

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 21 November 2006

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

Summary

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 7 September 2005 the complainant made a request for information by email to HM Treasury (HMT) for information fed into the macroeconomic model used to forecast the performance of the UK economy. In particular the request stated:

"I need to know which are the exogenous variables and really ideally have the treasury assumptions there for which I formally hereby request a copy of the treasury configuration files."
3. This request was answered on 5 October 2005. HMT advised the complainant that the information requested was held but declined to communicate that information in reliance on the exemptions at section 29 (The Economy) and section 35 (Formulation of Government Policy). HMT acknowledged that both these exemptions are subject to a public interest test but stated that in its view, the public interest required maintenance of the exemptions in this particular case.
4. On 10 October 2005, the complainant wrote to the Commissioner to complain about the refusal of his request.

The Investigation

Scope

5. The Commissioner's investigation of the complaint focussed upon the substantive grounds for the refusal of the request. At the same time, partly as a result of issues that came to light in the course of the investigation, consideration was given to the way in which both the initial request for information and the subsequent request for a review of that decision by HMT were handled. Although these matters do not form a part of the decision which the Commissioner is required to make under s.50 of the Act, they are of general concern to him and his conclusions are set out in the section headed, "Other Matters".

Chronology

6. The complaint was received by the Commissioner on 12 October and acknowledged on 14 October 2005. At this stage it was not entirely clear to the Commissioner (partly because of the somewhat technical nature of the request) what information had been requested from HMT. Further enquiries were made of the complainant on 18 January and 6 February 2006 seeking clarification.
7. On 22 February 2006, having spoken by telephone to the complainant, the case officer assigned to the case wrote to HMT. His assumption, since this had not been mentioned by the complainant, was that no internal review had been requested although one had been offered. He indicated to HMT that he would be content in the first instance for it to reconsider the basis of the refusal, as it would have done had a review been requested. HMT was invited to provide any information in addition to that previously given to the complainant as to why the exemptions cited applied and why the public interest required maintenance of the exemptions. The case officer also repeated the argument made by the complainant, namely that the requested information was of a statistical nature and therefore not covered by the exemption at section 35 of the Act. The case officer stated that, depending upon the outcome, he would then consider whether, in this particular instance, he would require sight of the refused information.
8. In response, HMT advised that the complainant had, in fact, requested an internal review and that this was in the process of completion. An assurance was initially given that this would be completed by 14 April and the details of the outcome communicated to the complainant.
9. On 20 April 2006, HMT advised the complainant by email that the review had upheld the original refusal. HMT said that it would "reply more fully next week explaining the reasons for this conclusion." The case officer wrote to HMT on 3 May 2006 seeking confirmation that these further details had been supplied and requesting a copy. Nothing further was heard from either HMT or the complainant until 22 June 2006 when the complainant contacted the case officer by email to ask how the investigation of this and another unrelated complaint were progressing. The case officer then wrote to the complainant, seeking confirmation that no further information had been received. On 30 June 2006, the

complainant wrote to the case officer to advise him that no correspondence had been received since 23 February 2006 from either HMT or the Commissioner. The case officer contacted HMT once again on 6 July and, in response, was provided with a copy of the letter sent to the complainant on 27 April 2006, setting out the reasons for the conclusion reached by the review. The case officer therefore took the statement by the complainant that he had heard nothing from HMT since February to mean simply that he had not been supplied with the requested information.

10. Given the difficulties that had arisen in this case and the technical nature of the information request, the case officer arranged a meeting with representatives of HMT. This took place on 26 September 2006 at the Treasury. At this meeting the case officer was provided with an overview of HMT processes around the Pre-Budget Report and the Budget and with an explanation of how the HMT macroeconomic model works and a clear explanation of the information which had been requested by the complainant. The meeting also provided an opportunity to the HMT to rehearse its grounds for the refusal of the complainant's request including the public interest considerations taken.

Findings of fact

11. The Commissioner's investigation has established firstly the nature of the information requested and the context in which the request was initially made. In essence the Treasury Model is a macroeconomic forecasting tool which allows HMT to make predictions about how the UK economy is likely to perform. This in turn forms the basis of the forecasts and proposals in the Chancellor's annual Budget. Various variables are fed into the tool, including hard data about past performance and - the subject of the complainant's request - estimated values for factors which may influence the future performance of the economy. Some 500 separate variables are fed into the model, of which some 140 represent estimated values. Examples given of the estimated values included predictions as to the performance of the housing market, estimates as to the level of UK employment and estimates as to the likely level of world oil prices. Each of these factors is likely to have some impact upon the performance of the UK economy.
12. It was explained in the course of the meeting of 26 September that HMT makes public a large amount of information about the economic assumptions underlying the budgetary process. Examples were provided to the case officer. It was also explained that there is a public version of the Treasury model and that the factors, both exogenous and endogenous, which are fed into it, are also publicly available. It was also explained that the actual values for historical data as opposed to forecast data, were published. HMT explained that the complainant's request related to the estimated or forecast values.
13. It was reported, by way of background to the case, that the complainant's request arose out of an attempt to make use of the public version of the model and that the information which was requested, described variously as the "exogenous variables" or "the Treasury configuration files", comprised the values which were fed into model representing Treasury officials' estimates as to the likely state of the housing and employment markets, the world price of oil and so forth. HMT

stated that it had attempted to provide assistance to the complainant in using the public version of the model and had directed him toward the Oxford Economic Forecasting group which makes considerable use of the Treasury model in its own work. The correspondence between HMT and the complainant bears out this account.

14. In the correspondence with the complainant and the case officer, HMT had stated that the requested information was exempt by virtue of section 29 of the Act (The Economy) and section 35 (Formulation of Government Policy.) In the earlier correspondence, HMT had suggested that the prejudice to the economy would arise principally because disclosure would result in less frank (and therefore poorer) advice being given by officials to Ministers). In other words, the prejudice to the economy would be as a consequence of the harm done to effective policy formulation. In the course of the meeting it was suggested that disclosure of HMT estimates as to the future performance of the housing market, for example, would have a direct and adverse impact upon the economy by influencing the future behaviour of buyers and sellers within the market.
15. HMT also explained that although the information requested by the complainant took a numerical or mathematical form, in its view the values represented judgments made by officials and that contrary to appearances it was correct to regard this information as advice to Ministers rather than as statistical information.

Analysis

16. The full text of the relevant sections of the Act is given in the Legal Annex. The key elements are summarised in the analysis below.
17. Section 1 of the Act establishes the right to make requests for recorded information held by public authorities and places on those authorities the duty first to confirm or deny that the requested information is held and, second, to communicate that information to an applicant. Part 1 of the Act sets out, among other things, the procedure for handling requests. Further assistance to public authorities as to the way in which requests are to be handled is given in the Code of Practice issued by the Secretary of State under section 45 of the Act.
18. At the same time, the Act recognises that there are limits to the right of access and sets out a series of exemptions from disclosure that apply in certain cases. Exemptions are either absolute, that is they always apply to information falling within an exemption; or qualified, that is they do not apply if there is an equal or greater public interest in disclosure compared to maintenance of the exemption. The exemptions cited by HMT in this case are both qualified exemptions.

Procedural matters

19. Section 10 of the Act provides that a response to a request for information must be given promptly or, in any event, within 20 working days.
20. The complainant's request was submitted on 7 September 2005 and refused on 5 October 2005, 20 working days later. The refusal notice given to the complainant included details of the right of appeal to the Commissioner and the opportunity to request an internal review of the refusal. To that extent the response was given in accordance with the requirements of the Act.
21. Section 16 of the Act requires public authorities to provide advice and assistance to applicants for information. In refusing the complainant's request, HMT drew attention to "the Government's fiscal framework, including its fiscal rules, and forecasts ... set out in the Budget and Pre-Budget Reports. In particular ... Chapters 2, B and C of the Budget Report and Chapter 2, and annexes A and B of the Pre Budget Report." HMT went on to explain, "The structure of the model used to prepare such forecasts is detailed in the model documentation that we have already supplied to you. This information along with the model and associated database is sufficient for you to prepare a forecast using your own assumptions." As described above, the complainant was also directed to Oxford Economic Forecasting for further assistance.

Section 29

22. Section 29 provides an exemption for information whose disclosure would or would be likely to prejudice the economic interests of the United Kingdom.
23. HMT has argued that disclosure of economic forecasts would or would be likely to cause prejudice for the following reasons:
 - Uninformed interpretation of the forecasts could mislead and damage the credibility of HMT and erode public confidence in it.
 - Disclosure would make it difficult to manage expectations and could hinder the conduct of monetary and fiscal policy;

It has also argued that disclosure of the advice given to Ministers would result in less frank advice being given in the future and that this would also be likely to cause prejudice. The logic of this argument, which is accepted by the Commissioner, is that more inhibited advice would result in poorer policy formulation which, in respect of economic policy, might harm the economy. However, it seems sensible to consider the argument in relation to the exemption covering the formulation of government policy which is considered below.

24. The first argument is that effectiveness of the management of the economy depends to an extent upon how widely HMT's forecasts are accepted. It is suggested that uninformed comment upon its forecasts might undermine confidence. Although the Commissioner has some sympathy for this view, he does not accept it in its entirety. In his view it is equally possible to argue that

informed debate will in fact enhance the standing of HMT and thus support the effective management of the economy. Insofar as there is a risk of “uninformed interpretation”, the Commissioner considers that it may be possible for HMT to supply additional information which would minimise it.

25. The second argument is that disclosure of a forecast will itself be likely to influence behaviour. For instance it was argued that if HMT were to state publicly that it expected house prices to rise significantly (or to crash) over the coming year, this would itself influence house prices. Similarly, if HMT were to put a figure on expected average earnings growth, this would itself set a “going rate” in wage negotiations. Although the argument may apply more strongly to endogenous factors, which the Government may be able to influence directly, the Commissioner accepts that disclosure of the estimate for an exogenous factor, such as the world oil price may have an effect on future behaviour.

Public interest

26. Having accepted that because of the risk that forecasts become self-fulfilling prophecies, disclosure would be likely to prejudice the economic interest of the UK, the Commissioner has considered whether, in the all the circumstances of this particular case, the public interest in disclosure is an equal to or stronger than that in maintaining the exemption.
27. It is obvious that there is a strong public interest in the effective management of the UK economy and, insofar as it is within the gift of government, in ensuring its success. Insofar as disclosure would adversely affect the economy, the Commissioner accepts that this would not be in the public interest. At the same time, the Commissioner recognises, as the complainant argues and as HMT accepts in principle, disclosure may advance public debate about economic issues and allow for enhanced accountability of both the HMT and its Ministers. On balance, however, his judgement is that the risk of harm to the economy through disclosure is significantly greater than the benefits that would flow from disclosure.
28. In reaching this conclusion, the Commissioner is influenced by the relative currency of the information requested which related to the economic forecasts for the same year in which the request was made. Had the request been submitted ten years after the forecast had been made, for example, the Commissioner would accept that risk of prejudice would be much lower, while the public interest in being able to judge the performance of HMT and the forecasting tool then employed would be undiminished. The Commissioner is not suggesting that the requested information should automatically be released after a certain period of time, simply that the public interest balance may be altered.
29. The Commissioner has also taken into account the considerable amount of background information which HMT routinely publishes in connection with the Pre-Budget Report and the Budget itself and its practice of publishing corrections of its economic forecasts. He accepts that there is some force, therefore, in the argument that the disclosure of a small amount of additional information would not contribute significantly to public debate or understanding.

Section 35

30. Section 35 provides an exemption in relation to information held by a government department if it relates, among other matters, to the formulation or development of government policy. There are some specific qualifications to the exemption. In particular, section 35(2) provides that statistical information used to provide an informed background to a decision that has been taken is not to be regarded as exempt. Meanwhile section 35(4) makes clear that there is a particular public interest in the disclosure of factual information which has been used to provide an informed background to decision making.
31. The complainant argues that because the values for the exogenous variables fed into the economic model are mathematical, they constitute statistical information.
32. HMT argues that “statistical information is usually the outcome of a mathematical operation performed on a sample of observations or some other factual information e.g. an average. The forecast is not an empirical fact and so we do not believe it is included as “statistical information” within the FOI Act.”
33. Before the implementation of the Act, the Commissioner took advice from the Office of National Statistics (ONS) as to the meaning of the term “statistical information” as it is employed in the Act. ONS advice was that “‘Statistical information’ has a wider application [than the term ‘statistics’], to include any analysis, reports, projections, and meta-data that are associated with the statistics and used to support policy formulation and development.” The word, ‘projections’ may suggest a forecast and the ONS view may, therefore, be argued to support the complainant’s view. The ONS advice forms the basis of the approach taken in the Commissioner’s published guidance although this does not further explore the meaning of the word ‘projection’.
34. Support for the HMT position is found in the dictionary definition of the word “statistic”. The Shorter OED defines the words as meaning ‘quantitative fact or statement’. This suggests that, insofar as those exogenous variables that are the subject of the request are mathematical expressions of the judgements of officials as to what may occur in the future, the information is not statistical.
35. In ultimately accepting the HMT argument the Commissioner draws a distinction between a projection which is simply an extrapolation from existing data (for instance an assumption that inflation in the forthcoming year will simply be an average of annual inflation over the previous decade) and a projection which represents a judgement based upon the experience of the forecaster but which does not flow in any mathematical sense from the data relating to past performance.
36. In making this distinction, the Commissioner has taken a purposive approach to the meaning of the section. It seems clear to him that “advice”, or the provision by officials to Ministers of opinions and recommendations, is regarded as the most sensitive information. Factual information is regarded as less sensitive once a decision has been taken, and therefore the Act specifies that public interest in

disclosure is more likely to outweigh the public interest in maintenance of the exemption. Statistical information, that is hard, factual information admitting little or no argument, is considered to be the least sensitive and should be disclosed once a decision has been taken. It seems to the Commissioner that against that scale of sensitivity, it is reasonable for HMT to argue that the exogenous variables are more deserving of protection than the mathematical representation of factual information. The Commissioner considers that this purposive approach is preferable to one focussing upon the *form* taken by information, which would lead to certain information being exempt simply by virtue of its being expressed in mathematical form.

37. For the exemption provided by section 35 to apply it is not necessary to demonstrate that disclosure would or would be likely to prejudice the formulation or development of policy. Since he accepts that the requested information does indeed constitute advice given to Ministers for the purposes of preparing the annual budget and is not simply statistical information, the Commissioner accepts that it is exempt. He has gone on, therefore, to consider whether there is an equal or stronger public interest in the disclosure as compared to that in the maintenance of the exemption.

Public interest

38. It seems clear to the Commissioner that the public interest protected by s.35 is the public interest in the formulation of effective policy by government and that, in the way in which the exemption is formulated, there is a recognition that a precondition is the ability of Ministers to obtain advice from officials, colleagues and the Law Officers and to engage in a free and frank discussion of the issues that contribute towards the development of a particular policy.
39. The contrary public interest in the ability to hold decision makers to account and to participate in informed debate is implied by the provisions relating to statistical and factual information in subsection 2 and 4 and by section 19(3)(b) which in the context of publication schemes, refers to the public interest in “the publication of reasons for decisions made by (an) authority.”
40. The first argument put by HMT is that disclosure of the requested information would inhibit officials in providing advice to Ministers in the future. It was suggested that a consequence of disclosure might be that HMT would not produce such broad forecasts in the future. The Commissioner does not dismiss the argument that disclosure of advice of civil servants may cause them to be more cautious in their advice giving, particularly in cases in which they may be personally identified. In this particular case, however, the Commissioner is not persuaded that disclosure would have the “chilling effect” described. On the contrary, in this particular case it seems to the Commissioner that Ministers could easily specify that they wished to continue to receive broad forecasts of the sort prepared hitherto.
41. The second argument put by HMT is that it already operates with a high degree of transparency. It cited, for instance, the Code for Fiscal Stability, adopted as a requirement of the 1998 Finance Act, and which requires the publication of much

background information to the Budget itself. The Government is also obliged to publish a Pre-Budget Report which is designed to promote informed discussion. It publishes corrections to financial forecasts and its forecasting is the subject of formal review by the Office of National Statistics. Although the Commissioner does not accept that the fact that some information is published of itself creates a case for withholding other information, he does accept that there is some force in the argument that disclosure of the additional information requested by the complainant would not contribute significantly to public understanding of the budgetary process or allow Ministers to be held significantly more accountable.

42. The Commissioner has also taken into account a further argument put in the course of the meeting of 26 September, namely that the budgetary process is essentially a continual one. Proposals in the area of taxation, for instance, may be submitted by officials one year and resubmitted, perhaps in modified form in subsequent years. Forecasting information, the subject of the complainant's request, is likely to relate not only to the financial year ahead but to subsequent years. In other words, although decisions as to the content of an annual Budget may have been taken, the advice and also the factual and statistical information, may also relate to the setting of Budgets in future years.
43. Although the Commissioner is not satisfied that disclosure of the requested information would necessarily result in poorer advice being given to Ministers, he does accept that disclosure would restrict the "private thinking space" available to Ministers to reflect upon that advice and for this reason he is satisfied that, on balance, the public interest favours the maintenance of the exemption provided by section 35(1). In reaching this conclusion he is also mindful of the general regime under which HMT operates as set out in the Code for Fiscal Stability.

The Decision

44. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the requirements of the Act. He is satisfied that it met the requirements regarding the timing of the response and the provision of advice and assistance and, in particular that it was entitled to rely upon the exemptions provided by sections 29 and 35.

Steps Required

45. In view of the above matters, the Commissioner requires no steps to be taken.

Other matters

46. The Act does not specify a time period within which reviews of refusal decisions must be completed. However non-statutory guidance is given in the Code of

Practice issued by the Secretary of State under section 45 of the Act. This contains the following statement:

“The complaints procedure should provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue. Complaints procedures should be as clear and simple as possible. **They should encourage a prompt determination of the complaint.**” (Emphasis added.)

47. The Code also recommends that reviews are carried by someone more senior than the person who originally dealt with a request and by someone who had not previously been involved. In this particular case, the Commissioner recognises that the HMT found itself in some difficulty in that the complainant's initial request was itself handled by a relatively senior official. The review was then carried out by a Treasury Managing Director. The Commissioner accepts that where reviews must be carried out by a person of such seniority, some delays are likely to occur. The Commissioner also recognises that the business of HMT is cyclical and that when the Commissioner contacted it with regard to this complaint, the officials best placed to complete the requested review were heavily involved in preparations for the 2006 Budget. Nevertheless, it is clear that the requested view was not carried out promptly
48. Under s.48 of the Act, the Commissioner may give a practice recommendation to a public authority whose practice does not, in his view, conform to the requirement of the Code. Although the Commissioner is critical of the length of time which it took the public authority to conduct a review of its decision to refuse the complainant's request for information, in this particular instance, he accepts that the complainant's request was made relatively soon after the full implementation of the Act and notes that HMT itself acknowledged in the course of the meeting on 26 September 2006 that the request had not been handled to a satisfactory standard. The Commissioner does not, therefore, propose to give a practice recommendation to HMT in this instance.

Right of Appeal

49. 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@dca.gsi.gov.uk

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 21st day of November 2006

Signed

**Richard Thomas
Information Commissioner**

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