

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 July 2012

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

Decision (including any steps ordered)

1. The complainant requested from HM Treasury ("the Treasury") details of any communications or records of any meetings between a senior civil servant and a BBC journalist in the six months prior to the nationalisation of Bradford & Bingley. The Treasury informed the complainant that it did not hold any information falling within the scope of his request.
2. The Commissioner's decision is that the Treasury does not, on the balance of probabilities, hold any information falling within the scope of the complainant's request. He therefore does not require the Treasury to take any steps to comply with the legislation.

Request and response

3. On 1 September 2011 complainant made the following request for information to the Treasury:

"We would appreciate full details of all documentation, faxes, emails and transcripts of telephone calls and meetings between Mr Kingman, a Treasury official at the time and Mr Peston of the BBC in the six months prior to the nationalisation of B&B."

4. It appears that the Treasury did not identify this initial request as having been received. Following correspondence with the Commissioner, on 20 January 2012, the Treasury provided a response in which it informed the complainant that it did not hold any information falling within the scope of the request.

5. The complainant requested an internal review on 24 January 2012. The Treasury provided the outcome of its internal review on 3 April 2012. It upheld its original position.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The Commissioner considered whether the Treasury was correct to inform the complainant that it did not hold any information as requested by the complainant for the six month period prior to the nationalisation of Bradford & Bingley, that is between 29 March 2008 and 29 September 2008.

Reasons for decision

7. In situations where there is a dispute between a public authority and a complainant about whether requested information is held by the public authority, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request.
8. The complainant informed the Commissioner that there was evidence of a long standing friendship between Mr Peston, a BBC journalist, and Mr Kingman, a senior civil servant at the Treasury, and that they had been colleagues at the Financial Times. The balance of probability strongly suggested that a succession of media scoops by Mr Peston came from Treasury briefings, some of which created a false market in Bradford & Bingley shares prior to nationalisation. He believed that this view was shared by many MPs, including a senior member of the Treasury Select Committee. It was also reflected in Sir Richard Branson's book "Business Stripped Bare" when dealing with Virgin's attempt to take over Northern Rock. This recounted how Sir Richard Branson believed that Mr Peston was often better informed than he was about the status of the take over talks, in which the Treasury was also involved.
9. The Commissioner notes that the Treasury and Mr Kingman have always denied being the source of any leaks to Mr Peston.
10. The Treasury provided the Commissioner with a detailed explanation of the searches that it had undertaken in an attempt to locate any information that it held that fell within the scope of the complainant's

request. It searched its electronic document and record management system ("EDRM") and provided details of the search terms used. It explained that it is departmental policy that any information must be captured, declared and managed as a record in its EDRM system when it related to departmental business. Therefore it expected that any relevant information would have been filed to this system. It had been unable to locate any.

11. The Treasury informed the Commissioner that it had also investigated whether information from the relevant period could still be held on equipment used by Mr Kingman such as laptops and smart phones or in networked resources. However, it believed that when Mr Kingman left the Treasury, at the end of 2008, any information would have been cleared from his laptop computer or smart phone to allow it to be reissued. In addition, new laptops were issued to all staff at the end of 2009 as a result of a change in its IT provider. It explained that it was departmental policy to clear all personal drives and mailboxes ten working days after an individual left the department. As a consequence, it had not located any relevant information from these sources.
12. The Treasury also informed the Commissioner that its policy and practice is that only the press office talk to the media. Other Treasury officials would only talk to the media in exceptional circumstances, normally where there was a need to explain complex issues that required special expertise. However, this would always be done under the supervision of the press office. In such exceptional circumstances, it would be expected that records of authorised communications would be kept and that such communications would have been advised and agreed by the press office and other parts of the department. There was no record of on the record briefings by policy officials with journalists in relation to Bradford & Bingley.
13. The Treasury confirmed that it had also asked the press office and policy officials working in the policy area at the time whether they had any knowledge of contacts between Mr Kingman and Mr Peston. They were not able to identify any link between them.
14. Finally, the Treasury pointed out that, at the time of the financial interventions to which the request relates, Mr Kingman was not responsible for work in this area. The Directorate responsible for Financial Services Strategy and Financial Stability and Risk was the International and Finance Directorate. The Managing Director of this Directorate at the time was a different senior civil servant.
15. Mr Kingman worked in an unrelated area. He was the Second Permanent Secretary to the Treasury and the Managing Director of the Public Services and Growth Directorate. The Treasury therefore considered it

unlikely that he would have been directly involved in this area of work except as a member of the organisation's Executive Management Group, Chair of its Group Finance Committee and a member of the Treasury Board.

16. The Treasury did not consider that Mr Kingman's role would have at any time required him to communicate with Robert Peston on the issue of Bradford & Bingley. It indicated that the Financial Services Authority would have lead on gathering all information relevant to a 'problem' institution and the Bank of England would have lead on market intelligence and payment systems. Accordingly, if there was a systematic threat, the Bank of England or the FSA would have lead in managing the situation and co-ordinating a response, although the Chancellor of the Exchequer would have had the final say on the launch of any operation.
17. The Treasury confirmed that the information that it had searched relating to Bradford & Bingley did not refer to Mr Kingman, was not produced by him and was not copied to him. It was unable to identify any evidence of any contact between Mr Kingman and Mr Peston in the period covered by the request.
18. Based on the searches carried out by the Treasury and the explanations that it has provided, the Commissioner is satisfied that, on the balance of probabilities, it does not hold any information falling within the scope of the complainant's request.

Right of appeal

19. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

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

20. 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.
21. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF