

**Freedom of Information Act 2000 (FOIA)  
Environmental Information Regulations 2004 (EIR)**

**Decision notice**

**Date:** 30 March 2021

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

**Decision (including any steps ordered)**

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1. The complainant submitted two requests, seeking the same information, to HM Treasury (HMT) asking for a list of communications and documents held by it relating to Lydian International's Amulsar gold mining project in Armenia. HMT sought to withhold the information on the basis of regulation 12(5)(a) (international relations) of the EIR. It subsequently withdrew its reliance on this exception during the course of the Commissioner's investigation and provided the complainant with the information he had requested.
2. The Commissioner has concluded that HMT has breached regulation 5(2) of the EIR by failing to provide the complainant with the requested information within 20 working days of either request.
3. No steps are required.

**Request and response**

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**First request – HMT reference FOI2020/02316**

4. The complainant submitted the following request to HMT on 3 February 2020:  
  
*'a list of internal communications, briefing documents, reports, evaluations or memos relating to Lydian International's Amulsar gold mining project in Armenia, which have been held or created by HM Treasury'*
5. HMT responded on 26 February 2020 and confirmed that it held information falling within the scope of this request but considered this to be exempt from disclosure on the basis of regulation 12(5)(a) of the EIR, the international relations exception. In support of this position, HMT argued that disclosure of the information *'would be likely to prejudice relations between the UK and the European Bank for Reconstruction and Development (EBRD)'* (emphasis added). HMT also concluded that the public interest favoured maintaining the exception.
6. The complainant contacted HMT on the same day and asked it to conduct an internal review of this response. He questioned whether disclosure simply of a list of documents in question (as opposed to the documents themselves) would have an adverse affect on international relations. He also set out why he considered there to be a compelling public interest in the disclosure of this information. Finally, in line with regulation 9 of the EIR he asked HMT whether an amended request might have better success and asked for its advice on this query.
7. HMT informed him of the outcome of the internal review on 26 March 2020. The review upheld the decision to withhold the list of documents on the basis of regulation 12(5)(a) of the EIR.

### **Second request – HMT reference FOI2020/08946**

8. The complainant subsequently submitted the following request to HMT on 3 April 2020:

*'This is a new request under the Environmental Information Regulations.*

*On 3 February 2020, I made a EIR request (Ref. FOI2020/02316) to HM Treasury, which was refused at the initial stage and at internal review. The request asked for:*

*- a list of internal communications, briefing documents, reports, evaluations or memos relating to Lydian International's Amulsar gold mining project in Armenia, which have been held or created by HM Treasury...*

*...I therefore request the list of documents described in FOI2020/02316 on the basis that the authority should:*

*a) issue the list of documents originally requested as its qualification of prejudice is not sufficient to prevent their disclosure under EIR exception 12(5)(a).*

*b) it is likely to hold documents relevant to my request as part of the ministry's dealings with the IFC [International Finance Corporation] outside of its relationship with the EBRD. The IFC, I emphasise, withdrew from the project in question in 2017.<sup>1</sup>*

9. HMT responded on 4 May 2020 and confirmed that it held the requested information but it remained of the view that this was exempt from disclosure on the basis of regulation 12(5)(a) of the EIR and that the public interest favoured maintaining the exception.
10. The complainant contacted HMT on 6 May 2020 in order to ask it to conduct an internal review.
11. HMT informed him of the outcome of the internal review on 4 June 2020. This upheld the decision to withhold the information on the basis of regulation 12(5)(a).

### **Scope of the case**

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12. The complainant contacted the Commissioner on 27 March 2020 in order to complain about HMT's refusal of his first request. He subsequently complained to the Commissioner about HMT's refusal of his second request.
13. The Commissioner subsequently contacted HMT in relation to this complaint and asked for a copy of requested information, noting that both requests sought the same information, and submissions to support its reliance on regulation 12(5)(a) of the EIR.

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<sup>1</sup> HMT's response to the first request had argued that disclosure 'would be likely to' have a prejudicial affect on international relations. However, in order to engage regulation 12(5)(a) of the EIR a public authority has to demonstrate that disclosure 'would' have an adverse affect. The Commissioner understands that it was for this reason, and in line with the comments at point a) of the second request, that the complainant submitted his further request.

14. In response HMT informed the Commissioner that it had decided to withdraw its reliance on regulation 12(5)(a) of the EIR and provide the complainant with a copy of the requested information. This was on the basis that it had concluded that disclosure of the requested information would not adversely affect international relations. HMT provided the complainant with the information on 11 February 2021.
15. The Commissioner asked the complainant whether he was prepared to withdraw his complaint in light of HMT's disclosure of the requested information. The complainant explained that he was not. However, as HMT has withdrawn its reliance on regulation 12(5)(a) this decision notice focuses simply on whether HMT has complied with regulation 5(2) of the EIR.

## Reasons for decision

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### Regulation 5

16. Regulation 5(1) of the EIR states that:

*'a public authority that holds environmental information shall make it available on request.'*

17. Regulation 5(2) of the EIR states that:

*'Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.'*

18. As is clear from the above chronology, HMT did not provide the complainant with the requested information within 20 working days of either request. It therefore breached regulation 5(2) of the EIR.

## Right of appeal

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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: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

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 .....**

**Jonathan Slee**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**