetings, which has presumably decreased any estimate on the commensurate costs by approximately 70%.

Please therefore provide:

- all briefings/documents (received from HMT and/or HMRC)
 - all minutes of such meetings
 - all follow-up correspondence to/from HMT and/or HMRC officials
 - all memoranda (for file and/or as sent to other individuals including any retained drafts) from Mr Norman or members of his office for these three meetings only: 5th June 2019: Chartered Institute of Taxation and ICAEW 6th June 2019: Keith Gordon 12th June 2019: Lord Forsyth Of Drumlean”
6. HM Treasury responded on 27 November 2021 and advised it was refusing the request under section 14(1) of FOIA.
7. On 1 December the complainant refined their request further to only include information on the meetings between Keith Gordon and Lord Forsyth of Drumlean. HM Treasury responded on 31 December 2021 to advise that section 14(1) still applied.
8. The complainant expressed dissatisfaction with that response on 7 January 2022.
9. Following an internal review, HM Treasury wrote to the complainant on 4 February 2022 and upheld its decision.
10. During the Commissioner’s investigation, HM Treasury advised that it had reconsidered its position and would disclose the requested

information to the complainant. It also advised that the complainant had made another request concerning the meeting with Keith Gordon and it had already released the information it held concerning that meeting in its response to the later request.

11. HM Treasury provided its revised response on 11 November 2022 disclosing the requested information about the meeting with Lord Forsyth of Drumlean. It withheld some of the requested information under section 40(2) of FOIA, specifically the names of junior staff and all email addresses and phone numbers contained within the disclosure.
12. The complainant expressed dissatisfaction with the amount of information disclosed and stated they believed more information within the scope of the request is held.

Scope of the case

13. The complainant contacted the Commissioner on 18 February 2022, to complain about the way their request for information had been handled.
14. The Commissioner has considered whether, on the balance of probabilities, HM Treasury holds further recorded information within scope of the request and whether it has complied with section 1(1) of FOIA. He has also considered whether HM Treasury was correct to apply section 40(2) of FOIA to the request.

Reasons for decision

Section 1 general right of access

15. Section 1 of FOIA states 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”.

16. The Commissioner has sought to determine whether, on the balance of probabilities, HM Treasury holds further information within the scope of the request.

17. HM Treasury has explained that searches were conducted by the officials identified to be likely to hold information within the scope of the request. The officials searched records held in emails and on personal drives and on the departmental electronic records management system.
18. Following notification of the Commissioner's investigation, HM Treasury conducted its searches again to ensure that no further information was identified. It explained that it conducted thorough further searches of its records (emails, documents, its records management system) for information in scope of the meeting between the Financial Secretary to the Treasury (FST) and Lord Forsyth of Drumlean which took place on 12 June 2019. As a result of these searches, HM Treasury confirmed that no further information within scope of the request has been found.
19. HM Treasury explained that information within the scope of the request was held electronically and no paper files were held. HM Treasury also confirmed that no information related to the request had been deleted or destroyed in line with any information retention policies.
20. Upon receipt of the revised response from HM Treasury, the complainant expressed dissatisfaction with the amount of information that had been disclosed and queried HM Treasury's previous reliance on sections 12 and 14(1) of FOIA. HM Treasury has explained that it revised its previous position as it had disclosed information relating to the meeting with Keith Gordon to the complainant as the result of another request, and had recently provided a response to another requester about the meeting with Lord Forsyth so it then disclosed the same information to the complainant.
21. The Commissioner notes the complainant's frustration at HM Treasury changing its position over the course of the request timeline, but finds that HM Treasury was correct to review its position in favour of disclosure as the request was refined, and as relevant information had since been disclosed as the result of other requests being made.
22. On the balance of probabilities the Commissioner is satisfied that no further information within the scope of the request is held by HM Treasury, as he has not been provided with any evidence that HM Treasury would hold further information. Furthermore, the Commissioner is satisfied that HM Treasury has conducted appropriate and diligent searches for any information within scope.
23. The Commissioner is satisfied that HM Treasury has complied with its obligations under section 1(1)(a) FOIA in this case.

Section 40 - personal information

24. This reasoning will also cover whether HM Treasury was correct to apply section 40(2) of FOIA to the request.¹
25. Section 40(2) says that information is exempt information if it is the personal data of another individual and disclosure would contravene one of the data protection principles. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
26. In this case, the Commissioner is satisfied that the withheld information is personal data because it relates to the names of junior officials and the email addresses and phone numbers of HM Treasury staff.
27. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
28. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary and whether these interests override the rights and freedoms of the individuals whose personal information it is.
29. The Commissioner considers that the complainant is pursuing a legitimate interest but that disclosure of the withheld information through FOIA is not necessary to satisfy it. This is because the legitimate interest has been met by the information already disclosed. The names of junior staff and specific email and telephone details add nothing of relevance to the legitimate interests of accountability and transparency which HM Treasury acknowledges.
30. The Commissioner therefore considers that disclosing the requested information would be unlawful as it would contravene a data protection principle; that set out under Article 5(1)(a) of the UK General Data Protection Regulation. The public authority was therefore correct to apply section 40(2) of FOIA to withhold the names of junior staff and all email and phone details.

Right of appeal

¹ <https://www.legislation.gov.uk/ukpga/2000/36/section/40>

31. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

32. 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.
33. 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

Michael Lea
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Wycliffe House
Water Lane
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