

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 4 May 2023

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

#### **Decision (including any steps ordered)**

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1. The complainant requested information relating to how the Treasury anticipated financial markets would react to September 2022's mini-Budget tax cuts.
2. HM Treasury refused to provide the requested information, citing sections 35(1) (formulation of government policy), 29(1) (the economy) and 40(2) (personal information) of FOIA.
3. The Commissioner's decision is that HM Treasury is entitled to rely on section 35(1)(a) to withhold the requested information.
4. The Commissioner requires no steps to be taken as a result of this decision.

#### **Request and response**

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5. On 3 October 2022, the complainant wrote to HM Treasury and requested information in the following terms:  
  
"All correspondence, memos and briefings sent or received by Clare Lombardelli, Chief Economic Adviser, between September 19 and

September 24, 2022 which discuss the anticipated reaction of financial markets to the mini-Budget tax cuts.

All correspondence, memos and briefings sent or received by Lindsey Whyte, Director General of International Finance, between September 19 and September 24, 2022 which discuss the anticipated reaction of financial markets to the mini-Budget tax cuts.”

6. HM Treasury responded on 31 October 2022. It confirmed it holds some information within the scope of the request but refused to provide it, citing:
  - section 35(1)(a) (formulation and development of Government policy);
  - section 29(1)(a) (prejudice to UK’s economic interests);
  - section 29(1)(b) (prejudice to the financial interests of the UK); and
  - section 40(2) (personal information).
7. Following an internal review, HM Treasury wrote to the complainant on 1 December 2022, maintaining its position.
8. The Commissioner is satisfied that the grounds for withholding names, and other personal details, of officials below Senior Civil Servant level are well established. As the complainant has not disputed the withholding of personal information the Commissioner has not found it necessary to consider whether those details have been correctly withheld.
9. The following analysis explains why the Commissioner is satisfied that HM Treasury was entitled to apply section 35(1)(a) to withhold the requested information.

## **Reasons for decision**

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### **Section 35(1)(a) formulation of government policy**

10. Section 35(1)(a) of FOIA provides an exemption from the duty to disclose information to the extent that it requires the disclosure of information relating to the formulation and development of government policy. The Commissioner understands ‘formulation’ to broadly refer to the design of new policy, and ‘development’ to the process of reviewing or improving existing policy.
11. The purpose of section 35(1)(a) is to protect the integrity of the policymaking process, and to prevent disclosures that would undermine

this process and result in less robust, well-considered or effective policies. In particular, it ensures a safe space to consider policy options in private.

12. The exemption is class based and so it is only necessary for the withheld information to 'relate to' the formulation or development of government policy for the exemption to be engaged – there is no need to consider its sensitivity. However, the exemption is subject to the public interest test.
13. In accordance with the Tribunal decision in *DfES v Information Commissioner and the Evening Standard* (EA/2006/0006, 19 February 2007) the term 'relates to' is interpreted broadly. Any significant link between the information and the process by which government either formulates or develops its policy will be sufficient to engage the exemption.
14. The Commissioner is limited in what he is able to say about the withheld information without disclosing its content. However, having considered the withheld information, he is satisfied that it comprises information relating to the formulation or development of government policy in relation to fiscal matters. The Commissioner is satisfied that the exemption at section 35(1)(a) is engaged.
15. He has therefore gone on to consider the public interest and whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **Public interest arguments in favour of disclosing the information**

16. The complainant considers that the Treasury's discussions prior to the mini-Budget are clearly a matter of public interest "given the enormous impact the proposed tax cuts had...".
17. He told HM Treasury that he believes that there is a significant public interest, both in the UK and elsewhere, in transparency around the decision-making associated with the tax cuts in question.
18. He considered that it was in the public interest to disclose the requested information to inform the public debate on tax policy and economic policy in general.
19. HM Treasury acknowledged the public interest in transparency and accountability of the Treasury, and the broad public interest in furthering public understanding of fiscal measures and issues relating to the UK economy.

### **Public interest arguments in favour of maintaining the exemption**

20. While HM Treasury recognises that transparency and openness in its policy-making process improves public trust, it also told the complainant:

“... there is a strong public interest in officials having a safe space environment to discuss policies candidly in order to ensure good policy-making, in this case on the Government’s fiscal measures”.

21. It argued that there is a strong public interest in protecting the Government’s ability to discuss and develop policies to reach well-formed conclusions.

22. It also stated that there is a strong public interest:

“... in sharing the final policy outcomes to the population as a whole, rather than making it available to one person, which may give rise to speculation on the Treasury’s fiscal plans”.

23. Regarding the timing of the request, HM Treasury told the Commissioner that, at the time of the request, policy development was ongoing.

### **The balance of the public interest**

24. The Commissioner accepts that significant weight should be given to safe space arguments – ie the concept that the Government needs a safe space to develop ideas, debate live issues, and reach decisions away from external interference and distraction – where the policy making is live and the requested information relates to that policy making.

25. The Commissioner accepts that there is a public interest in the disclosure of information which can inform public understanding of fiscal matters. The question for the Commissioner to consider is whether the arguments in favour of maintaining the exemption are stronger.

26. The relevance and weight of public interest arguments will depend on the content and sensitivity of the particular information in question and the effect its release would have in all the circumstances of the case. Once a policy decision has been finalised and the policy process is complete, the sensitivity of information relating to that policy will generally start to wane, and public interest arguments for protecting the policy process become weaker. If the request is made after the policy process is complete, that particular process can no longer be harmed. As such, the timing of a request will be important.

27. In the context of this request, the Commissioner accepts that the policy making process was clearly live and ongoing at the point the request was submitted. The Commissioner recognises that the request was

made shortly after the 'mini-budget' of 23 September 2022 and its effect on the UK economy.

28. In assessing the public interest balance in this case, the Commissioner has taken into account the timing of the request, the content of the information in question and the effect of its release in all the circumstances of the case.
29. While acknowledging the public interest in the subject matter, the Commissioner considers that greater weight can be afforded to the public interest argument in favour of protecting the safe space in which policy matters are discussed.
30. The Commissioner's decision, therefore, is that, in the circumstances of this case, the public interest favours maintaining the exemption. The Commissioner is satisfied that, at the time of the request, the information related to live policy formulation and that there is a stronger public interest in protecting the space in which that policy is being developed. It follows that HM Treasury was entitled to rely on section 35(1)(a) to refuse the request.

### **Other exemptions**

31. Having concluded that HM Treasury is entitled to rely on section 35(1)(a) as its basis for withholding all the requested information, the Commissioner has not gone on to consider its application of section 29 to the same information.

## Right of appeal

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32. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

33. 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.
34. 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 .....**

**Laura Tomkinson  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**