

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 March 2015

Public Authority: The Royal Mint
Address: Llantrisant, Pontyclun
CF72 8YT

Decision (including any steps ordered)

1. The complainant requested all electronic communications between the public authority and Treasury officials in relation to the development of the new £1 coin to be introduced in 2017.
2. The Commissioner's decision is that:
 - The public authority was entitled to withhold all of the information held within the scope of the request on the basis of the exemptions at section 36(2)(b)(i) and (ii) FOIA.
 - The public authority breached sections 17(1) and (1)(b), 17(3)(b) and 17(7) FOIA.
3. No steps required.

Request and response

4. On 24 April 2014 the complainant wrote to the public authority and requested information in the following terms:

'I am writing to you under the Freedom of Information Act 2000 to request the following information:

Please may I receive all electronic communications between the Royal Mint and the Treasury [Her Majesty's Treasury] relating to the new one pound coin which is to be introduced.

Please may I receive all of the requested information, and related attachments, from 19th March 2012 until 19th March 2014.

Please also provide the total costs for the development of the coin and breakdown where this expenditure was spent. E.g. Design etc.

Please provide the information in the form of an electronic manner.

If it is not possible to provide the information requested due to time/cost limitation put in place by the Act please provide guidance under S.16 as to how I can refine my request to be included in the scope of the Act.

I would be willing to accept information from the dates listed between 2013-14 if the longer period will exceed cost limits.

I look forward to your response within 20 working days as stipulated by the Act.'

5. On 20 June 2014 the public authority explained to the complainant that it considered the information requested exempt from disclosure on the basis of section 43 FOIA because it would be likely to prejudice the public authority's commercial interests and section 36 FOIA because it would be likely to inhibit the free and frank provision of advice on any future projects.
6. On 8 July 2014 the complainant asked the public authority to review its response to his request. He specifically pointed out that the public authority had failed to provide him with details of the public interest test a public authority was required to carry out if it considered that a qualified exemption such as those in sections 43 and 36 was engaged.
7. On 18 August 2014 the public authority wrote to complainant with details of the outcome of the internal review. It explained that the original decision had been upheld primarily because the information requested was commercially sensitive and also because disclosure would prejudice the outcome of the ongoing consultation with industry and the public with regards to the introduction of the new £1 coin. The public authority did not provide any specific details with regards to the public interest test.

Scope of the case

8. The complainant contacted the Commissioner on 19 October 2014 to complain about the way his request for information had been handled. He primarily challenged the public authority's decision to withhold the information requested.
9. The complainant also queried the length of time it took the public authority to issue a refusal notice and complete its internal review. He further pointed out that the refusal notice did not comply with the FOIA because it did not state the specific exemptions relied upon, details of the public interest test, notification of the availability of an internal review process and the right to complain to the Commissioner.
10. The complainant also submitted that the public authority had failed to meet its obligation under section 16 FOIA to provide him with advice and assistance in narrowing down his request.
11. The Commissioner has addressed these procedural matters further below.
12. During the course of the Commissioner's investigation, the public authority explained that only emails from February 2014 to March 2014 actually fell within the scope of the complainant's request. This is because the request was for information relating to the £1 coin to be introduced. The information prior to February 2014 held by the public authority does not relate to the £1 coin to be introduced in 2017.
13. The public authority also clarified that it was specifically relying on the exemptions at sections 36(2)(b) and 43(2) and additionally introduced the exemptions at sections 29(1)(a), 31(1)(a), 35(1)(b) and 41(1) FOIA.
14. The substantive scope of the investigation therefore was to consider;
 - whether the public authority was entitled to withhold the emails within the scope of the request¹ on the basis of the exemptions at sections 29(1)(a), 31(1)(a), 35(1)(b), 36(2)(b), 41(1) and 43(2).

¹ Also referred to as "the disputed information" in this notice.

Reasons for decision

Disputed information

15. The disputed information consists of emails from February to March 2014 between the public authority and the Treasury over the development (including the cost) of the new £1 coin to be introduced.

Section 36(2)(b)

16. The Commissioner initially considered the application of the exemption at section 36(2)(b) because unlike the other exemptions relied upon, the public authority considers that all of the disputed information is exempt on the basis of section 36(2)(b).

17. Section 36(2) states:

'Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-.....

...(b) would, or would be likely to, inhibit-

(i) the free and frank provision of advice, or

(ii) the free and frank exchange of views for the purposes of deliberation, or

(c) would otherwise prejudice, or would be likely to otherwise prejudice, the effective conduct of public affairs.'

18. Section 36(5) FOIA contains a list of persons who may act as a 'qualified person' within the meaning in section 36(2). The public authority is a government owned company. However, it is not an executive agency. It is actually owned by The Royal Mint trading fund, which is itself owned by the Treasury. The exemption at section 36(2)(b) was engaged by the public authority on the basis of the opinion of its Chief Executive.
19. The Commissioner is satisfied that the Chief Executive is the designated qualified person within the meaning in section 36(5)(c) FOIA.²
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² Section 36(5)(c) - A 'qualified person' in relation to information held by any other government department (ie other than a government department in the charge of a Minister

20. In determining whether this exemption is engaged the Commissioner must determine whether the qualified person's opinion was a reasonable one. In doing so the Commissioner has considered all of the relevant factors including:
- Whether the prejudice relates to the specific subsection of section 36(2) that is being claimed. If the prejudice or inhibition envisaged is not related to the specific subsection, the opinion is unlikely to be reasonable.
 - The nature of the information and the timing of the request, for example, whether the request concerns an important ongoing issue on which there needs to be a free and frank exchange of views or provision of advice.
 - The qualified person's knowledge of, or involvement in, the issue.
21. Further, in determining whether the opinion is a reasonable one, the Commissioner takes the approach that if the opinion is in accordance with reason and not irrational or absurd – in short, if it is an opinion that a reasonable person could hold – then it is reasonable. This is not the same as saying that it is the only reasonable opinion that could be held on the subject. The qualified person's opinion is not rendered unreasonable simply because other people may have come to a different (and equally reasonable) conclusion. It is only unreasonable if it is an opinion that no reasonable person in the qualified person's position could hold. The qualified person's opinion does not have to be the most reasonable opinion that could be held; it only has to be a reasonable opinion.
22. The qualified person gave his opinion that the disputed information engaged the exemptions at section 36(2)(b) on 6 June 2014. Some details of the reasons given by the qualified person in support of his opinion that section 36(2)(b) was engaged (and inevitably, some aspects of the Commissioner's analysis) have been reproduced in the confidential annex to this notice at the request of the public authority. The annex has not been published along with this notice and is thus unavailable to the public, including the complainant.
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or a Northern Ireland department in the charge of a Northern Ireland Minister), means the commissioners or other person in charge of that department.

23. The qualified person explained to the Commissioner that the withheld emails contain frank discussions and debate between the public authority and Treasury officials over the development of the new £1 coin. In the qualified person's opinion, disclosure of the disputed information would be likely to result in Treasury officials and Ministers being less willing to seek the expert advice of the public authority. The public authority would also be less willing to offer unwelcome guidance to the Treasury for fear of disclosure. This would have significant effects on the security, reliability and durability of the coinage.
24. The Commissioner is satisfied that the withheld emails contain frank discussions between the public authority and Treasury officials in connection with the development of the new £1 coin. Given the nature of the discussions, the Commissioner is satisfied that the qualified person's opinion above was neither irrational nor absurd. It was a reasonable opinion for him to hold in the circumstances. There was a real and significant possibility that disclosure of the disputed information would have resulted in less free and frank discussions between officials and the public authority in relation to the development and introduction of the new £1 coin. The request was submitted soon after the announcement was made by the Chancellor of the Exchequer in the Annual Budget on 19 March 2014 that a new £1 coin would be introduced in 2017. However, the public authority has separately explained that discussions are still ongoing between the authority, Treasury officials and industry stakeholders.
25. The discussions between the public authority and Treasury officials leading up to that announcement were therefore still very recent and it was reasonable to hold the view that disclosure at the time of the request could inhibit the frankness of future discussions for fear of any adverse publicity generated as a result. Given the ongoing discussions, it was also reasonable to hold the opinion that disclosure would be likely to inhibit free and frank discussions as well as the provision of advice.
26. The Commissioner therefore finds that the exemptions at section 36(2)(b)(i) and (ii) were correctly engaged by the public authority.

Public interest test

27. The exemption at section 36(2) is subject to a public interest. Therefore, the Commissioner has to consider whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the disputed information.
28. As stated above at paragraph 22, some details of the public authority's public interest arguments (and inevitably, some aspects of the

Commissioner's analysis) have been reproduced in the confidential annex at the request of the public authority.

29. The public authority noted that disclosure of the disputed information could result in improved decisions and better quality discussions which would be in the public interest.
30. It however argued that Ministers and officials need to be able to work through potential options and their implications without the fear that policy, and their own candid assessments, may be held up to ridicule. Similarly, the public authority should be able to provide expert advice on the coinage in the understanding that this will enable an informed, free and frank debate on any options for the coinage.
31. The public authority further argued that disclosure would not allow space for debate and discussion without the fear of potential recrimination should the discussions ever be released. This would impact upon the security, reliability and durability of the coinage which would have a detrimental effect on the public, potentially leading to an increase in counterfeiting and ultimately costing the taxpayer more money and that would not be in the public interest.
32. The authority also argued that the quality of advice to Ministers would suffer as a result if officials did not feel that they could offer candid advice or felt constrained from doing so.
33. The public authority stressed that there is a public interest in preserving the Budget decision-making process, a sensitive element of the Treasury and wider Government policy-making. It argued that there is a clear and strong public interest in ensuring that Ministers receive full, free and frank advice so that they can make informed decisions regarding the Budget. Disclosure of the disputed information would in its view, undermine this process because officials would be less likely to provide full, free and frank advice in future as part of the Budget decision-making process.
34. Finally, the public authority argued that disclosure would be likely to put undue pressure on officials to formulate their advice amidst public debate which could otherwise undermine reasoned analysis.

Balance of the public interest

35. The Commissioner considers that disclosure of the disputed information would increase public understanding of the various options considered and the reasons why a particular option was preferred over others.

36. Furthermore, there is a public interest in knowing the cost of developing the new £1 coin as well as the different options considered in that regard. Disclosure of the disputed information would assist the public in making informed views regarding the cost of developing the coin.
37. The Commissioner however considers that in the circumstances of this case, there is a strong public interest in protecting the private space for the public authority, Treasury officials and industry stakeholders to have free and frank discussions regarding the development of the new £1 coin. He accepts that these discussions should be able to take place in an atmosphere where participants can make full and frank contributions without fear that their views could be made public before discussions have concluded. Subjecting their views to public scrutiny while discussions are still ongoing is likely to constrain their willingness to consider options which might seem unpopular for fear of any adverse reaction. There is a strong public interest in the public authority, officials and industry stakeholders having the private thinking space to consider all options in relation to the development of the new £1 coin.
38. The Commissioner also considers that there is a strong public interest in preventing a chilling effect on future discussions between the public authority and officials. Whilst he does not share the view that disclosure of the disputed information at any time would almost certainly have a chilling effect on the frankness of similar discussions in future, he is willing to accept that disclosure of the disputed information at the time of the request is likely to result in such a chilling effect. If the public authority and Treasury officials felt that views they have expressed candidly could be made public so soon after they were expressed and while discussions were still ongoing, they are likely to be less candid in future discussions and that would not be in the public interest.
39. Although not directly inherent in the exemptions at section 36(2)(b) itself, the Commissioner is mindful of the very strong public interest in protecting the security of the new £1 coin from counterfeiters. There is clearly a public interest protecting the private space for free and frank discussions (a public interest inherent in section 36(2)(b)) so as not to undermine the security and reliability of the coin.
40. The Commissioner accepts that disclosure could undermine measures included in a Budget in the sense that undermining the quality of advice the Treasury receives from the public authority could foreseeably impact on the quality of decisions taken by Ministers.
41. Therefore, on balance, the Commissioner finds that in all the circumstances of the case, the public interest in maintaining the

exemption outweighs the public interest in disclosing the disputed information.

42. In view of his decision above, the Commissioner did not need to consider any of the other exemptions.

Procedural Matters

43. A public authority is required by virtue of section 17(1) FOIA to issue a refusal notice promptly and in any event no later than 20 working days, and 17(1)(b) requires it to specify the exemption it is relying upon to withhold information requested by an applicant. Section 17(3)(b) FOIA further requires a public authority to provide an applicant with details of the public interest test conducted in reliance on a qualified exemption either in the refusal notice or in a separate notice given within a reasonable time.
44. The Commissioner finds the public authority in breach of section 17(1) and 17(1)(b) for issuing its refusal notice well over the time limit and for not specifying the limbs of the exemptions at sections 36 and 43 it was relying upon to withhold the disputed information. He further finds the public authority in breach of section 17(1) for relying on the exemptions at sections 29(1)(a), 31(1)(a), 35(1)(b) and 41(1) after the 20 working days' time limit. These additional exemptions were first introduced during the Commissioner's investigation. The Commissioner additionally finds the public authority in breach of section 17(3)(b) for failing to provide the complainant with details of the public interest factors it had considered in maintaining its reliance on the qualified exemption at section 36(2)(b).
45. Section 17(7) also states that a refusal notice issued by a public authority must contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure and contain particulars of the right to appeal to the Commissioner.
46. The Commissioner finds the public authority in breach of section 17(7) because the refusal notice issued by the public authority did not advise the complainant that he could request an internal review and that he also had the right to subsequently appeal to the Commissioner.
47. Section 16(1) states that it shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

48. The Commissioner does not consider that public authority was obliged to provide advice or assistance to the complainant in this case in the course of making his request. The request was clear enough for the public authority to handle and the issue of narrowing it down to meet the cost of compliance in section 12 FOIA did not arise because the authority had not sought to introduce any of the provisions in section 12. However, the public authority should have informed the complainant that only information from February to March 2014 actually fell within the scope of his request. Nevertheless, the Commissioner does not consider that this was a breach of the public authority's obligation under section 16(1).

Other Matters

49. Although there is no statutory time limit for a public authority to complete its internal review, as a matter of good practice, the Commissioner expects internal reviews to take no longer than 20 working days and 40 working days in exceptional circumstances.
50. The Commissioner notes that the internal review took longer than 20 working days and he has mentioned this to the public authority along with the delay in issuing the refusal notice and the inadequacy of the notice itself.
51. The Commissioner also notes that the public authority did not specifically confirm that it was upholding the exemption at section 36(2)(b) following the internal review. Although during the course of the Commissioner's investigation, the public authority clarified that it had not withdrawn its reliance on the exemption 36(2)(b), it goes without saying that internal reviews provide public authorities with the opportunity to review their initial response and make their position absolutely clear to applicants in order to avoid confusion further down the line.
52. The public authority has acknowledged that its handling of the request fell short of the required standards and has committed to undertaking a review into the way it handles and processes freedom of information requests in order to ensure that they are dealt with in a timely and correct manner. It explained that action has already been taken to ensure that requests are more clearly highlighted when they are received, and a new, distinct, inbox has been set up into which, all future requests will now be directed. Requests were previously forwarded on by its customer services team as was the case with this request which resulted in the long delay in issuing the initial response.

53. The Commissioner is satisfied that the public authority has learned the lessons it needs to from the handling of this request and is committed to taking the necessary steps to ensure that the shortcomings identified above do not re-occur in future.

Right of appeal

54. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

55. 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.
56. 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

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