

Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 3 October 2006

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

Summary

On 3 February 2005 the complainant requested information as to the names and background of all candidates for the 2002 appointment of Governor of the Bank of England. The Treasury refused to disclose this information placing reliance upon the personal information exemption under section 40 Freedom of information Act ("the Act") upholding its decision on review. Upon considering a complaint dated 12 August 2005 the Commissioner upheld the decision to withhold the information as exempt under section 40 of the Act save for the information requested as to the background of the successful candidate Mr Mervyn King which was considered exempt from disclosure under the information reasonably accessible by other means exemption under section 21 of the Act.

The Commissioner's Role

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

The Request

2. The complainant initially requested information relating to the selection process leading to the appointment of Mervyn King as Governor of the Bank of England, prior the Act coming into force.
3. On 2 February 2005 the Treasury responded disclosing a copy of a briefing memo to the Chancellor dated 22 November 2002, together with an annexed document, referred to as annex "A" which outlined the appointment process. The memo also suggested that there were two further annexes, "B" and "C" which were said to contain background details and attributes of the respective candidates although this information was withheld.

4. On 3 February 2005 the complainant wrote to the Treasury requesting the withheld information from the public authority in accordance with section 1 of the Act in the following terms:

“Under the Act, I would like to ask the Treasury to reconsider its decision to withhold annexes B and C of the memo entitled Bank Appointments on November 22 2002. From the released portions of this memo, it appears that the background on the six candidates is set out at annex B and the attributes of these candidates is contained in annex C.

I believe that there is a clear public interest in releasing this information as the Governor of the Bank of England is a key and high-profile post. The public is entitled to know more about the way in which this appointment was made. The list of candidates should not be withheld on the grounds that it constitutes personal data, as this information relates to the public lives of the individuals.”

5. On 1 March 2005, the Treasury replied stating that it was unable to disclose information relating to individual candidates as it would fall within the personal information exemption provided under section 40 of the Act and that disclosure of the information would contravene one of the data protection principles as its disclosure would be unfair to the individuals concerned.
6. The Treasury went on to state that there had been a drafting error in the memo dated 22 January 2002 in that there were in fact only two annexes to the letter. The Treasury stated that one had already been disclosed (annex A) and the second (annex B) could not be disclosed because it contained personal information, having regard to the exemption under section 40 of the Act.
7. On 13 April 2005 the complainant requested an internal review arguing that as the Governorship was a key and high profile public appointment the public should know more about how it was made and that the information requested related to the public lives of the individuals concerned and as such their privacy should be regarded as ‘over-ridden’ in the wider interest of informing the public.
8. On 8 July 2005 the Treasury responded upholding its refusal and stating that the request related to personal information and would be exempt from disclosure under section 40 of the Act because disclosure would be unfair to the individuals concerned and would contravene the first data protection principle. The Treasury went on to say that the argument raised by the complainant as to whether the information related to the public lives of the individuals was irrelevant because the information was personal data and the balancing of the public interest was not required because section 40 is an absolute exemption.

The Investigation

9. On 12 August 2005 the complainant wrote to the Commissioner making a formal application for a decision under section 50 of the Act.
10. On 6 March 2006 the Commissioner wrote to the Treasury seeking clarification of the reasoning relied upon for withholding the outstanding information having regard to the presumption running through the Act in favour of openness.
11. On 10 April 2006 the Treasury replied stating that contrary to an earlier indication, there were in fact only two annexes and the reference to an annex C document was in error. The Treasury stated that the withheld information (contained in annex B) consisted of a list of candidates for the post of Governor and “biographical information” on each candidate, which it said was subject to the section 40 exemption stating:

“In our view both the individual names and the biographical information contains personal data. In this instance HMT reached the view that section 40(2)(a) applied because release would contravene the first data protection principle in that it would be unfair to release the information.

In making this decision we concluded that, given the sensitive nature of the appointment process it would be unfair and not in the public interest to release the names of those considered for appointment and rejected. Particularly because as the appointment process is undertaken in confidence, those candidates on the list had not applied for the post and were, in many cases, not even aware that they (were) being considered.”

12. On 12 June 2006 the Treasury advised that it had already released the information contained in Annex B of the memo to the Chancellor as to the background of Mr Mervyn King on its website and in the form of a press office Question and Answer briefing to coincide with the announcement of his appointment by the Chancellor to Parliament on 27 November 2002 and that the withheld information consisted of an assessment of the “strengths” and “weaknesses” of Mr King’s nomination for the post.

Analysis

13. The Commissioner is satisfied that the information requested in respect of each of the candidates for the post of Governor of the Bank of England constitutes personal data as it relates to living individuals who can be identified from it.

14. The information consists of personal data in respect of third parties, and as such will constitute exempt information if either of the conditions referred to in section 40(2) are satisfied.
15. In considering whether the first condition is satisfied, the Commissioner has had regard to whether any of the data protection principles have been breached. The first data protection principle requires that personal data should be processed “fairly” and “lawfully.”

Information relating to the unsuccessful candidates

16. Having regard to the confidential nature of the selection process the Commissioner does not consider that it would have been in the expectation, even of the candidates who knew they were being considered, that their personal data, consisting of names and biographical information or by implication the fact of their rejection would be released to the public domain.
17. The Commissioner therefore considers that disclosure of either the list of names or the “biographical information” in relation to the unsuccessful candidates would be unfair, contrary to the first data protection principle and the exemption under section 40(2) would therefore apply.

Information relating to Mr Mervyn King

18. In so far as interest in the background of the appointee is concerned, the Commissioner considers that it would be fair to release this information having regard to the importance of this high profile public role and the implied acceptance of the legitimate public interests in the career history and track record of the office holder.
19. The Commissioner notes however that information as to the background of Mr King had already been released into the public domain in the form of a Treasury press office Question and Answer briefing and information posted on the Treasury website to coincide with the Chancellor's announcement of the new Governor's appointment to Parliament on 27 November 2002.
20. In the circumstances, the Commissioner considers that disclosure of this information would be exempt under section 21 of the Act as information reasonably accessible to the applicant by other means.
21. In so far as the information as to the “attributes” of the successful candidate is concerned, comprising of an assessment of the “strengths” and “weaknesses” of Mr King, the Commissioner considers that Mr King would have had a reasonable expectation that this information would continue to be treated as highly confidential following his acceptance of the post. The Commissioner considers that to release this information would therefore be unfair and as such would contravene the first data protection principle and he therefore considers it to be exempt from disclosure under section 40(2) of the Act.

22. With regards to the argument by the complainant that there is a public interest in releasing the information because the position of Governor of the Bank of England is a “key and high profile post” and that the public have an interest in knowing more about how the appointment was made the Commissioner considers that the exemption under section 40 of the Act is absolute and accordingly the public interest does not fall to be considered.
23. In all the circumstances and for the reasons set out above the Commissioner upholds the decision of the public authority to withhold the information requested.

The Decision

24. The Commissioner's decision in this matter is that the Public Authority has dealt with the Complainant's request in accordance with the requirements of Part I of the Act

Steps Required

25. In the light of the above circumstances the Commissioner does not require any additional steps to be taken by the Treasury.

Right of Appeal

26. 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

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 3rd day of October 2006

Signed

**Phil Boyd
Assistant Commissioner**

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

Legal Annex

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.

Section 21(1) provides that

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

Section 40 provides as follows: –

- (1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject
- (2) Any information to which a request for information relates is also exempt information if-
 - (a) it constitutes personal data which do not fall within subsection(1), and
 - (b) either the first or the second condition below is satisfied.
- (3) The first condition is –
 - (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of the Act (right to prevent processing likely to cause damage or distress), and
 - (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A (1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.