

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 17 March 2008

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

### Summary

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The complainant asked the public authority for all information which it held concerning the resignation of Sir David Varney from HM Revenue and Customs (HMRC), including the background to it, and similar information regarding his appointment as the Chancellor's adviser on Transformational Government. The Treasury's response was that details of the resignation and appointment had been set out in a publicly available press notice and written response to Parliamentary Questions, and that it held no other relevant information. The Commissioner decided that there was no evidence that any additional information was held by the public authority and that accordingly there had been no breach of section 1 of the Act.

### The Commissioner's Role

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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

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2. On 16 January 2007 the complainant requested from HM Treasury ('the Treasury') the following:

*'information (including memos, meeting minutes and any other information) on the resignation of Sir David Varney from HMRC [HM Revenue & Customs] and the background to it; and similarly the information you have on his appointment as the Chancellor's adviser on Transformational Government'.*

He stated that he was submitting a similar request to HM Revenue and Customs.

3. The Treasury replied on 1 February 2007. It stated that the details of the resignation and appointment had been set out, respectively, in a Treasury press notice on 19 July 2006, and a written response to Parliamentary Questions by the Financial Secretary to the Treasury. It gave website addresses where these documents could be accessed, and attached background Q&A material prepared by officials for use in explaining the appointment. It stated that this was all the relevant information which it held. It advised the complainant of his right to apply for an internal review and to complain to the Commissioner.
4. On 2 February 2007 the complainant expressed his doubt that no other relevant information was held, and asked the Treasury to confirm that that was the case.
5. The Treasury wrote to the complainant on 20 February 2007. It stated that it had checked its records again and could confirm that it had found no additional recorded information. It pointed out that the Treasury was a public authority and employer separate to HMRC, and that it was the Prime Minister who was generally responsible for appointments at senior level. It provided some further information on the process for making senior civil service appointments.
6. Following the complainant's query, the Treasury stated on 1 March 2007 that it had now conducted a formal internal review. Since the request related to recent events and any information held would be relatively easy to locate, it was content that it retained no further recorded information. The Treasury advised the complainant of his right to approach the Commissioner.

## The Investigation

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### Scope of the case

7. On 14 March 2007 the complainant contacted the Commissioner to complain about the way in which his request for information had been handled. He indicated that he found it hard to believe that such a significant move had been the subject of *'no minuted or summarised discussions, correspondence, emails etc of any kind within either department or between them'*.

## Chronology

8. The Commissioner wrote to the complainant and the Treasury on 14 November 2007, seeking further information.
9. The Treasury replied on 5 December 2007.
10. On 7 February 2008 the Commissioner asked the Treasury to clarify what searches had been carried out in order to locate the information requested in this case.
11. The Treasury replied on 22 February 2008 with those details.
12. Following a further query from the Commissioner on 6 March 2008, the Treasury provided further comments on 11 March.

## Analysis

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### Procedural matters

13. The complainant requested from the Treasury all information which it held concerning the resignation of Sir David Varney from HM Revenue and Customs (HMRC), including the background to it, and similar information regarding his appointment as the Chancellor's adviser on Transformational Government. The Treasury's response was that the details of the resignation and appointment had been set out, respectively, in a Treasury press notice on 19 July 2006, and a written response to Parliamentary Questions by the Financial Secretary to the Treasury. It gave website addresses where these documents could be accessed, and attached background Q&A material prepared by officials for use in explaining the appointment. It claimed that this was all the relevant information which it held. When the complainant queried this, the Treasury informed him that it had checked its records again and could find no additional recorded information.
14. The complainant expressed his view to the Commissioner that it was hard to believe that such a significant move had been the subject of *'no minuted or summarised discussions, correspondence, emails etc of any kind within either department or between them'*. The Treasury pointed out to the complainant that the reason why the Treasury was likely to hold little information was because HMRC was a separate public authority and employer in its own right, and the Treasury did not have management responsibilities for it. It also pointed out that it was the Prime Minister who was generally responsible for appointments at senior level. In response to the Commissioner's invitation to the Treasury to comment on the complainant's view, it made the similar point that Sir David Varney was not an employee of the Treasury but rather of HMRC, and had been appointed by the Prime Minister in a process overseen by the Cabinet Secretary and the Cabinet Office. It claimed that, since he had not been *'recruited, appointed or employed by HM Treasury prior to his resignation, it is therefore unsurprising'* that the

Treasury did not hold any further information relating to Sir David Varney's resignation.

15. In reaching a decision the Commissioner has been guided by the decision of the Information Tribunal in *Linda Bromley v Information Commissioner and The Environment Agency EA/2006/072*. In its decision the Tribunal agreed that the test to be applied in such cases '*was not certainty but the balance of probabilities*'. The Tribunal also set the factors that should be considered: '*the quality of the public authority's initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted.*'
16. The Commissioner has considered if the requested information was what he would expect the Treasury to hold, and whether there is any evidence that the information was once held. The Treasury has confirmed that the information was not held and that it was not the sort of information which it was likely to have ever held.
17. The Commissioner also asked the Treasury to outline what searches it had carried out. The Treasury stated that it had identified the Chancellor and Permanent Secretary's Offices as the relevant locations for any relevant information which might be held, and that a search of the electronic and paper records in those offices had produced the Q&A briefing which had supported the Press Notice. Further searches had been made of the Press Office and the Internal Communications Team, which had produced no additional information. After the complainant had queried the lack of information, the Permanent Secretary's Office had been checked again; HMRC had been contacted for any emails that might have been sent to the Treasury; the Human Resources department in the Treasury had been asked for any papers that might have been passed to a personal file; and HMRC's freedom of information team had also been asked whether its searches regarding a parallel request on a similar theme had uncovered anything. However, no further relevant records had been found.
18. The Treasury confirmed that these searches included its Electronic Document Records Management System. Since it was not its practice to record the search terms used, it had now conducted the searches again following the Commissioner's enquiry. It had conducted a simple search under 'varney', refined by adding various combinations of terms including:

*'substituting "varney" for "HMRC Chairman"; we used terms such as: resign\* ( \* engages resigned, resignation etc) ; chancellor's advisor; transformational government'*.

The Treasury also reported that it had conducted searches with both unlimited and limited (1 June 2006 to 2 February 2007) date ranges. Although the unlimited date range searches had uncovered some documents which matched the request they related to the freedom of information request and subsequent handling by the Commissioner. Within the limited date range 89 electronic files had been returned; none of the titles suggested any relevance to the request, and on

perusal of a random selection of 52 of the files no relevant information was discovered.

19. The Commissioner considers that the searches conducted by the Treasury were appropriate and that reasonable action was therefore taken in an attempt to locate information relevant to the request.

20. The Commissioner has also considered whether there was any legal requirement for the Treasury to hold the information, but can identify no such requirement. Further, the Commissioner has also reflected on whether the Treasury had any specific reason or motive to conceal the information, but could discern none. In the circumstances, the Commissioner has decided that there is no evidence that would justify refusing to accept the Treasury's response that it does not hold the information requested in this case. The Commissioner therefore concludes that, on the balance of probabilities, the Treasury does not hold any information falling within the complainant's request. Accordingly, he does not consider that there is any evidence of a breach of section 1 of the Act.

## **The Decision**

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21. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

## **Steps Required**

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22. The Commissioner requires no steps to be taken.

## Right of Appeal

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23. 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@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.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 17<sup>th</sup> day of March 2008**

**Signed .....**

**Steve Wood**  
**Assistant Commissioner**

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

## Legal Annex

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**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 1(2)** provides that -

'Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.'

**Section 1(3)** provides that –

'Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.'

**Section 1(4)** provides that –

'The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.'

**Section 1(5)** provides that –

'A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).'

**Section 1(6)** provides that –

'In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as 'the duty to confirm or deny'.'