

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 October 2013

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

Decision (including any steps ordered)

1. The complainant has requested HM Treasury (HMT) to disclose Appendix 8 to the Bingham Report. HMT refused to disclose this information as it considered it was exempt from disclosure under section 23(1) of the FOIA.
2. The Commissioner's decision is that HMT is correct to withhold the requested information under section 23(1) of the FOIA. He therefore requires no further action to be taken.

Request and response

3. On 8 January 2012, the complainant wrote to HMT and requested information in the following terms:

"Following the July 2011 ruling by the First Tier Tribunal in favour of Professor Sikka regarding the Sandstorm Report (EA/2010/0054), I wish to request an unredacted copy of the unpublished Appendix 8 of the Bingham Report into the collapse of the Bank of Credit and Commerce International."
4. HMT responded on 30 January 2012 refusing to disclose the requested information under section 23(1) of the FOIA.
5. The complainant requested an internal review on 12 March 2012.

6. HMT completed its internal review on 7 December 2012. It informed the complainant that it remained of the view that the requested information was exempt from disclosure under section 23(1) of the FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 7 May 2013 to complain about the way his request for information had been handled. Specifically, the complainant disagrees that section 23(1) of the FOIA applies to the requested information. He considers with the passage of time (20 years) and the historical interest in this information it should be released into the public domain.
8. The Commissioner did not obtain a copy of the withheld information in this case. Instead, the Commissioner obtained written confirmation from the Head of Security at HMT that the requested information had been reviewed by him and that section 23(1) of the FOIA remained applicable. Often information to which this exemption is applied is highly confidential or highly sensitive. Public authorities are therefore very reluctant to provide the Commissioner with a copy or indeed access to the information in question. To get round this issue and to protect the information in question, the Commissioner will accept written assurance from an appropriate senior official within the authority. In this case the Commissioner considers the Head of Security has sufficient seniority and knowledge of security matters to provide the necessary confirmation.
9. Similarly it is not possible to go into great depth in this notice about section 23(1) and how it applies to the requested information in this case, as to do so could reveal exempt information.

Reasons for decision

10. Section 23(1) of the FOIA states that information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).
11. Section 23(3) provides a list of bodies dealing with security matters. In this case HMT has stated that the requested information was supplied by or relates to the security services. HMT is unhappy to provide exact names of the body/bodies involved, as to do so would release information which itself is top secret.

12. Section 23(1) of the FOIA is an absolute exemption. It is not therefore subject to the public interest test. For section 23(1) to apply, the Commissioner only needs to satisfy himself that the requested information falls within the definition of this exemption.
13. As stated above, the Commissioner has been provided with written assurance from the Head of Security at HMT that the requested information is information that was directly or indirectly supplied to HMT by, or relates to, bodies specified in subsection 3. The Head of Security has reviewed the withheld information himself and is satisfied that section 23(1) of the FOIA applies.
14. The HMT confirmed that the Bingham Report has been released into the public domain. It is only Appendix 8 that was not published because it is considered top secret. HMT advised that at various points in the report the appendix is mentioned – the fact that it contains information obtained from security services, is of a high security classification and is not to be published. One particular part of the report discusses the help he received from an expert banker and an accountant and the fact that these individuals, despite the assistance they provided, did not have access to the information contained in appendix 8 (Part F of Chapter 2, page iii of the report, page xi of the report).
15. For the reasons explained above, the Commissioner is satisfied that the requested information is exempt from disclosure under section 23(1) of the FOIA.
16. The Commissioner notes that the complainant has provided strong public interest arguments in support of the disclosure of this information. He has already informed the complainant that such arguments cannot be taken into account, as section 23(1) of the FOIA is an absolute exemption and is not subject to the public interest test.

Other matters

17. The Commissioner notes that HMT took just short of 9 months to respond to the complainant's request for an internal review – it was requested on 12 March 2012 but it was not completed by HMT until 7 December 2012. Although there is no statutory time set out in the FOIA within which public authorities must complete a review, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review, and in no case should the total time taken exceed 40 working days. Where it is apparent that determination of the complaint will take

longer than the target time, the authority should inform the applicant and explain the reason for the delay. The Section 45 Code of Practice contains comprehensive information on how an internal review should be conducted.

Right of appeal

18. 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

19. 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.
20. 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
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