

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 5 September 2011

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

Summary

The complainant made a number of requests under the Freedom of Information Act 2000 (the Act) to HM Treasury (the Treasury) for information surrounding the consultation paper *Restriction of pensions tax relief: a discussion document on the alternative approach* dated July 2010. The requests which have been considered by the Commissioner within this Notice were numbered 2, 3 and 8 in the complainant's letter to the Treasury dated 13 August 2010. The Treasury has explained that information relevant to requests 2, 3 and 8 was not held. The Commissioner considers that the Treasury does not hold information within the scope of requests 2, 3 and 8.

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 13 August 2010 the complainant made a number of requests under the Act to the Treasury. The requests were for the following information:

1. *The information sought arises from the consultation paper Restriction of pensions tax relief: a discussion document on the alternative approach dated July 2010.*
 2. *Annex A of that paper refers to "full actuarial valuation of DB contributions". What figure was used for that purpose?*
 3. *What were the actuary's instructions for that purpose; what assumptions were used as the basis for the actuary's calculation; and what was the actuary's advice?*
 4. *The number 20 is specified as the relevant valuation factor in section 276 of the Finance Act 2004. Was that figure determined after considering actuarial advice? If so, what were the actuary's instructions for that purpose; what assumptions were used as the basis for the actuary's calculation, and what was the actuary's advice?*
 5. *The multiplier 10 is specified for defined benefit pension schemes in section 234 of the Finance Act 2004 in connection with the Annual Allowance. Was that figure determined after considering actuarial advice? If so, what were the actuary's instructions for that purpose; what assumptions were used as the basis for the actuary's calculation; and what was the actuary's advice?*
 6. *What is the Treasury's estimate of the number of persons currently brought within a charge to tax under the present Lifetime Allowance and Annual Allowance rules?*
 7. *What is the Treasury's estimate of the number of persons likely to be brought into a charge to tax under each of the examples (i) to (iv) of Annex A of the consultation paper?*
 8. *Paragraph 2.12 of the paper refers to provisional analysis by the Government. Would you very kindly provide a copy of that provisional analysis?*
3. On 13 September 2011 the Treasury responded to the complainant. In relation to parts 4 and 5 of the request the Treasury confirmed that this information was not held. In relation to point 6 of the request the Treasury provided this information to the complainant. In relation to points 2, 3, 7 and 8 of the request the Treasury applied section 35(1)(a) of the Act.

4. On 8 October 2010 the complainant asked the Treasury to carry out an internal review.
5. On 15 January 2011 the Treasury wrote to the complainant with the result of the internal review it had carried out. In relation to part 7 of the request, the Treasury provided the complainant with this information. It confirmed that it did not hold the information requested at points 2, 3 and 8 of the request.

The Investigation

Scope of the case

6. On 25 February 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the Treasury's handling of points 2, 3 and 8 of the request and the length of time it took for the Treasury to carry out the internal review.

Chronology

7. On 19 July 2011 the Commissioner wrote to the Treasury to ask for submissions in relation to its handling of points 2, 3 and 8 of the request.
8. On 15 August 2011 the Treasury provided the Commissioner with submissions in relation to its handling of points 2, 3 and 8 of the request.

Analysis

Substantive Procedural Matters

Section 1(1)(a)

9. Section 1(1)(a) states that:

"Any person making a request for information to a public authority is entitled –

to be informed in writing by the public authority whether it holds information of the description specified in the request,"

10. In this case the Treasury has informed the Commissioner that it does not hold the information requested at points 2, 3 and 8 of the request.
11. The Treasury explained to the Commissioner that when it had originally responded to the complainant it had scoped the request too widely and had included information which actually fell outside the scope of the request. It explained that it had looked at information falling within the subject area of the request rather than the specific information which the complainant had requested. It had therefore applied section 35 in order to withhold information which actually fell outside the scope of the request. At internal review it did confirm that the requested information was not held. The Treasury explained that whilst it remained of the view that information falling within the scope of the request was not held it was now willing to provide the complainant with the information which fell outside the scope of the request to which it had originally applied section 35. It explained that it had offered this to the complainant.
12. In relation to point 2 of the request the Treasury has confirmed that no figure was ever used, therefore the Treasury has never held such a figure.
13. In relation to point 3 of the request the Treasury has confirmed that there was no actuary and therefore the words 'full actuarial valuation' do not refer to the calculation of an actuary or to the provision of a factor by an actuary. It reiterated that in its letter of 15 January it confirmed to the complainant that, "internal Treasury modelling produced estimates for various scenarios that were intended to approximate to full actuarial valuation" it explained that it had also informed the complainant that, "the nature of the analysis at this stage meant that it was not necessary to actually estimate the valuation factor precisely, and at no point was a valuation factor, eg as ultimately recommended by the Government Actuary's Department, used in this modelling."
14. In relation to point 8 of the request the Treasury confirmed that on 15 January 2011 it had explained to the complainant that, "the suggestion that the actuarial factor might need to be in the range

of 15-20 was based on initial meetings and discussions between HM Treasury and the Government's Actuary Department. This early work was not captured in a specific piece of 'provisional analysis' so this information is not held by us." The Treasury further explained to the Commissioner that "the 'provisional analysis' in question was ... principally the views and analysis of colleagues at the Government's Actuary Department" and "HM Treasury did not hold the provisional analysis in question". It reiterated that the Treasury has never held this information.

15. In coming to a decision in this case the Commissioner was mindful of the Information Tribunal decision of *Bromley v The Information Commissioner and The Environment Agency (EA/2006/0072)* in which it was stated that "there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records". It was clarified in that case that the test to be applied as to whether or not information was held was not certainty but the balance of probabilities.
16. Having taken into account the submissions provided by the Treasury and the previous Tribunal decisions highlighted above, the Commissioner considers that on the balance of probabilities the Treasury does not hold the information requested at points 2, 3 and 8 of the request because in relation to point 2 of the request the Treasury has explained that no figure was ever used, in relation to point 3 of the request the Treasury has explained that there was no actuary and in relation to point 8 of the request, the provisional analysis was the views of the Government's Actuary Department and the Treasury does not hold any recorded information in relation to this. The Commissioner therefore considers that the Treasury complied with section 1(1)(a) of the Act.

The Decision

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

Steps Required

18. The Commissioner requires no steps to be taken.

Other matters

19. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took over 40 working days for an internal review to be completed, despite the publication of his guidance on the matter.

Right of Appeal

20. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

21. 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.
22. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 5th day of September 2011

Signed

Pamela Clements

Group Manager, Complaints Resolution

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Legal Annex

General Right of Access

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 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
 - (i) subsection (1), and
 - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
 - (iii) section 41, and
 - (iv) section 44"